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THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:85334
Court No.1

APPEAL UNDER SECTION 37 OF ARBITRATION AND

CONCILIATION ACT 1996 No. - 257 of 2024

SH. DHARMVEER TYAGI AND OTHERS

v.

COMPETENT AUTHORITY, DFCC, SPECIAL LAND ACQUISITION

(JOINT OFFICER ORGANIZATION) AND OTHERS

(Judgement Dictated in Open Court)

HON'BLE SHEKHAR B. SARAF, J.

1. Heard Sri Sushil Kumar Shukla, learned counsel for the appellants.

2. This is an appeal filed against an order dated March 22, 2024 passed by the Additional District Judge, Court No.1, Saharanpur in an application filed under Section 34 of the Arbitration and Conciliation Application Act, 1996 (hereinafter referred to as the "Act") whereby the said application was dismissed as time barred.

3. Acquisition of the land of the appellants was carried out in the year 2015 and thereafter an arbitration award was passed by the learned Arbitrator/Commissioner, Saharanpur on March 15, 2018. Subsequently, on November 21, 2019, the appellants filed a writ petition before this Court bearing Writ-C No.4985 of 2020. This writ petition was disposed of by this Court on February 20, 2020 with the following direction:

"Upon perusal of the averments made in the writ petition and the documents appended thereto, it transpires that the petitioners are challenging the validity of the award made under Section 20F(6) of The Railways Act, 1989.

In our opinion, the remedy if any, available to the petitioners against the impugned award is to file an objection under Section 34 of the Indian Arbitration & Conciliation Act, 1996.

Subject to aforesaid observations, writ petition stands disposed of."

4. Upon being reverted by this Court, the appellants filed an application under Section 34 of the Act before the court of Additional District Judge on July 13, 2020. Learned Additional District Judge, after granting hearing to the appellants, passed a detailed order taking into consideration the submissions made by the appellants and dismissed the said application on the ground that the application was beyond 120 days and, Section 5 of the Limitation Act, 1963 (hereinafter referred to as the 'Limitation Act') would not apply. Accordingly, the learned Additional District Judge dismissed the application under Section 34 of the Act as time barred. Relevant portion of the judgment is extracted herein:

"15. That in this case, the impugned order was passed by Ld. Arbitrator/Commissioner, Saharanpur on 15.03.2018 and it is the case of the applicants that they went to the Hon'ble High Court against that order and filed writ petition, but it is not mentioned on what date that writ petition was filed before the Hon'ble High Court. The Court can condone the time spent before the Hon'ble High Court while pursuing writ petition as per Section 14 of the Limitation Act. However, in this case, as the applicants have not mentioned when they have filed the writ petition before the Hon'ble High Court and therefore, it is not possible to calculate the time spent by the applicants before the Hon'ble High Court. Even though, the writ petition was disposed off on 20.02.2020 and the present application filed by the applicants before this Court on 13.07.2020 i.e. after five months from the date of order of the Hon'ble Allahabad High Court, when the writ petition of the applicants were disposed off. Though, the applicants have mentioned that certain times were taken for getting certified copy of the order, but the applicants were already aware about the impugned order and also went to the Hon'ble High Court against that order. Thus, the applicants cannot take the advantage of its own mistake. Admittedly, in this case the objection was filed beyond 120 days and therefore, the present application under Section 5 of the Limitation Act is not maintainable and the same is liable to be dismissed.

The present application of the applicants under Section 5 read with Section 34(3) of the Arbitration and Conciliation Act, 1996 is hereby dismissed.

The file be consigned to the record room."

5. Upon a perusal of the order passed by the learned Additional District Judge, it appears that the appellants did not inform the Court of the date of the filing of the writ petition before the High Court. This factual matrix has, however, been addressed before this Court and it appears that the writ petition was filed on November 21, 2019. As the order was passed by the learned Arbitrator/Commissioner on March 15, 2018, it is clear that the writ petition was filed after a period of eighteen months. Subsequently, after dismissal of the writ petition on February 20, 2020, the arbitration application was filed once again after the delay of five months, that is, on July 17, 2020.

