

(1996) 05 DEL CK 0106

In the Delhi High Court

Case No : Interim Application No's. 12421 and 12422 of 1992 and Suit No. 163-A of 1991

Union of India

APPELLANT

Vs

S.P. Timber Industries

RESPONDENT

Date of Decision : 01-05-1996

Acts Referred:

Arbitration Act, 1940 — Section 30
Limitation Act, 1963 — Section 5

Citation : (1996) 3 AD 584 : (1996) 37 DRJ 415

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Sudha Srivastava and S.K. Khurana, for the Appellant;

Judgement

Manmohan Sarin, J.

(1) The petitioner/objector has filed I.A.12421/92 being objections u/s 30 and 33 of the Arbitration Act, against the award made and published by the arbitrator, Sh. Shiv Prakash on 7-5-1990. I.As. 12422/92 is an application u/s 5 of the Limitation Act, seeking condensation of delay of 396 days in filing the objections. The petitioner has also filed an additional affidavit in support of the application u/s 5 of the Limitation Act.

(2) Let me notice the facts in brief:-

THE Director General of Supplies and Disposals appointed Sh. Shiv Prakash, Additional Legal Adviser, Ministry of law, New Delhi as the sole arbitrator on 13-1-86, to decide the dispute that had arisen between the petitioner and respondents with regard to the contract contained in A/T No.TP-I/107/66/055/10.5.76/006/107/117,118 & 119/2.7.77/ 128/Rep/516/PACD dated 8.8.80. The learned arbitrator has made and published the award in respect of the claims and counter claims of the parties after hearing them on 7-5-1990.

(3) The award was filed by the arbitrator and notice of filing of the award was issued to the parties. The notice of filing of the award and inviting objections were served on the petitioner/objector Union of India, on 25-1-1991. The respondent was served on 11-3-1991. The respondent has not filed any objections to the award. The petitioner filed objections to the award on 26-3-1992. It is the admitted case of the parties that objections were required to be filed by 24-2-1991 by Union of India. There was a delay of 396 days in filing the objections. I.A. 12422/92 is stated to be filed seeking condensation of delay, followed subsequently with the an additional affidavit.

(4) The learned arbitrator in the award had disallowed the petitioner's claim of Rs. 2,67,125.00 on account of short supply of the timber, relying on the special term of the contract in clause 11 A whereby, the delivery was For, Kanpur. The learned arbitrator held that having dispatched the goods under a clear railway receipt, the respondents were not liable for the short supply. The arbitrator relied on the decision of the Apex Court in M/s. Marwar Tent Factory Vs. Union of India reported at 1990 S.C. 1753.

(5) The petitioner has assailed the award on the ground that the learned arbitrator erred in relying on the condition with regard to the delivery being "FOR" since the general terms and conditions in Clause 19 provided for and stipulated that the supplier will be held responsible till the entire goods contracted for arrived in good condition at destination and the responsibility for transit insurance was that of the supplier.

(6) Learned counsel for the respondent argued that the arbitrator has made the award in accordance with law and the contractual term. He was fully justified in relying on the specific delivery term as against "special instructions". The view taken by the learned arbitrator was correct and in accordance with the judgment of the Apex Court in Marwar Tent Factory Vs. Union of India -Supra. Although prima facie, it appears that the learned arbitrator, who is master of law and facts has taken a plausible view which cannot be faulted with, it is not necessary for me to consider these objections as the same are hopelessly barred by limitation.

(7) The petitioner has not made out sufficient cause for condensation of delay in preferring the objections. The reasons given in the application are that the "dealing assistant" failed to appreciate the urgency of the matter. Action was taken immediately after the said lapse was detected. Further the delay was unintentional and non deliberate. It is stated that non deliberate delay would not confer any right in the opposite party to perpetuate injustice. Further that public interest and public policy required that decision be taken on merits.

