
(1984) 04 PAT CK 0021

In the Patna High Court

Case No : A.F. Cri. O. No's. 126 of 1978 and 49 and 456 of 1979

Union of India (UOI) and Others

APPELLANT

Vs

Ajit Ram Jain

RESPONDENT

Date of Decision : 26-04-1984

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 30, 33
Limitation Act, 1963 — Article 119

Citation : AIR 1986 Patna 19 : (1985) 33 BLJR 660 : (1985) PLJR 668

Hon'ble Judges : Birendra Prasad Sinha, J;B.P. Griyaghey, J

Bench : Division Bench

Advocate : Kamla Kant Prasad, for the Appellant; Bishwanath Agrawal and Triloki Nath Maitin, for the Respondent

Judgement

B.P. Griyaghey, J.—These two miscellaneous appeals and one civil revision have been heard together as they arise out of the same matter, and are being disposed of by this common judgment.

2. Union of India is the appellant in both these appeals and petitioner in the civil revision application. Sri Ajit Ram Jain is the respondent in the two appeals and the opposite party in the civil revision. The said Ajit Ram Jain the respondent had entered into a contract with Union of India represented through Chief Engineer, Central Range, Nagpur on 11th January, 1971 for construction of some work at Gaya. One of the terms of the contract was that all disputes appertaining to the contract had to be settled by arbitration of a sole arbitrator to be appointed by the Engineer-in-Chief, Army Headquarters. On completion of the work, the contractor requested the Engineer-in-Chief, Army Headquarters, New Delhi to appoint an arbitrator and accordingly Brig. Jagdeo Singh was appointed the sole arbitrator. The arbitrator published his award on 29-1-1977 and a notice thereof was sent by the arbitrator to both the parties of the award. That notice was received by the said contractor Ajit Ram Jain on 1-2-1977. Then the arbitrator filed the award along with the documents as provided u/s 14(2) of the Arbitration

Act 1940 in Court which was transmitted by the arbitrator through the Garrison Engineer, Danapur Cant who (the latter) in turn sent a copy of the intimation of filing the award in court to the parties of arbitration by his letter dated 26-2-1977. The contractor, the said Ajit Ram Jain then on 18-4-1977 filed an application u/s 14(2) of the Arbitration Act in the Court of the Sub-Judge at Gaya for directing the arbitrator to file the award in court and also to make the award the rule of the court. Thereafter the court served a notice upon the parties of the arbitration u/s 14(2) of the Arbitration Act about the award having been filed, which notice was served on the appellant through the Chief Engineer, Northern Zone, Lucknow representing the Union of India, on 28-4-1977. But even before that date, i.e. on 23-3-1977, the Union of India through the Chief Engineer, the appellant, had filed objection u/s 30 of the Arbitration Act in court for setting aside the award. This was filed in Title Suit No. 35 of 1977 before the Sub-Judge, which was the case registered on the above-mentioned application of the respondent contractor Ajit Ram Jain filed under Sections 14(2) and 17 of the Arbitration Act before the Sub-Judge for directing the arbitrator to file the award in court and to make the same the rule of the Court. The learned Sub-Judge disallowed the objection of the appellant, the Union of India (filed u/s 30 of the Arbitration Act) on the ground that that objection was prematurely filed before the service of the notice u/s 14(2) and as such the objection was not entertainable. The learned Sub-Judge by the same order accordingly made the award the rule of the Court and decree was accordingly prepared. It is against that judgment dated 29-3-1978 that the Union of India has filed the present Miscellaneous Appeal No. 126 of 1978. The said contractor, namely, the respondent has filed a cross-objection in this appeal.

