

and good conduct and I am not willing to believe that if they had been validly served, they would not have appeared in Court to contest the application more particularly when the eviction had been sought on the ground, namely, non-payment of arrears of rent and creation of sub-tenancy by the tenants. The sub-tenancy was created with the consent of the landlord and that ground is apparently non-subsistent. The other ground ceased to exist when the arrears of rent upto date were deposited in the Court. The sub-tenants had good grounds to contest the eviction application.

(9) The other aspect which requires consideration is, whether the applicants acquired knowledge of the proceedings on the date pleaded by them or any anterior date. They have to furnish a good cause and they have so shown and I am satisfied, on the basis of the evidence on record, that they acquired the knowledge on the date pleaded by them and the application is, thus, within limitation.

(10) For the reasons, recorded supra, this revision is allowed. The *ex parte* order passed in rent case No. 51 dated July, 1978 decided on January, 31, 1983, is set aside. The case is remitted to the Rent Controller, Khanna, for *de novo* trial from the date when the applicants were proceeded *ex parte*. However, this order is subject to payment of conditional costs of Rs. 2,500, which have been paid and accepted in Court by Mr. Saini, learned counsel for the respondent. The parties will, however, bear their own costs of this petition.

(11) The parties, through their counsel, are directed to appear before the Rent Controller on April 21, 1989, on which date the Rent Controller will assess the costs and interest payable by the applicants and the applicant will pay or deposit the same on the same date.

S.C.K.

Before J. V. Gupta, J.

M. L. GUPTA AND BROS. AND OTHERS,—Petitioners.

versus

UNION OF INDIA,—Respondent.

Civil Revision No. 637 of 1985

February 28, 1989.

Arbitration Act (X of 1940)—S. 37(5)—Limitation Act (XXXVI of 1963)—Art. 137—Application for making a reference to the Arbitrator—Limitation for making such application—Commencement of such

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*limitation—Exclusion of time consumed in proceedings in court—
Effect of such exclusion.*

Held, that a period of limitation provided for filing an application for seeking a reference to the Arbitrator is three years which begins to run when the right to apply accrues. The right to apply accrues when the contract was rescinded. Once the period of limitation begins to run it does not stop and, therefore, the said period expired during the pendency of the proceedings when the award was set aside on November 23, 1978. Under Section 37(5) of the Arbitration Act, 1940 the period between the commencement of the Arbitration and the date of the order of the court could be excluded in computing the time prescribed under the Limitation Act, 1963.

(Para 3).

Petition under section 115 CPC for revision of the order of the Court of Mrs. Bimla Gautam, Additional District Judge, Jalandhar, dated 5th October, 1984 affirming that of the Court of Shri Amarjit Singh Katari, PCS, Subordinate Judge 1st Class, Jalandhar, dated 15th September, 1982 allowing the application and the petitioner is directed to file the original agreement in the court within a period of 30 days. Thereafter the reference shall be made for arbitration and leaving the parties to bear their own costs.

Ravinder Seth, Advocate, for the petitioner.

Jaishree Anand, Advocate, for the respondents.

JUDGMENT

J. V. Gupta, J.—

(1) The brief facts, giving rise to this revision petition are that there was an agreement between the parties dated August 23, 1973, which contained an arbitration clause as well. The said agreement was entered into for constructing accommodation for the JCOs, Havildars and other ranks at Suranussi. When there was some dispute between the parties, an application was made on behalf of the Union of India on December 20, 1973, for making a reference to the arbitrator. A reference was made to the arbitrator,—*vide* order dated November 14, 1974. The award was given by the arbitrator on September 12, 1975, which was set aside by the Court on November 23, 1978. Fresh application was filed on behalf of the Union of India purporting to be under section 20 of the Arbitration Act, (hereinafter called the Act). Ultimately, the said application was returned on January 5, 1981, so as to enable the Union of India to file the same before a competent Court. Consequently, the said application was filed before the competent Court on January 28,

1981. One of the objections raised on behalf of the petitioners was that the same was barred by time. On the pleadings of the parties, the learned Subordinate Judge, First Class, Jullundur, framed the necessary issues and allowed the parties to lead evidence. One of the issues was whether the application is within time. According to the learned subordinate Judge, the period of limitation under Article 137 of the Limitation Act commenced on November 23, 1978, when the award was set aside and then the cause of action had arisen to the Union of India. Since the application under section 20 of the Act, was originally filed on December 20, 1978, though in a wrong Court and the instant application was filed on January 28, 1981, even if the period for which the petitioner had been prosecuting the application in a wrong Court is not deducted, the subsequent application was within time. Consequently,—*vide* order dated September 15, 1982, the said application under section 20 of the Act, was allowed. In appeal, the learned Additional District Judge affirmed the said finding of the learned Subordinate Judge and, thus, maintained the said order. According to the learned Additional District Judge, the period spent in prosecuting the earlier arbitration proceedings till the award was set aside has to be excluded for computing the period of limitation. If that period is excluded for computing the period of limitation, the application is certainly within limitation. Reliance in this behalf was placed on a judgment of the Jammu and Kashmir High Court in *Union of India v. S. Kesar Singh*, (1).

