
(2010) 07 DEL CK 0166
In the Delhi High Court
Case No : O.M.P. No. 85 of 2004

Union of India (UOI)

APPELLANT

Vs

Damyanti Builders and Another

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(3)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10
Limitation Act, 1963 — Section 14

Citation : (2010) 07 DEL CK 0166

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : R.V. Sinha, for the Appellant; D. Moitra, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—Objections u/s 34 of the Arbitration and Conciliation Act, 1996 have been filed by the petitioner, Union of India to challenge the award dated 10.07.2000 passed by the sole arbitrator Mr. G.S. Mehta in respect of the claims of respondent No. 1 M/s Damyanti Builders. A preliminary objection regarding the bar of limitation has been raised by the respondent.

2. I have heard learned Counsels for the parties on the said preliminary objection, and in my view, there is merit in the same and the present objections appear to be barred by limitation. The brief facts may be noted in this respect.

3. The learned arbitrator rendered his award on 10.07.2000. The same, according to the petitioner, was received by it on 15.07.2000. The petitioner filed objections u/s 34 of the Act before the Court of the District Judge on 30.09.2000. The objections preferred by the petitioner were allowed and the award was set aside vide order dated 03.08.2001. The respondent preferred a first appeal before this Court to challenge the order of the learned Additional District Judge. The said appeal, being FAO No. 634/2002, was allowed by this Court on 28.11.2003 on the ground that the objections preferred by the petitioner herein

before the District Judge, were without jurisdiction. This Court directed that the application u/s 34 of the Arbitration and Conciliation Act, as filed by the petitioner herein, be returned for its presentation in the High Court. The petitioner, thereafter, obtained the certified copy of the order passed in the aforesaid first appeal and filed the same before the District Court on 08.02.2004. On 09.02.2004 the District Judge returned the objection preferred u/s 34 with the requisite endorsements. On 13.02.2004 the present objections were filed before this Court.

4. According to the respondents, the objections should have been filed within a period of 90 days of receiving a copy of the award, which could at best be extended by another 30 days on sufficient cause being shown for condonation of delay. On the other hand, the submission of learned Counsel for the petitioner is that the period during which the objections remained pending before the learned District Judge; the period till the first appeal preferred by the respondent was allowed by this Court on the ground that the objections ought to have been preferred before the High Court; as also the period upto the return of the objections with the requisite endorsements by the District Court should be excluded by application of Section 14 of the Limitation Act. If all these periods are excluded, the objections, as filed before this Court on 13.02.2004, would be well within the period of limitation.

5. The submission of learned Counsel for the respondents is that once this Court had allowed the aforesaid first appeal on 28.11.2003, it was the obligation of the petitioner to have taken immediate steps for the purpose of return of the objections by the District Court. However, steps were not taken expeditiously. Even according to the petitioner the certified copy of the judgment of the High Court in the aforesaid appeal was applied only on 15.12.2003, and even though the certified copy was ready on 06.01.2004, the same was collected by the petitioner on 15.01.2004. After receiving the certified copy of the judgment of this Court on 15.01.2004 the petitioner again waited and did not file the same before the District Court till 08.02.2004. Learned Counsel for the respondent submits that the period between 28.11.2003 and 15.12.2003 (the time taken by the petitioner for applying for the certified copy of the judgment of the High Court); the period from 06.01.2004 to 15.01.2004 (the period between the date of preparation of the certified copy till the date of receipt of the certified copy by the petitioner) and; the period from 15.01.2004 to 08.02.2004 (the period from the date of receipt of the certified copy till the date of filing of the same before the District Courts) should all be included while computing the limitation.

6. On the other hand, the submission of Mr. Sinha, counsel for the petitioner is that after the passing of the order dated 28.11.2003, there was no obligation on the part of the petitioner to communicate the order of the High Court to the District Court or to apply for a certified copy of the judgment of the High Court and to present the same before the District Court. He submits that it was the obligation of the District Court to have returned the objections on its own in

compliance of the judgment of the High Court.

7. There is no dispute that if the submission of learned Counsel for the respondent is accepted, the objections as preferred before this Court would be barred by limitation, inasmuch, as even if the delay to the extent of 30 days beyond the period of 90 days is condoned, the objections would not be saved from the bar of limitation contained in Section 34(3) of the Act.