3. Besides this appeal, both the parties of the arbitration filed separate review petitions also before the Sub-Judge against that judgment dated 29-3-1978. The review petition registered as Miscellaneous Case No. 12 of 1978 was filed by the contractor Ajit Ram Jain claiming that the Sub-Judge had wrongly missed to allow interest over the amount decreed in his favour. This review petition was allowed by the Sub-Judge who by his judgment dated 8-12-1978 allowed six per cent interest to the amount decreed. The Union of India has filed the present Miscellaneous Appeal No. 49 of 1979 in this Court against that judgment of the Sub-Judge. The contractor Ajit Ram Jain has filed a cross-objection in this Miscellaneous Appeal No. 49 of 1979 claiming that the Sub-Judge should have rather allowed more interest than six per cent.

3A. Another review petition, namely,

Misc. Case No. 13 of 1978 was filed against the judgment dated 29-3-1978 of the above-mentioned T. S. No. 35 of 1977, by the Union of India claiming that the Sub-Judge ought not to have dismissed its objection filed u/s 30 of the Arbitration Act and should not have made the award the rule of the Court. The Union of India had filed this review application besides having filed the present Miscellaneous Appeal No. 126 of 1978 in this Court. This review petition was

dismissed by the Sub-Judge by judgment dated 8-12-1978. The Union of India has filed Civil Revision No. 456 of 1979 against that judgment rejecting that review petition.

4. Thus, the abovementioned two appeals and one revision are together here for consideration in this judgment. Out of these appeals and revision, the principal one is Miscellaneous Appeal No. 126 of 1978 against the judgment given in T.S. No. 35 of 1977 by the Sub-Judge. This is the principal appeal because the disposal of this appeal will render the other appeal and the revision to be disposed of accordingly. The impugned judgment in this appeal is based on a short point, namely, that in the opinion of the learned Sub-Judge since the objection by the appellant u/s 30 of the Arbitration Act was filed on 23-3-1977, even before service of the notice u/s 14(2) of the said Act upon it on 28-4-1977, it was not an objection at all in the eye of law as the same had been filed before the service of the notice u/s 14(2) of the said Act. The learned Sub-Judge in his short judgment has decided this point only on this position of law as said to have been conceded by the Government Pleader appearing on behalf of this appellant before the Sub-Judge.

5. The learned counsel for the appellant, the Union of India, has, however, contended that the learned Sub-Judge was wrong in not having entertained the objection filed by the Union of India u/s 30 of the said Act on the ground mentioned above and that the concession in this respect said to have been made by the Government Pleader appearing on behalf of the Union of India could not by itself be sufficient for the learned Sub-Judge to act upon the said concession without examining the correct position of law in this regard. It is contended that the concession made by a counsel on behalf of a party on a point of law has no binding effect and cannot be treated as an estoppel. There can be no dispute on this point that the concession of law made by a counsel in a court is not at all binding. This is a settled position of law and this was the view expressed also in a recent Bench decision of this Court in *Zakia Afaque Islamia College, Siwan Vs. State of Bihar and Others*, which relevant observation in this regard occurs at the top page 84 of the report. The impugned judgment of the Sub-Judge does not show that he had by himself examined this position of law which is said to have been conceded before him by the Government Pleader. Therefore, it falls upon this Court to examine this position of law.

6. By going through the provisions of the Arbitration Act and examining the entire scheme of the Act one would find that there is no provision made in the Act as to when (at what stage, and depending upon what event) a party to an arbitration can file an objection against the award u/s 30 of the Act. There are two types of arbitration contemplated under the Act; those without intervention of a court, provisions for which have been made in Chapter II, and those with the intervention of a court, provisions of which are contained in Chapter III. Chapter IV deals with some aspects when the arbitration is with respect to suits pending in Court. Chapter V deals with some general provisions. In the general provisions

contained in Chapter V occurs Section 30 which provides only the grounds on which an award can be set aside by the Court. There is no provision specifically contained in the Act specifying as to how and when such an objection has to be filed. Thus, there does not appear to be any condition on which filing of an objection is dependent, except that until an award is filed in court no application to set it aside can be entertained because unless there is an award filed in court, there does not arise any occasion for filing the objection to set it aside. This view is found in a case of Lachhmi Prasad Vs. Gobardhan Das and Others, .