(8) Let us examine this matter in some more detail, as the delays in filing objections to awards, appear to be a frequent occurrence and corrective steps need to be taken. In this connection, it is worthwhile to notice the averments made in the additional affidavit dated 15-2-1996, filed in support of the application u/s 5 of the Limitation Act, by Deputy Director Dgs & D. The gist of

the factual narration is that after service being effected on Union of India on 21-1- 1991 the notice was diarised on 25-1-1991. On 28- 1-1991, file was sent to concerned junior officer on 28-1-1991, who moved for appointment of Government counsel. The formal letter for engagement of counsel was sent on 1-2-1991 and litigation branch of Delhi High Court was requested on 4-2-1991, to prepare para wise comments. There was to and fro movement of the file between the Litigation Branch and Purchase Directorate. The Purchase Directorate sent the file to the Litigation Branch asking for information with regard to the "application on which paradise comments were required by them, betraying complete non application of mind. Thereafter it remained in litigation branch up to 25-3-1991, for making payments of Brief Transmission Money to counsel. Thereafter, a period of ten months elapsed when it was referred to the Purchase Directorate to attend the hearings. It seems that there was a semblance of awakening from slumber and it was decided to treat the matter as urgent. It was in February, 1992, that the litigation branch submitted a report to ask the Purchase Directorate to consult the counsel immediately Along with a Steno. Again, there is to and fro movement of the file between the Purchase Directorate and Litigation Branch and after preparation of objections, the same were filed on 26-3-1992.

(9) It would seen with the foregoing narration, of events that it simply describes the movement of the file and there is no Explanation disclosing any sufficient cause for the objections, not being preferred in time. In fact there is a candid admission in para 8 of the supplementary affidavit, which I am tempted to reproduce ignoring the errors in language.

THAT the despite prominent marking in the margin as urgent and limitation involved, this case did not receive the due attention. In fact in Government decision making process no one take the responsibility to final decision, attempting to pass on the buck at every stage, resultantly each and every case delay in decision taking. It is not uncommon that on many occasions(in this case) deliberately the file is kept unmoved for days together for inexplicable and without reasons.

However, delay in this case has been due to impart handling of the case by the Government officers as well as Government advocate and due to carelessness. There by causing delay for filing of the objections/taking appearances on behalf of Union of India.

(10) Counsel for the petitioner relied on the decision of the Division Bench of this Court namely Union of India Vs. R.P. Builders, in support of her contention that the Court should consider the factors enumerated in para Ii of the said decision while considering the application for condensation of delay. Counsel urged that taking into account the observations made by the Division Bench and to avoid damage to State and loss of public funds, the Court should render substantial justice by condoning the delay of 396 days.

(11) While I am conscious of the need of doing substantial justice and of the factors enumerated in the decision of Division Bench in condoning bonafide and unintentional delays, the same would not come to the rescue of the petitioner in the instant case. I am convinced that even on a pragmatic and liberal approach being taken, the petitioner has not disclosed any sufficient cause for condensation of enormous delay in filing objections. Reference in this connection may be made to decision of Arun B. Sahariya, J Single judge of this Court in Kanishka Builders Vs. Union of India reported at 1990(2) Alr 97, wherein the Court rejected the Explanation for delay wherein the application simply mentioned the dates when papers were passed of from one to another Government department and held that same cannot be an Explanation for sufficient cause. The situation in the present case is the same.

(12) I am constrained to observe that unless certain immediate and radical measures are taken to streamline the procedure in fixing certain time limits, within which the various sanctions or approvals required by the concerned department are taken, it does not appear feasible for the Union of India to file objections within statutory period of 30 days. It is no answer to always seek solace in that such delays are inherent and part of the bureaucratic set up. In the result, I hold that the application has no merit and is dismissed. The award is made rule of the Court. A decree in terms of the award be passed. The respondent would also be entitled to interest on the awarded amount @ 12% from the date of decree till realization.