8. Mr. Sinha has placed reliance on three decisions in support of his submission. The first decision relied by Mr. Sinha is reported as *Islam Shah Vs. Wali Mohammad Khan*, . This decision, to my understanding, does not advance the case of the petitioner. The facts of this case were that the High Court, in revision proceedings, held that the trial court did not have the territorial jurisdiction to try the suit. After the said decision was rendered, the trial Court record was sent back to it. The plaint was thereafter returned with the necessary endorsement. After the plaint was refiled before the court of competent jurisdiction, the issue arose whether the suit was barred by limitation. The plaintiff sought exclusion of the entire period between the date of filing of the suit and the date of return of the plaint before the court which had no jurisdiction. The Court was concerned with the exclusion of the period between the date of pronouncement of the High Court (i.e. 11th August, 1960) and the date on which the plaint was returned (i.e. 07th August, 1961) in compliance of the decision of the High Court. The Court held that the said period ought to have been excluded. In that case the plaintiff, immediately upon learning that the record of the case had been received by the trial Court from the High Court, on the same day filed an application for return of the plaint for presentation before the proper Court and three days later the plaint was returned to the plaintiff after an endorsement as required by Order 7 Rule 10 CPC had been made. On the same day the plaint was presented before the competent Court.

9. The facts of the present case are materially different. In the present case, it appears that the district Court record was not requisitioned by the High Court, when it heard FAO No. 634/2002 and consequently, the question of the said record being sent back to the Court of the District Judge did not arise. Moreover, in the present case, the Court of District Judge had already disposed of the objection petition and nothing was pending before it, when the decision of the High Court in FAO No. 634/2002 was returned. Consequently, in the facts of the present case, the Court of District Judge obviously would not have become aware of the decision of the High Court in FAO No. 634/2002 in the normal course, as the objection petition had already been disposed of by it and there was no proceeding pending before it, when the decision of the High Court in FAO No. 634/2002 was rendered. In *Islam Shah (supra)*, the plaintiff on the very same day on which the record was returned to the trial court, moved an application for return of the plaint. That is not the situation in the facts of the present case. This case, therefore, has no application in the present case.

10. The next decision cited by Mr. Sinha is *Hussan Bhat v. Haji Mohamed Sultan*

Bhai AIR 1967 J&K 18. In this decision, it was held by the High Court that the period between the date when the application for return of plaint was made and the date when the plaint was returned with the necessary endorsement should be excluded. This decision also is of no avail to the petitioner, inasmuch, as even according to the respondent's contention the period between the date of application for return of the plaint and the date on which the plaint was returned after endorsement, has to be excluded. As already noticed hereinabove the certified copy of the judgment of the High Court was filed before the District Court on 08.02.2004 and the petition u/s 34 had been returned by the District Court on 09.02.2004 i.e. the very next date. Even if this period is excluded the petition preferred by the petitioner is not saved from the bar of limitation.

11. The third decision relied upon by Mr. Sinha is reported as Brij Mohandas Gokulchand Vs. Narsinghdas Manoharilal and Others, In this case the trial Court at Shivpuri framed a preliminary issue on jurisdiction and held by its order dated 18.03.1963 that the said Court had no territorial jurisdiction to entertain the suit and directed that the plaint be returned to the plaintiff. On 22.04.1963 the plaintiff applied to the Court for the return of the plaint and the same was returned on the very same day with the necessary endorsement. On 23.04.1963, the plaintiff presented the plaint before the competent Court. The plaintiff prayed that the period spent before the Court at Shivpuri be excluded from computation of limitation u/s 14 of the Limitation Act.

12. The Court held that no order was passed by the Shivpuri Court giving any direction to the plaintiff to act in any particular manner. On the contrary, it was the plaintiff who moved the Court on 22.04.1963 to return the plaint. The necessary copy was also filed by him on that very date and the plaint was returned. Thus, there were no laches on the part of the plaintiff and he was entitled to exclusion of the period upto 22.04.1963 when the plaint was returned, as till that date no endorsement was made by the Court on the plaint and the proceedings had not come to an end in that Court. Pertinently, in this very decision the Court noted the decision of the Rajasthan High Court in Ramchandra and Others Vs. Union of India (UOI), In that case it had been held that the plaintiff was guilty of laches and the period during which the plaintiff was guilty of not carrying out his obligations could not be excluded. The plaintiff was directed to file true copy of the plaint for the purpose of record before the plaint could be returned. The period during which the copy was not supplied by the plaintiff was, therefore, held to be not liable to be excluded u/s 14 of the Limitation Act.

