

(2009) 04 DEL CK 0224

In the Delhi High Court

Case No : I.A. No. 518 of 2005 in CS (OS) 1153A of 1998

Union of India (UOI)

APPELLANT

Vs

Chadha Engg. Works

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Arbitration Act, 1940 — Section 14, 17
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Limitation Act, 1963 — Article 119

Citation : (2009) 165 DLT 6 : (2010) 157 PLR 14 : (2010) 6 RCR(Civil) 545

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Preeti Dalal, for the Appellant; Shiv Khorana and Ashish Khorana, for the Respondent

Judgement

Vipin Sanghi, J.—In relation to a contract entered into between the parties, which contained in arbitration agreement, the disputes were referred to arbitration of Sh. R.N. Poddar, Additional Legal Advisor to the Government of India, Department of Legal Affairs, Ministry of Law, Justice and Company Affairs, New Delhi. The learned arbitrator made his award dated 09.08.1996. Notice of making of the award was issued by the learned arbitrator on 09.08.1996 itself to both the parties. At this stage itself, I may notice that it is not the petitioner's case that the notice of making an award issued by the learned arbitrator was not received by it.

2. The award was filed in this Court by one Sh. S.B. Sharan, who claimed himself to be the sole arbitrator, on 18.05.1998 i.e. nearly 20 months after the making of the award and after the issuance of the notice of its being made to the parties. The forwarding letter along with which the award has been filed in this Court records that in compliance with the request from Union of India, the original award with the entire proceeding folder is forwarded in the arbitration case of M/s Chadha Engineering Works, G.T. Road, Jalandhar-140008. It is not disputed that the petitioner did not move a petition u/s 14 & 17 of the Arbitration Act,

1940 within the period of limitation prescribed under Article 119(a) of the Limitation Act for the filing of the award in this Court upon the filing of the award as aforesaid, the aforesaid suit was registered.

3. In these circumstances, the respondent has moved the present application under Order 7 Rule 11 CPC to submit that the aforesaid suit No. 1153-A/1998 registered upon the filing of the award dated 09.08.1996 be rejected as not being maintainable.

4. I have heard learned Counsel for the parties and considered the various judgments relied upon by them.

5. The first submission of Mr. Khorana, learned Counsel for the applicant/respondent is that on a bare perusal of the forwarding letter whereby the award has been filed in this Court, it is clear that the filing of the award has not been done by the arbitrator, Sh. R.N. Poddar, or upon his direction by a person authorized by him, but by another person, namely, Sh. S.B. Sharan, who claims to be an arbitrator, but was never appointed as the arbitrator in respect of the disputes between the parties. Secondly, the said filing was done at the request of the petitioner, Union of India, and was not a suo moto filing of the award by the arbitrator in this Court. He submits that a distinction has been drawn by this Court and by various other courts between filing of an award suo moto by an arbitrator in a Court, for which no period of limitation prescribed under the law, and filing of an award by an arbitrator in a Court at the instance of one of the parties to which Article 119(a) of the Limitation Act applies. Since the filing of the award in this Court was done at the instance of the petitioner, it is submitted that the same was beyond the period of limitation. Mr. Khorana in support of his submission that the filing of the award in the present case itself was beyond limitation has relied upon the following decisions of this Court:

(a) Union of India v. Rajesh Kumar Pradeep Kumar 2002 (65) DRJ 217

(b) Union of India v. Vidarbha Paper Mills Ltd. CS(OS) 2441/1993 decided on 27.04.2005

6. He has relied upon the few other decisions of other High Courts on the same issue, but I do not consider it necessary to refer to them since two coordinate Benches of this Court have expressed their view on the issue raised by Mr. Khorana and these are binding upon me. The latter decision in CS(OS) 2441/1993 sets out in extenso the earlier decision in the case of Rajesh Kumar Pradeep Kumar (supra). I may, therefore, quote the relevant extract from the latter decision itself and the same reads as follows:

1. Learned Counsel for the objector presses the limited objection. In reference to the forwarding letter dated 5.10.1993 written to this Court by the learned arbitrator forwarding the award and record of arbitration proceedings, learned Counsel submits that since the award has been filed at the instance of UOI and not suo-moto by the learned arbitrator, issue of limitation would have to be

decided in context of law laid down by the learned Single Judge of this Court reported as 2002(65) DRJ 217, Union of India v. Rajesh Kumar Pradeep Kumar.

