

(12) The case will now go back to the learned Single Judge for decision on merits. A copy of this judgment may be sent to all the Districts & Sessions Judges in the States of Punjab & Haryana and Chandigarh to be circulated amongst all judicial officers working under them for their information.

R.N.R.

Before : G. R. Majithia, J.

DES RAJ ARORA,—Petitioner.

versus

UNION OF INDIA AND ANOTHER,—Respondents.

Civil Revision No. 3268 of 1982.

21st November, 1990.

Arbitration Act (X of 1940)—Ss. 14(2) & 17—Limitation Act (XXXVI of 1963)—Ss. 5, 29(2) & 37(1)—Application for making award rule of the Court filed in Delhi Court—Delhi Court returning application on the ground of lack of territorial jurisdiction—Application subsequently filed in competent Court at Ambala—Period spent in pursuing remedies in wrong court but with due diligence and good faith has to be excluded from the period of limitation—Held, Arbitration Act does not exclude applicability of Ss. 4 to 24 of the Limitation Act.

Held, that under the present Section 29(2) of the Limitation Act, 1963, all the provisions contained in Sections 4 to 24 of the Limitation Act are made applicable to the special or local law in the absence of exclusion of such provision by the special or local law. There is no provision in the Act that the applicability of Sections 4 to 24 of the Limitation Act has been excluded. Sub-section (2) of Section 29 of the Limitation Act is supplemental in its character insofar as it provides for the application of sections 4 to 24 to such cases as would not come within the purview of those provisions. The real effect of the provisions contained in Section 14 of the Limitation Act is to extend the period of limitation prescribed by the period during which the suit/proceeding has been prosecuted with due diligence and good faith in court, which from defect of jurisdiction or other cause of a like nature is unable to entertain.

(Para 6)

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Held, that the petitioner bona fide prosecuted his remedies under the Act in Delhi Court and when the application was returned to him by the Delhi Court on the ground that it had no jurisdiction, it was filed in the competent Court at Ambala within four days. The petitioner was entitled to exclude the time spent by him in litigating for his claim in the Court at Delhi and if that is done, there is no escape from the conclusion that the application was filed within time.

(Para 7)

Petition under Section 115 C.P.C. for revision of the order of the Court of Shri K. C. Gupta, H.C.S., Senior Sub-Judge, Ambala, dated 5th August, 1982 dismissing the application of the applicant Des Raj under Section 17 of the Indian Arbitration Act for making the award dated 28th March, 1979, rule of the court.

Ajay Mittal, Advocate and G. S. Sandhawalia, Advocate, for the Petitioner.

Nemo, for the Respondents.

JUDGMENT

G. R. Majithia, J.

(1) This revision petition is directed against the order of the trial Judge rejecting the application of the petitioner under Sections 14(2) and 17 of the Indian Arbitration Act, 1940 (for short, the Act) for making the award the rule of the Court only on the ground that it was filed beyond the period of limitation.

(2) The petitioner entered into an agreement with the Executive Engineer for the execution of work "Coaxial Building" and 4 Nos. Type-1 quarters at Fatiabad. The dispute arose between the petitioner and the respondents out of the aforesaid agreement and was referred to the Chief Engineer (Civil), P&T Civil Engineering Wing, New Delhi, for arbitration. The arbitrator entered upon the reference on April 3, 1978 and the award was rendered on March 28, 1979 and a sum of Rs. 27,713 was awarded to the petitioner. Prior thereto, time for rendering the award was extended upto March 31, 1979. The petitioner received notice from the arbitrator that the award had been rendered on March 27, 1979. The petitioner reserving his right to file objections against the award, if any, moved the instant petition on April 21, 1979 in the Court of the District Judge, Delhi and the same was assigned to the Additional District Judge, Delhi. Respondent No. 1 filed objections on July 3, 1979. The petitioner did not

file any objections and prayed that the award be made the rule of the Court. Respondent No. 1 took a preliminary objection that the contract was entered into at Ambala and the work was to be executed at Fatiabad and as such the Delhi court had no jurisdiction to try the application; that the arbitrator had misconducted himself in awarding Rs. 27,713 as compensation to the petitioner.

(3) The Additional District Judge, Delhi, who was seized of the application on transfer from the District Judge, Delhi,—*vide* his order dated November 8, 1979, held that the Delhi court had no territorial jurisdiction to try the application. The application was returned on November 9, 1979 and it was filed in the Court of the Senior Subordinate Judge at Ambala on November 12, 1979. Alongwith the application, an application under Section 5 read with Section 14 of the Limitation Act was also filed.

(4) On the pleadings of the parties, the trial Judge, framed the following issues:—

- (1) Whether the award pronounced by the arbitrator is liable to be set aside on the grounds mentioned in the petition?
- (2) Whether the petition is within time ?
- (3) If issue No. 2 is not proved, whether there are sufficient grounds for condoning the delay ?
- (4) Relief.