13. In the facts of the present case, in my view, it is the decision in Ramchandra (supra) which would attract application rather than the decision in Brij Mohandas Gokulchand (supra). The decision in Brij Mohandas Gokulchand (supra) is clearly distinguishable on facts. In that case, the order to the effect that the trial court did not have jurisdiction to entertain the suit had been passed by the trial court itself. The trial court was therefore well aware of the said development. There

was no obligation on the plaintiff to have informed the trial court of its own decision dated 18.03.1963. The trial court, after passing the order dated 18.03.1963, could have immediately taken steps to return the plaint. However, the trial court at Shivpuri did not take any such step and it was only when the plaintiff applied for return of the plaint on 22.04.1963, that the plaintiff was returned with the necessary endorsement.

14. As I have already noticed, in the present case, the order pronouncing on the lack of jurisdiction of the Court of the District Judge was passed by the High Court in FAO No. 634/2002 and not by the Court of the District Judge. In fact, when the said order was pronounced on 28.11.2003, the proceedings before the Court of District Judge already stood concluded and there was no proceeding pending before the Court of the District Judge in relation to the award. There was no way that the Court of the District Judge would have become aware of the decision of the High Court in FAO No. 634/2002, unless the Court was communicated the decision of the High Court. It was, therefore, the obligation of the petitioner to have taken steps to inform the Court of the District Judge of the decision of the High Court in FAO No. 634/2002 and to seek the return of the objections from the District Court. Had the said decision been arrived at by the district Court itself, the position would have been materially different. However, as the decision was that of the High Court, the petitioner ought to have informed the district Court of the said development and to have sought the return of the objections for them being filed before the High Court.

15. If the submission of Mr. Sinha, that the petitioner was under no obligation to take any steps for the return of the objections and that it was only the obligation of the Court to return the same to the petitioner, were to be accepted, then it would mean that the petitioner could have waited endlessly, without suffering any consequences, and the objections could have been taken back from the district Court at the sweet will and convenience of the petitioner, and filed before the High Court after any length of time. Such an interpretation would completely defeat the purport, purpose and object of the Act and also of Section 34(3) of the Act which limits the period within which objections can be preferred before the competent Court to challenge an award.

16. The filing of objections u/s 34 to challenge an award operates as an automatic stay of the award. Consequently, if the interpretation advanced by the petitioner were to be accepted, it would put the party, in whose favour the award has been rendered, to grave prejudice, as the objector could endlessly delay receipt of the objections from the Court which had no jurisdiction, and to refile the same before the Court of competent jurisdiction. The party who may have pursued his remedy before an incompetent forum, cannot take advantage of his own lapses. The sine qua non of Section 14 of the Limitation Act is that the plaintiff should have pursued his remedy before the incompetent forum in good faith and with due diligence. If a party does not act in good faith and with due diligence, he cannot take the umbrage of Section 14 of the Limitation Act. By not

taking steps with expedition, to inform the District Court of the passing of the order dated 28.11.2003 by the High Court in FAO No. 634/2002, and seeking the return of the objections from the District Court, the petitioner displayed lack of good faith and due diligence.

17. The petitioner, in my view, therefore, was obliged to act with expedition and was obliged to not only obtain the certified copy of the order passed by the High Court, but to also move the District Court for return of the objections within time, such that the total time consumed in preferring the objections before the High Court, (after excluding the period during which the objections remained pending before the District Court and upto the date of the decision of the High Court and the period spent in obtaining the certified copy from the High Court) did not exceed the prescribed period u/s 34(3) of the Act.

18. The petitioner is not entitled to exclude the following periods for the purpose of computation of limitation u/s 14 of the Limitation Act:

(i) 28.11.2003 and 15.12.2003 (the time taken by the petitioner for applying for the certified copy of the judgment of the High Court);

(ii) 06.01.2004 to 15.01.2004 (the period between the date of preparation of the certified copy till the date of receipt of the certified copy by the petitioner) and;

(iii) 15.01.2004 to 08.02.2004 (the period from the date of receipt of the certified copy till the date of filing of the same before the District Courts).

19. For the aforesaid reasons, in my view, the objections preferred by the petitioner are beyond the period of limitation and the delay is beyond the period of 30 days which could be condoned. Accordingly, the objections are dismissed as being barred by limitation.