6. Section 34 of the Act delineates the procedural contours governing recourse against the arbitral awards. Central to this section is the stipulation regarding the timeline within which an application for setting aside an arbitral award must be made. Section 34(3) of the Act unequivocally mandates that such an application cannot be made after three months from the date on which the party received the arbitral award or, if a request under Section 33 of the Act was made, from the date on which such request was disposed of by the arbitral tribunal. Section 34(3) of the Act also provides that the courts may allow an application filed under Section 34 of the Act within a further period of thirty days, but not thereafter. This temporal constrain is not merely a procedural formality but embodies crucial legal principles essential for maintaining the integrity, efficiency, and finality of the arbitral process. The imposition of a strict timeline serves to promote legal certainty, preserve the integrity of the arbitral process, and safeguard against dilatory tactics employed by parties dissatisfied with arbitral outcomes. By setting a clear deadline for challenging arbitral awards, parties are compelled to act promptly, ensuring that awards are either upheld or set aside within a reasonable time frame.

7. The usage of the phrase “but not thereafter” in Section 34(3) of the Act is of immense significance. This seemingly innocuous phrase underscores the legislature’s intent to impose a strict and non-negotiable deadline for challenging arbitral awards, precluding the courts from exercising any discretion in granting additional time beyond what is specified in Section 34(3) of the Act.

8. The language of Section 34(3) of the Act is clear and unambiguous, leaving no room for discretionary interpretation. This language reflects a deliberate policy decision to impose a rigid temporal constraint, emphasizing the importance of adherence to statutory timelines in the arbitration regime. Allowing indefinite delays in challenging awards would undermine the efficiency and credibility of arbitration, eroding trust in the process and detracting from its efficacy as a viable alternative to traditional litigation.

9. In **Union of India -v- Popular Construction Co.** reported in **(2001) 8 SCC 470**, the Hon’ble Supreme Court propounded that Section 5 of the Limitation Act would not apply to applications made under Section 34 of the Act and the time period prescribed by Section 34(3) of the Act is absolute and unextendible. Relevant paragraphs are extracted herein:

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, 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. No principle of interpretation would justify such a result.

13. Apart from the language, “express exclusion” may follow from the scheme and object of the special or local law:

“[E]ven in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of

those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.”
 [(1974) 2 SCC 133] (SCC p. 146, para 17)

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by court under Section 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 minimise the supervisory role of courts in the arbitral process” [Para 4(v) of the Statement of Objects and Reasons of the Arbitration and Conciliation Act, 1996] . This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

“5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”

15. The “Part” referred to in Section 5 is Part I of the 1996 Act which deals with domestic arbitrations. 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.

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award “in accordance with” sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application “in accordance with” that sub-section. Consequently 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 under Section 34 is emphasised by the provisions of Section 36 which provide that “where the time for making an application to set aside the arbitral award under Section 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court”. This 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” (Section 17). Now the consequence of the time expiring under Section 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 the 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.”

10. Referring to it’s judgment in **Popular Construction Co. (supra)**, the Hon’ble Supreme Court in **Bhimashankar Sahakari Sakkare Karkhane Niyamita -v- Walchandnagar Industries Limited (WIL)** reported in **(2023) 8 SCC 453** held that Limitation Act will apply to the Act except where it has been specifically excluded:

“54. Now, so far as the submission on behalf of the appellant that the Limitation Act shall not be applicable to the proceedings under the Arbitration Act is concerned, the aforesaid has no substance. Section 43(1) of the Arbitration Act specifically provides that the Limitation Act, 1963 shall apply to arbitrations as it applies to proceeding in Court. However, as observed and held by this Court in Assam Urban [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831] , the Limitation Act, 1963 shall be applicable to the matters of arbitration covered by the 1996 Act save and except to the extent its applicability has been excluded by virtue of express provision contained in Section 34(3) of the Arbitration Act.