7. The pertinent question that arises for the disposal of this appeal is as to whether the filing of an objection u/s 30 is dependant on the service of the notice on the party u/s 14(2) of the Act. The learned Sub-Judge has rejected the objection on this ground that the objection was filed before the service of such a notice. The learned Sub-Judge has not himself examined that position of law in his judgment, but has relied simply on a verbal concession in this respect said to have been made by the Government Pleader. The learned Sub-Judge has accepted that position of law on such a concession made by the Government Pleader. That concession and the acceptance of that position of law by the learned Sub-Judge appears to have been based on the mis-conception by construing Article 119 of the Limitation Act read with Section 14 of the Arbitration Act. The ground of the concession made by the Government Pleader is not spelt by the learned Sub-Judge in his judgment, but presumably that is based on the fact that Clause (b) of Article 119 of the Limitation Act provides a period of limitation of 30 days for such filing of application for setting aside an award. The third column of that Article provides for the starting date from which the period of 30 days has to be reckoned. That gives the date of the service of the notice of the filing of the ward. The misconception in this regard appears to have been based on the ground that the period of limitation of 30 days would begin to commence from the date of the service of such a notice, and that before the service of such a notice, such a period would not commence and, that, therefore, a party would not be entitled to file any objection before that period starts to commence. The misconception is based on the misconstruction of the third column of this Article as to mean the date after which date alone, a party is entitled to file an objection. But that is not the correct construction of the significance and import of the date stated in the third column of the Article. That date is simply to reckon the period of limitation after the expiry of which a party cannot be permitted to file an objection, but that does not mean that a party cannot file objection before the period of limitation starts to commence. I am supported in my view in this regard by a Bench decision of this Court in Jagdish Mahton and Others Vs. Sundar Mahton and Others, . That was, however, a case relating to an application for filing of the award by the arbitrator in Court, an application filed u/s 14(2) of the Act. Similar provision of limitation for filing such a petition is provided in the same Article 119 of the Limitation Act in Clause (1). The period prescribed is 30 days. For that also in the third column of Article 119 the date mentioned is similarly "the date of service of the notice". In this

reported decision similar question arose as to the right of a party to file such a petition u/s 14(2) of the Arbitration Act and it was contended that it could not be filed before the notice in this respect as provided u/s 14(1) of the Arbitration Act is served on the party. This contention was rejected by their Lordships with an observation that the power of a party to apply to the Court does not depend on the service of the notice, and that what is provided in the third column of Article 119 is simply for the purpose of computing the period of limitation after which the party would not be entitled to file the application. Following observations in paragraph 17 of the judgment would be relevant : --

"If the power of a party to apply to the Court to direct the filing of the award depends on the service of the notice u/s 14(1), the arbitrators would be able to hold up proceedings by delaying service of the notice..... Therefore, as soon as a party knows that an award has been made, it is open to him to file an application to the Court to direct the award to be filed. Time will, however, not run against him till a written notice has been served upon him as required by Sub-section (1)".

Same view was expressed in Bench decisions of two other High Courts, namely, that of Calcutta High Court in *The State of West Bengal Vs. L.M. Das*, and by the High Court of Andhra Pradesh in *Badarla Ramakrishnamma v. Vattikonda Lakshmibayamma* AIR 1958 AP 497 (at the end of paragraph 5 at page 502 of the report).

