
(2005) 09 AHC CK 0316
In the Allahabad High Court
Case No : FAFO No. 401 of 2005

Union of India (UOI) and Others

APPELLANT

Vs

Radha Krishna Seth and Another

RESPONDENT

Date of Decision : 14-09-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16(2), 16(3), 17, 31(5), 34
Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 29(2), 5

Citation : (2006) 2 ARBLR 441 : (2006) 3 AWC 2754

Hon'ble Judges : U.K. Dhaon, J; R.P. Yadav, J

Bench : Division Bench

Advocate : Deepak Srivastava, for the Appellant; Ravi Nath, for the Respondent

Final Decision : Dismissed

Judgement

1. The order impugned in this appeal u/s 37 of the Arbitration and Conciliation Act No. 26 of 1996 (hereinafter called "the Act") is dated 01.04.2005 passed by the District Judge, Lucknow rejecting an application u/s 5 of the Limitation Act for condonation of delay as not maintainable and dismissing the objection u/s 34 of the Act as barred by limitation.

2. It appears that pursuant to some arbitration agreement, the arbitrators were appointed, who gave their arbitral award on 05.01.2001. A certified copy of the said award was served on the appellants on 01.02.2001. An objection purporting to be u/s 34 of the Act along with an application u/s 5 of the Limitation Act was filed before the learned District Judge, Lucknow on 09.06.2003. As such, there was delay of 2 years, 4 months and 8 days. The respondents objected to the maintainability of the application u/s 5 of the Limitation Act and pleaded that objection u/s 34 of the Act was barred by limitation provided under the law, which was three months only. The learned District Judge, Lucknow relying on the case of Union of India v. Popular Construction Co. 2001 (45) ALR 531 : 2001(3)

Arb. LR 345 (SC), held that the proviso to Section 34(3) excluded the applicability of Section 5 of the Limitation Act and that only one month's delay and no more could be condoned under the proviso added to Section 34(3) of the Act. He, therefore, dismissed the application and objection u/s 34 of the Act.

3. Aggrieved, the appellants have come up with this appeal.

4. At the very threshold an objection was raised by Shri Ravi Nath, the learned Counsel for respondents that the appeal is not maintainable against the impugned order, which lies only against the final, order passed on an objection u/s 34 of the Act.

5. Shri Deepak Srivastava, learned Counsel for the appellants has vehemently urged that the provisions of Section 31(5) require that after the arbitral award is made, a signed copy thereof shall be given to each party and since no signed copy was supplied till this date and it was only a certified copy, which was given to him, the limitation did not start to run and his objection u/s 34 of the Act is not barred by limitation and the same was maintainable, therefore, an order throwing his objection away on false and untenable ground can be challenged in appeal only.

6. Before we proceed to decide the maintainability of appeal, the important question which hinges for immediate attention is as to what is the actual meaning of the words "signed copy". No material was produced by the parties' counsel explaining or defining the said words. What was the legislative intention while using the words "signed copy"? Before we find out the meaning of the words "signed copy", let us first understand the meaning of the word "copy". On understanding the correct meaning of word "copy" it would be easy to understand the true import of "signed copy".

7. In Webster's Universal Dictionary and Thesaurus (2002 Edition), "copy" when used as a noun means reproduction, a transcript, imitation, a manuscript for printing, newspapers text and when used as a verb means to make a copy, to reproduce, to imitate, to create duplicate of a file (computer) word. In the Thesaurus its synonyms counter script, duplicate, facsimile, replica, reproduction, transcript. "Sign" means indicate, signify, countersign, endorse, subscribe.

8. In Words and Phrases (permanent edition), 9A--"copy" has been defined to mean in "general" as a writing like another writing, a true transcript of an original, a reproduction of the original work. In common and legal acceptance, a copy is not an original. The noun copy ordinarily and as used in copyright cases signifies a tangible object that is reproduction of the original work.

9. In volume 39 of permanent edition of Words and Phrases, the word "sign" as a verb is said to have several shades of meaning, and hence a statutory requirement that an instrument shall be "signed" by some person or officer to make it complete is much more general and comprehensive than a similar

requirement that such an instrument or pleading must be subscribed by the person or officer. On the same principle, the signing of a written instrument has a much broader and more extended meaning than attaching his written signature to it, which implies when a person attaches his name or causes it to be attached to a writing by any of the known methods of impressing his name upon paper with the intention of signing it, he is regarded as having signed in writing. A signature consists both of the act of writing the party's name and of the intention thereby finally authenticating it.