55. In Popular Construction Co. [Union of India v. Popular Construction Co., (2001) 8 SCC 470] , when Section 5 of the Limitation Act was pressed into service to proceedings under Section 34 of the Arbitration Act for setting aside the arbitral award, this Court has observed that the Arbitration Act being a special law and provides a period of limitation different from that prescribed under the Limitation Act, the period of limitation prescribed under the Arbitration Act shall prevail and shall be applicable and to that extent the Limitation Act shall be excluded. That, thereafter, it is observed and held that application challenging an award filed beyond period mentioned in Section 34(3) of the Arbitration Act would not be an

application “in accordance with” sub-section (3) as required under Section 34(1) of the Arbitration Act.”

11. In **Esha Agarwal and Ors. -v- Ram Niranjana Ruia** reported in **MANU/WB/0021/2023**, I had dealt with the question of limitation under Section 34(3) of the Act as follows:

“6. The question of limitation takes centre stage in the present application and needs to be adjudicated upon first and foremost. With respect to limitation for filing a challenge to an arbitral award, Section 34(3) of the Arbitration and Conciliation Act, 1996 provides that an application under the section cannot be made after 'three months have elapsed from the date on which the party making that application had received the arbitral award'. The courts can condone the delay within a further period of thirty days, provided sufficient cause is present, but not 'thereafter'. I believe the term 'thereafter' used in the section does not need any further interpretation. A plain reading of the said section and the proviso makes it as clear as the sky on a summer morning that courts cannot condone a delay beyond the extendable period of thirty days provided in the section.

7. It is necessary at this point to make reference to the recent decision of the apex court in Mahindra and Mahindra Financial Services Limited v. Maheshbhai Tinabhai Rathod And Others reported in MANU/SC/1338/2021 : (2022) 4 SCC 162 wherein the restricted scope of the courts' power to condone the delay in case of an application under Section 34 was reiterated by the Supreme Court. Relevant portions have been extracted below-

9. The scope available for condonation of delay being self-contained in the proviso to Section 34(3) and Section 5 of the Limitation Act not being applicable has been taken note by this Court in its earlier decisions, which we may note. In Union of India v. Popular Construction Co. [Union of India v. Popular Construction Co., MANU/SC/0613/2001 : (2001) 8 SCC 470] it has been held as hereunder:

"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, 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. No principle of interpretation would justify such a result.

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by court under Section 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 minimise the supervisory role of courts in the arbitral process" [Para 4(v) of the Statement of Objects and Reasons of the Arbitration and Conciliation Act, 1996.]. This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

'5. Extent of judicial intervention.-- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.'

16. This 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" (Section 17). Now the consequence of the time expiring under Section 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 the 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.'

8. While I express my sympathy towards the petitioner, my judicial hands are curtailed by the law, as mentioned above. There is no runway of merit for the present application to land on. The present application has been filed forty-two days after the prescribed period of limitation under the Act, and given that the court has the power to condone a delay of only up to thirty days, the present application fails and is bound to be sacrificed at the altar of limitation.”

12. From the above factual matrix, it is clear that the appellants have had a lackadaisical and nonchalant approach to the entire affair and even after giving the benefit of Section 14 of the Limitation Act, Section 34 application would have remained time barred.

13. Before I part with this judgement, it is essential to underscore the importance of adhering to statutory timelines especially within the context of arbitration. Unlike traditional litigation, where cases may languish in the court system for years, arbitration offers parties a streamlined and expeditious mechanism for resolving disputes. Central to the efficacy of arbitration is the timely administration of proceedings, which necessitates adherence to prescribed timelines at every stage of the arbitral process. Delay in challenging arbitral awards can prejudice the rights for the parties involved, particularly the party seeking to enforce the award. When disputes are resolved expeditiously, parties can obtain closure and move forward with their lives, rather than being mired in prolonged legal battles. Moreover, timely resolution reduces the burden on the court system, allowing courts to focus their resources on cases that require judicial intervention.

14. In light of the aforesaid, I find no reason to interfere with the order passed by the learned Additional District Judge under Section 34 of the Act dismissing the application as time barred.

15. Accordingly, the instant appeal is dismissed.

Date:- 13.5.2024
Kuldeep

(Shekhar B. Saraf, J.)