2. Forwarding letter dated 5.10.1993 written by the learned arbitrator to the Registrar of this Court records as under:

In accordance with UOI's request dated 15.9.1993 in the above mentioned case, I am forwarding herewith the original award dated 30.3.1993 in the case along with the complete proceedings of the case, details given below:

3. Decision cited reads as under:

2. Although award dated 7th August,1995 has been challenged on diverse grounds but during the course of arguments Sh. M. Dutta for respondent pressed only the ground about award being filed beyond the prescribed period of limitation. It was pointed out that as is evident from covering letter dated 19th May,1997 forwarding therewith the award dated 7th August,1995 by the arbitrator to the Registrar of this Court, the award was sent to court at the request dated 2nd April,1997 made by Union of India (ITB Police). Relying on the decisions in Govt. of Kerala and Anr. v. V.J. Chacko 1995 (2) Arb.LR 50, Seth and Associates v. Steel Authority of India 1998(2) RAJ 528 (Cal) and Patel Motibhai Naranbhai and another Vs. Dinubhai Motibhai Patel and others, it was urged by Shri M. Dutta that where the award is filed before the court at the instance of a party to the agreement, it has to be considered as an application by that party and in such a case Article 119(a) of Limitation Act,1963 would apply. While refuting the submission, it was contended by Sh. Dalip Singh for petitioner that as the said award was filed before the Court by the arbitrator himself the said Article would not apply. Reliance was placed on the decisions in Champalal Vs. Mst. Samrath Bai, Chowdhury and Gulzar Singh Vs. Frick India Limited, , Moti Ram v. Mangal Singh and Ors. ILR (1971) Delhi 451 and The State Trading Corporation of India Ltd. v. Marpro Ltd. U.K. 2000 (2) Arb.LR 605 (Delhi). Notice (at page 5 of the file containing arbitration proceedings) would reveal that both the parties to petition were intimated through registered AD post of making and publishing of award on 7th August,1995 by the arbitrator. Aforesaid covering letter dated 19th May,1997 would show that award was filed therewith at the request dated 2nd April,1997 made by the petitioner (ITBP). To be noted that Seth & Associate's case (supra) was rendered taking note of the ratio of Full Bench decision of Kerala High Court in Government of Kerala and another (supra). In former decision distinction has been made in between filing of award by the arbitrator suo-moto and filing of award by him at the instance of a party to the agreement. Both these decisions fully support the contention referred to above advanced on behalf of respondent that where award is filed in Court by the arbitrator suo-moto but at the instance of a party to arbitration agreement said Article 119(a) would apply and the award if filed beyond 30 days period will be barred by limitation. In none of the aforementioned decisions relied on behalf of petitioner, the question of filing of award by the arbitrator at the instance of one of the parties to arbitration agreement was either in issue or considered in the

said backdrop and the ratio in issue or considered. In the said backdrop and the ratio in aforesaid two decisions, the filing of award dated 7th August,1995, obviously, barred by limitation.

4. Award was published by the learned arbitrator on 30.3.1993. Limitation has this to be governed under Article 119(a) of the Limitation Act,1963 for the reason arbitrator has filed the award in this Court on the basis of request of UOI and not suo-moto. 5. Objections filed by the objector vide IA. No. 1440/94 are accordingly allowed. The filing of the award is held to be barred by limitation. The award cannot be made a rule of the Court. Suit stand disposed of without any decree.