8. In that decision of Andhra Pradesh High Court by a bench of celebrated Judges C. K. Subba Rao C. J. and Jaganmohan Reddy, J.) it was laid down that the provision of notice u/s 14(2) is not mandatory and that its non-compliance would not render the award invalid and that the provision of service of notice in that section is relevant only for the purpose of computing the period of limitation as per Article 119. Even for the notice contemplated u/s 14(2), it has been finally decided in a series of decisions including that of the Supreme Court and of this Court that no such formal notice is necessary to be served, and that the rule provided is as to the knowledge which a party had got about the award having been filed in Court. In an important decision on this point by the Supreme Court in *Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others*, it was held that the word "notice" used in Section 14(2) may also mean an informal intimation by which a party had a knowledge of the matter. This view was followed in this Court in a Bench decision of *Prabhat Kumar Lala and Others Vs. Jagdish Chandra Narang*, . It was observed by their Lordships that the communication of the information that an award has been filed is sufficient compliance with the requirement of Section 14(2). Later on in another case of *Parasramka Commercial Company Vs. Union of India (UOI)*, it was laid down that the word "notice" in Section 14 of the Act denotes merely intimation to the party concerned. Consistent with the spirit of law on this point expressed in those decisions of the Supreme Court, the High Court of Andhra Pradesh in a Bench decision in *Bollaram George Vs. Kadpak Lingiah*, laid down that even in absence

of notice required to be served u/s 14(2) if a party had knowledge of the filing of the award, that would be sufficient compliance. This view was based on previous decisions of High Courts of Nagpur and Calcutta and it was held that if a party had knowledge that the award has been filed, that would be sufficient compliance with Section 14(2) and no further notice would be necessary.

9. In the instant case I find by referring to the second file of the lower court records that a letter (No. P/60/291/E) dated 26th February 1977 was written from Garrison Engineer to Brig. Jagdeo Singh, arbitrator of the case. It may be mentioned at this place that the arbitrator had submitted the award to the court of the Sub-Judge through the Garrison Engineer. By this letter the Garrison Engineer had intimated the arbitrator that, as desired by him, he had submitted the award and the connected papers in the court of the Sub-Judge on 25th February, 1977. This letter shows that a copy of this letter was also sent by registered post to the Chief Engineer, Northern Zone, Lucknow (representing Union of India) who was one of the parties to the arbitration. It is by this letter dated 26th February, 1977 sent to the appellant (Chief Engineer representing Union of India) that he got the knowledge of the award having been filed in court, and thereupon he filed the objection u/s 30 on 23-3-1977. Therefore, irrespective of the fact that the notice u/s 14(2) was sent by the court to the appellant and served on him later on 28-4-1977, he had filed the objection on the knowledge which he had received earlier by the letter aforesaid. Since he had got the knowledge of the filing of the award by a letter issued on 26-2-1977, he was justified in filing his objection on 23-3-1977. That date is, however, within a period of 30 days from the knowledge. Therefore, the ground taken by the learned Sub-Judge for not having entertained that objection filed u/s 30 as having been filed before the service of the notice u/s 14(2) was erroneous. The judgment under appeal (dated 29-3-1978) of the learned Sub-Judge has to be set aside. The appeal is, therefore, allowed and that judgment is set aside. The cross-objection filed in this appeal has, therefore, to be dismissed.

10. In view of the judgment under appeal dated 29-3-1978 having been set aside, the question of revision of the same relating to Miscellaneous Appeal No. 39 of 1979 and the cross-objection filed therein and Civil Revision No. 456 of 1979 become redundant and they are also accordingly dismissed as such.

11. The judgment of the Sub-Judge dated 29-3-1978 passed in Title Suit No. 35 of 1977 having been set aside, the case is remitted back to the learned Sub-Judge to give hearing to the objection u/s 30 of the Act filed by the appellant-petitioner and dispose it of as expeditiously as possible, but at any rate not beyond 3 months from the receipt of the records by him. The question of awarding interest which was decided in the review petition (Misc. Case No. 12 of 1978) by the learned Sub-Judge relating to which this Miscellaneous Appeal No. 49 of 1979 is filed, will be considered by the learned Sub-Judge in his final judgment. It may, however, be made clear that the setting aside of the aforesaid judgment of Title Suit No. 35 of 1977 by this order, will not have the effect to

entitle the appellant to withdraw the money it has deposited in the court in pursuance of the decree passed in that suit as the Sub-Judge is herewith being directed to dispose of the matter within 3 months. The parties of these appeals and revision shall bear their respective costs.

Birendra Prasad Sinha, J.

12. I agree.