



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Arb. Appeal No. 36 of 2023

Decided on: 17th September, 2024

National Highway Authority of IndiaAppellant

Versus

Narayan Dass ...Respondent

Coram

Hon'ble Mr. Justice Bipin Chander Negi, Judge

¹Whether approved for reporting?

For the appellant: Mr. K.D. Shreedhar, Senior Advocate, along with Ms. Sneh Bhimta, Advocate.

For the respondent: Mr. Varun Rana, Advocate.

Bipin Chander Negi, Judge (Oral)

The appellant is aggrieved by the judgment dated 02.05.2023, passed by the learned District Judge, whereby its application moved under Section 34 of the Arbitration and Conciliation Act, 1996, (the Act in short) was dismissed as barred by limitation.

2. Heard learned counsel for the parties and considered the case file.

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

3. Admitted facts are that: - An award was passed on 03.02.2022 by the learned Divisional Commissioner, exercising powers of Arbitrator under the National Highways Act, 1956. The appellant received certified copy of the award on 13.10.2022. Three months' time available to the appellant in terms of Section 34(3) of the Act for assailing the aforesaid award lapsed on 12.01.2023. Admittedly, award dated 03.02.2022 had not been assailed by the appellant till 12.01.2023.

4. Learned District Judge relying upon ***Bhimashankar Shakari Sakkare Karkhane Niyamita Vs. Walchandnagar Industries Limited (WIL)***¹, held that the appellant could have taken the benefit of Section 4 by excluding the period when the Courts were closed during the ninety days and not thereafter. The period of thirty days had also expired before the Courts were closed for winter vacation. Hence, the application was held barred by limitation. Therefore, the validity of award dated 17.01.2022 was not gone into.

5. Learned District Judge did not err in holding that

¹ (2023) 8 SCC 453

benefit of Section 4 by excluding the period when the Courts are closed, can be taken only during ninety days' (sic three months) period.

Hon'ble Apex Court in ***Bhimashankar Shakari Sakkare Karkhane Niyamita***¹ has held that benefit of exclusion of period during which Court is closed is available only when application for setting aside the award is filed within "prescribed period of limitation". The prescribed period of limitation for assailing the award under Section 34 of the Act is three months. The benefit of exclusion it is not available in respect of the period which may be extended by the Court in exercise of its discretion under the proviso attached to Section 34(3) of the Act.

In ***The State of West Bengal represented through the Secretary & Ors. Vs. Rajpath Contractors and Engineers Ltd.***², Hon'ble Apex Court held that applicability of Section 5 of the Limitation Act to the petition under Section 34 of the Act has been excluded. Relevant para of the judgment reads as under: -

"8. We may note here that Section 43 of the Arbitration Act provides that the Limitation Act shall apply to the

² Civil Appeal No. 7426 of 2023 decided on 08.07.2024

arbitrations as it applies to proceedings in the Court. We may note here that the consistent view taken by this Court right from the decision in the case of Union of India v. Popular Construction Co. is that given the language used in proviso to subsection (3) of Section 34 of the Arbitration Act, the applicability of Section 5 of the Limitation Act to the petition under Section 34 of the Arbitration Act has been excluded.”

In respect of applicability of Section 4 of the Limitation Act to Section 34 of the Act, it was held that it was only where the “prescribed period” expires on the day when the Court is closed, the application can be preferred on the day when the Court re-opens. The prescribed period of limitation in context of Section 34(3) of the Act for making an application for setting aside the arbitral award is three months. Period of thirty days mentioned in the proviso that follows Sub-Section 3 of Section 34 of the Act, is not the prescribed period for the purpose of making application for setting aside the arbitral award. Relevant paras from the judgment read as under: -

“9. Now, we proceed to consider whether the appellant will be entitled to the benefit of [Section 4](#) of the Limitation Act. [Section 4](#) of the Limitation Act reads thus:

“4. Expiry of prescribed period when court is closed.
—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

(underline supplied)

The meaning of “the prescribed period” is no longer *res integra*. In the case of [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd.](#) 2, in paragraphs nos. 13 and 14, the law has been laid down on the subject. The said paragraphs read thus:

“13. The crucial words in [Section 4](#) of the 1963 Act are “prescribed period”. What is the meaning of these words?

14. [Section 2\(j\)](#) of the 1963 Act defines:

“2. (j) ‘period of limitation’ [which] means the period of limitation prescribed for any suit, appeal or application by the Schedule, and ‘prescribed period’ means the period of limitation computed in accordance with the provisions of this Act;

[Section 2\(j\)](#) of the 1963 Act when read in the context of [Section 34\(3\)](#) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside an arbitral award is three months. The period of 30 days mentioned in the proviso that follows subsection (3) of [Section 34](#) of the 1996 Act is not the “period of limitation” and, therefore, not the “prescribed period” for the purposes of making the application for setting aside the arbitral award. The

period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to subsection (3) of [Section 34](#) of the 1996 Act being not the “period of limitation” or, in other words, the “prescribed period”, in our opinion, [Section 4](#) of the 1963 Act is not, at all, attracted to the facts of the present case.”

(underline supplied)

Even in this case, this Court was dealing with the period of limitation for preferring a petition under [Section 34](#) of the Arbitration Act. We may note that the decision in the case of [State of Himachal Pradesh and Another v. Himachal Techno Engineers and Another](#)¹ which is relied upon by the appellant, follows the aforesaid decision.

10. In the facts of the case in hand, the three months provided by way of limitation expired a day before the commencement of the pooja vacation, which commenced on 1st October 2022. Thus, the prescribed period within the meaning of [Section 4](#) of the Limitation Act ended on 30 th September 2022. Therefore, the appellants were not entitled to take benefit of [Section 4](#) of the Limitation Act. As per the proviso to subsection (3) of [Section 34](#), the period of limitation could have been extended by a maximum period of 30 days. The maximum period of 30 days expired on 30 th October 2022. As noted earlier, the petition was filed on 31 st October 2022.

11. Thus, looking from the angle, the High Court was right in holding that the petition filed by the appellants under [Section 34](#) of the Arbitration Act was not filed within the period specified under subsection (3)

of [Section 34](#). Hence, we find no merit in the appeal, and it is, accordingly, dismissed.”

6. In view of above and in the given admitted facts of the case, the appellant cannot gain any advantage of Section 4 of the Limitation Act, as the prescribed period of limitation (three months) under Section 34 (3) of the Act, had lapsed on 12.01.2023. The winter vacation of the Court started thereafter, that is, w.e.f. 23.01.2023 to 19.02.2023. Application under Section 34 of the Act was filed on 20.02.2023. The dismissal of application moved by the appellant for assailing the award dated 03.02.2022, being barred by limitation, is in order.

Consequently, no interference is called for with the impugned judgment. The present appeal is accordingly dismissed.

Pending miscellaneous application(s), if any, also to stand disposed of.

(Bipin C. Negi)
Judge

17th September, 2024
(Shamsh Tabrez)