(2) The learned counsel for the petitioners submitted that under sub-section (5) of section 37 of the Act, certain period is to be excluded, but that does not give a fresh cause of action from the date when the award was set aside on November 23, 1978. According to the learned counsel, under article 137 of the Limitation Act, the period of limitation provided is three years and it commences to run when the right to apply accrues. The right to apply accrued when the first application was filed on December 20, 1973, when the arbitrator was appointed on November 14, 1974, and the award was given on September 12, 1975. Thus, argued the learned counsel, even if the period between the commencement of the arbitration and the date of the order of the Court setting aside the award is excluded, even then, the application filed on January 28, 1981, was barred by time. According to the learned counsel, there was absolutely no explanation why the subsequent application was filed

(1) AIR 1978 J. & K. 102.

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on December 5, 1979, whereas the award was set aside on November 23, 1978. Even no application for condonation of delay was filed on behalf of the Union of India. In support of the contention, the learned counsel relied upon *Union of India v. M/s Vijay Construction Co.*, (2), and *Kerala S.E. Board v. T. P. Kunhaliumma*, (3).

(3) It is no more disputed that it is article 137 of the Limitation Act, which governs the period of limitation in the present case. The period of limitation provided therein is three years which begins to run when the right to apply accrues. The right to apply accrues when the contract was rescinded by the Union of India by moving an application on December 20, 1973, for appointment of an arbitrator. When once the period of limitation begins to run, it does not stop and, therefore, the said period expired during the pendency of the proceedings when the award was set aside on November 23, 1978. Sub-section (5) of section 37 of the Act, provides,—

“Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Indian Limitation Act, 1908, for the commencement of the proceedings (including arbitration) with respect to the difference referred.”

Under the said provision, the period between the commencement of the arbitration and the date of the order of the Court could be excluded in computing the time prescribed under article 137 for the commencement of the proceedings with respect to the difference referred. Even if the said period is excluded, there is absolutely no explanation why the second application under section 20 of the Act, after setting aside of the award, was filed on December 5, 1979, that is, after more than a year of the setting aside of the award. The view taken by the Courts below that the period of three years commenced from the date of the setting aside of the award, i.e., November 23, 1978, is apparently wrong. The right to apply had accrued to the Union of India when the earlier application for appointment of an arbitrator was made on December 20, 1973.

(2) AIR 1981 Delhi 193.

(3) AIR 1977 S.C. 282.

Second application, if any, for the appointment of an arbitrator, if at all, could be filed immediately after when the award was set aside, as the said period could be excluded under sub-section (5) of section 37 of the Act. Since the said period of three years when once commenced on December 20, 1973, has expired, meanwhile, no fresh period of three years after the setting aside of award was available. Sub-section (5) of section 37 does not provide for fresh period of limitation. It only provides for the exclusion of certain period as is contemplated under section 14 of the Limitation Act. Thus, in the absence of any explanation on behalf of the Union of India for not making the application for more than one year after the setting aside of the award, when the limitation under article 137 of the Limitation Act, had expired, the application filed subsequently, by the Union of India under section 20 of the Act was barred by time.

(4) Consequently, this revision petition succeeds and is allowed. The impugned orders are set aside and the application filed by the Union of India under Section 20 of the Act is dismissed with no order as to costs.

S.C.K.

Before Ujagar Singh, J.

STATE OF PUNJAB,—*Petitioner.*

versus

RADHA RAM AND ANOTHER,—*Respondents.*

Civil Revision No. 644 of 1985

February 28, 1989.

Code of Civil Procedure (V of 1908)—S. 34—Declaratory decree declaring termination order unconstitutional, null and void—Decree holder also declared deemed to be in service—Execution of such decree—Payment of interest—Power of executing court to award interest.

Held, that any such declaratory decree, as in this case, enjoins upon the defendant to pay arrears of pay and other allowances, considering that the plaintiff was never dismissed from service and