10. As defined by Bourier "signature" is understood as the art of putting down a man's name at the end of an instrument to attest its validity.

11. In view of the above meanings of the words "copy" and "signed" it can reasonably be said that when the words "signed" and "copy" are conjunctively used they would mean an authenticated copy duly signed to certify the genuineness of the document or in other words it may be called as the "certified copy".

12. In the case of Mallikarjun Vs. Gulbarga University, , when the copy of award was not furnished to the appellant, he filed a writ petition under Article 226 of the Constitution of India for issue of writ of mandamus directing the arbitrator to deliver a certified copy of the award. The Hon'ble High Court issued a direction and in compliance thereof the arbitrator sent a certified copy of the award, which was pending execution and thereafter objection u/s 47, CPC was filed by the other party and the matter went up to the Hon'ble Supreme Court on the point of "arbitration agreement" but the certified copy given by the arbitrator was treated as sufficient compliance of law as contained in the said Act of 1996.

13. In view of the above, furnishing of a certified copy by arbitrator was sufficient compliance of the requirement of law and the appellants ought to have filed an objection u/s 34 of the Act within 3 months from 01.02.2001, the date when they received the certified copy and in any event within a month further by seeking condonation of delay under the proviso to Section 34(3) of the Act, but no objection could be filed thereafter, i.e. after the expiry of four months" period.

14. So far as the application of Section 5 of Limitation Act for filing delayed objection u/s 34 of Act, the matter is no more res Integra and it stands finally decided as per edict of the Hon'ble Supreme Court in Union of India v. Popular Construction Co. (supra).

15. It would be apposite to excerpt the following from the aforesaid authority:

"The provisions of Section 5 of Limitation Act, 1963 are not applicable to an application challenging an award u/s 34 and as such there was no scope for assessing sufficiency of the cause for the delay beyond the period prescribed in proviso to Section 34. The crucial words in Section 34 are "but not thereafter" used in the proviso to Sub-section (3). This phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would,

therefore, bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. Apart from the language, "express exclusion" may follow from the scheme and object of the special or local law. The history and scheme of the 1996 Act support the conclusion that the time-limit prescribed u/s 34 to challenge an award is absolute and unextendable by court u/s 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimize" the supervisory role of courts in the arbitral process. This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms. The Tart" referred to in Section 5 is Part I of the 1996 Act which deals with domestic arbitration. Section 34 is contained in Part I and is, therefore, subject to the sweep of the prohibition contained in Section 5 of the 1996 Act.

By virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed u/s 34 is emphasized by the provisions of Section 36. It is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow". Now the consequence of the time expiring u/s 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act."

16. In view of the above decision of the Hon"ble Supreme Court, we hold that Section 5 of the Limitation Act is not applicable for condoning delay in filing objection u/s 34 of the Act and the delay could not be condoned in exercise of the powers u/s 5 of the Limitation Act.

17. The objection u/s 34 of the Act could be filed within three months or within one month further with a prayer for condonation of delay disclosing sufficient grounds as permissible under the proviso to Section 34(3) of the Act, whereas objection was filed after more than two years four months period. So, it was barred by limitation and was rightly rejected. The appellants cannot be permitted to assail it on the ground that it was within time as signed copy was not given to him. "Certified copy" was the "signed copy" within the meaning of law.

18. Rejection of application u/s 5 of the Limitation Act for condonation of delay can be challenged only in revision. No appeal lies against the impugned order because u/s 37 of the Act an appeal lies against the following orders only:

(a) granting or refusing to grant any measure u/s 9;

(b) setting aside or refusing to set aside an arbitral award u/s 34.

An appeal shall also lie to a court from an order of the arbitral tribunal:

(a) accepting the plea referred to in Sub-section (2) or Sub-section (3) of Section 16; or

(b) granting or refusing to grant an interim measure u/s 17.

19. The impugned order has been passed refusing to condone delay and dismissing the objection u/s 34 of the Act on the ground of being barred by limitation. Therefore, no appeal can lie against this order. The preliminary objection is, therefore, sustained.

20. No prayer is made for conversion of appeal into revision.

21. The appeal is, therefore, dismissed as not maintainable.

22. There will be no order as to costs.