(5) Under issue No. 1, the trial Judge found that the award dated March 28, 1979 was not liable to be set aside. Under issues No. 2 and 3, he held that the application to make the award the rule of the Court was filed beyond limitation and on these findings rejected the application.

(6) The approach of the learned trial Judge, to say the least, is perverse. He did not make an effort to understand the correct principles of law applicable to the facts of the instant case. Sub-Section (2) of Section 29 of the Limitation Act says that when a special or local Act provides for any suit, appeal or application, a period of limitation different from the period prescribed by the Limitation Act, it is the provision in the special or local Act that will prevail and

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not a provision of the Limitation Act except to the extent specified in the section, namely, (i) that Section 3 shall apply as if the period prescribed by the special or local law for the period prescribed by the schedule to the Act; (ii) Sections 4 to 24 of the Limitation Act shall apply only in so far as and to the extent which they are not expressly excluded by such special or local law. Under the present Section 29(2) of the Limitation Act, 1963, all the provisions contained in Sections 4 to 24 of the Limitation Act are made applicable to the special or local law in the absence of exclusion of such provision by the special or local law. There is no provision in the Act that the applicability of sections 4 to 24 of the Limitation Act has been excluded. Sub-section (2) of the Section 29 of the Limitation Act is supplemental in its character insofar as it provides for the application of sections 4 to 24 to such cases as would not come within the purview of those provisions. The real effect of the provisions contained in section 14 of the Limitation Act is to extend the period of limitation prescribed by the period during which the suit/proceeding has been prosecuted with due diligence and good faith in a court, which from defect of jurisdiction or other cause of a like nature is unable to entertain. Moreover, Section 37(1) of the Act provides that all the provisions of the Limitation Act shall apply to arbitration proceedings as they apply to proceedings in courts, but that in view of section 37(5) of the Act, the whole of the time referred to in sub-section (1) of Section 37 is not to be excluded; it is only the period limited by that sub-section, that has to be excluded and that too only if the tests laid down therein are satisfied.

(7) In the instant case, the petition under Sections 14(2) and 17 of the Act was presented in the Court of District Judge on April 21, 1979. The petitioner received the intimation regarding the signing of the award on March 29, 1979. A composite application under Section 14(2) read with Section 17 of the Act was filed and under article 119(a) of the Limitation Act, the application had to be filed within thirty days of the date of service of the notice of making of the award. Service of notice of making of the award was made on the appellant on March 29, 1979 and the application was filed on April 21, 1979, much before the expiry of the prescribed period of limitation of 30 days. The Delhi Court returned the petition for want of territorial jurisdiction on November 9, 1979 and it was filed in the Court of Senior Subordinate Judge, Ambala on November 12, 1979. If the time spent in prosecuting the petition in the Delhi Court is excluded, the petition was filed within limitation in the Court of competent

jurisdiction. The petitioner had been *bona fide* pursuing his remedies under the Act in Delhi Court. A.W. 1 Shri Satinder Kumar, Advocate, Delhi advised the petitioner to file the application under Section 14(2) read with Section 17, of the Act in Delhi court and, acting on that advice, the petitioner filed the application in Delhi court. The counsel stated at the trial that on the basis of the judgment rendered by the Delhi High Court he had advised the petitioner that the Delhi Court had the jurisdiction to try the application. The trial Court rejected his testimony on the ground that the authority on the basis of which the advice was rendered was not applicable to the instant case and that the witness could not refer to any other authority on the basis of which the advice was tendered by him to his client. The comments about this witness by the trial Court give an impression that he has tried to sit in judgment over the advice tendered by the witness to his client. He further proceeded to express an opinion that the advice was not correctly tendered. The petitioner is a lay man. He has to approach an expert in the field of law for advice. He was tendered advice and acting on that advice, he had filed the application under Section 14(2) read with Section 17 of the Act in Delhi court. No fault can be found with his conduct. A.W. 1 Shri Satinder Kumar, Advocate may have given a mistaken advice, but he reiterated at the trial that he did give the advice and no fault can be found with the same. On these proved facts, there was no escape from the conclusion that the petitioner *bona fide* prosecuted his remedies under the Act in Delhi court and when the application was returned to him by the Delhi court on the ground that it had no jurisdiction, it was filed in the competent Court at Ambala within four days. The petition was entitled to exclude the time spent by him in litigating for his claim in the court at Delhi and if that is done, there is no escape from the conclusion that the application was filed within time. The decision of the trial Court under issues No. 2 and 3 is set aside.

(8) For the reasons aforesaid, the revision petition succeeds and the order under challenge to the extent it held that the application under Section 14(2) read with Section 17 of the Act was filed beyond limitation is set aside. In view of the finding under issue No. 1 that the award of the arbitrator is not liable to be set aside and the same has not been assailed by the opposite party, the award is made the rule of the Court. There will be no order as to costs.

R.N.R.