7. On the other hand, the submission of learned Counsel for the petitioner/non-applicant is that since there is no prescription of the period of limitation for filing of an award by an arbitrator, the filing of the award in this Court cannot be said to be irregular. In support of her submission, learned Counsel for the petitioner relies on Chowdhury and Gulzar Singh Vs. Frick India Limited, . She also placed reliance on the Supreme Court decision in Champalal Vs. Mst. Samrath Bai, .

8. Having heard learned Counsel for the parties, I am of the view that there is merit in the submission of applicant/respondent. It is clear from the forwarding letter as paraphrased hereinabove that the award was filed in this Court at the request of the petitioner, Union of India, on 19.05.1998. Moreover, the said filing was not by the sole arbitrator, namely, Sh. R.N. Poddar, but by one Sh. S.B. Sharan, who never acted as the arbitrator in relation to the disputes between the parties. The forwarding officer letter does not suggest that Sh. R.N. Poddar had instructed and authorized Sh. S.B. Sharan to file the award in this Court. Once the arbitrator Sh. R.N. Poddar had made his award the arbitration proceedings had come to a close. There was no question of any other person being appointed as an arbitrator for any purpose, including for the purpose of filing the award in the Court. Consequently, the filing of the award in this Court was not by the arbitrator or under his instructions or authority, and it was totally unauthorized. Consequently, the petitioner cannot claim absence of limitation on the time available for filing of the award in this Court.

9. Moreover, the filing of the award was done at the request of the Union of India. The present case is squarely covered by the aforesaid two decisions in the case of Rajesh Kumar Pradeep Kumar (supra) and the case of Vidarbha Paper Mills Ltd. (supra). In both these cases as well, the filing of the award in the Court was done by the arbitrator at the request of one of the parties. The Court held that in such a situation the limitation prescribed in Article 119(a) shall apply, and since the filing was beyond that period of limitation, the filing of the award in the Court was held to be irregular. Article 119(a) of the Schedule to the Limitation Act, 1963 provides:

Description of Period of Limitation Time from which application period begins to run

119. Under the Arbitration Act, 1940 (10 of 1940), -

(a) for the filing in Thirty days The date of service court of an award. of the notice of the making of the award

10. Consequently, the filing of the award in this Court, even if the same is assumed to have been done by the arbitrator and not by a stranger (as is in fact the case), the same was clearly beyond the period of limitation of 30 days from the date of issuance of the notice of the making of the award.

11. The decisions relied upon by learned Counsel for petitioner, in my view, are not of much assistance. The decision in *M/s Chowdhury and Gulzar Singh (supra)* does not squarely deals with the issue as to whether Article 119(a) of the Limitation Act would apply to a case where the filing of the award by the arbitrator is at the instance of one of the parties. No doubt paragraph 5 of the said decision records the fact that at the request of the petitioners in that case the arbitrators had filed the award dated 19.05.1972 in the Court on 07.08.1972. Subsequently, the award was re-filed in this Court on 11.07.1975. One of the issues considered by this Court in *M/s Chowdhury and Gulzar Singh (supra)* was whether there was any limitation period for filing the award in Court by the arbitrator. However, no argument was urged in this case to draw a distinction between the filing of the award suo moto by the arbitrator, and the filing of the award at the instance of one of the parties by the arbitrator for purposes of computing limitation. Consequently, the issue raised in the present case was not even considered by the Court. By placing reliance on *Champalal (supra)* this Court held that there was no limitation prescribed in relation to the filing of the award by an arbitrator. The said decision in *M/s Chowdhury and Gulzar Singh (supra)*, therefore, is of no avail to the petitioner. For the same reason the decision of Supreme Court in *Champalal (supra)* is of no assistance to the petitioner. That was not a case of filing of the award by the arbitrator at the instance of a party to arbitration.

12. Consequently, the respondent's application under Order 7 Rule 11 CPC succeeds. The filing of the award in this Court is held to be unauthorized and barred by limitation and the award cannot be made a rule of the Court. The suit, accordingly, stands disposed off without a decree being passed in terms of the award. Parties are left to bear their own respective costs.