APPELLATE CIVIL.

Before D. S. Tewatia, J.

THE STATE OF UTTAR PRADESH, ETC.,—*Appellants.*

versus

FIRM M/S PEARL HOSIERY MILLS, LUDHIANA,—*Respondent.*

R. F. A. No. 230 *of* 1960.

February 2, 1973.

Arbitration Act (X of 1940)—Section 37(5)—Expression 'the Court' appearing therein—Whether means the court of first instance only—Time spent in pursuing appeal or revision against the order of the court of first instance—Whether to the excluded for reckoning the period of limitation for a suit.

Held, that the expression 'the court' appearing in sub-section (5) of section 37 of the Arbitration Act, 1940, means the court which finally decides the question regarding the setting aside of an award or the supersession of the arbitration agreement whether it is the court of first instance or the appellate court or the revisional court. The time spent, in pursuing the proceedings right from the date of appointment of the arbitrator till the date of the final order including the time spent in pursuing an appeal or revision against the order of the court of first instance shall have to be excluded for reckoning the period of limitation for a suit. The absence of specification of heirarchy of Courts in section 37(5) does not lead to the inference that the Legislature while enacting the section intended to limit the concession of exclusion of time up to the court of first instance only.

(Paras 10 and 12).

Regular First Appeal from the decree of the Court of Shri Pritpal Singh, Sub-Judge, 1st Class, Ludhiana, dated the 25th day of March, 1960, granting the plaintiff a decree for Rs. 5,397.50 Np. with costs and with interest at the rate of 6 per cent per annum from the date of the suit till realisation.

J. S. Wasu. Advocate-General, Punjab, with S. K. Syal, Advocate, *for the appellants.*

D. N. Awasthy, Advocate, with A. C. Jain, Advocate, *for the respondent.*

JUDGMENT

TEWATIA, J.—The State of Uttar Pradesh, defendant-appellant, entered into a contract Exhibit P. 1 on August 7, 1952, with the plaintiff-respondent firm (Messrs Pearl Hosiery Mills, Ludhiana) for

supply of ten thousand *khaki* woollen jerseys of a given specification. The requisite number of jerseys were duly supplied by the plaintiff-respondent and certificates Exhibits P. 4 and P. 5 envisaged to be issued after inspection of the goods by the requisite authority under clause 9 of the agreement were issued on November 14, 1952 and November 24, 1952, respectively by the authority concerned and pursuant thereof the plaintiff-respondent received final payment of the goods on January 8, 1953. Clause 18 of the said contract envisaged the return of the security amount deposited, which in this case was Rs. 4,250, six months after the expiry of the contract and after the Director of Cottage Industries had satisfied himself that all the terms of the said contract had been duly and faithfully carried out by the contractor.

(2) The plaintiff-respondent after having received the final payment for the good supplies, from time to time, called upon the defendant-appellant to release the said security amount which was lying in deposit in Post-office Savings Bank Account at Ludhiana in the name of the Director of the Cottage Industries. The defendant-appellant after a long silence intimated the plaintiff-respondent that the security amount in question stood forfeited as after a laboratory test of the goods in question, it was found that the goods supplied did not conform to the specification of the sample agreed upon. This reply led in the first instance to the reference to the arbitrator and later, when the former course proved abortive, to the filling of the present suit for recovery of Rs. 5,397.50 P., which amount included the security deposit and the interest accrued thereon at the rate of 6 per cent per annum.

(3) The defendant-State resisted the suit *inter alia* with the plea that the Ludhiana Court had no jurisdiction, that the suit was barred by limitation and the plaintiff was not entitled to recover the security amount as the same stood correctly forfeited.

(4) On the pleadings of the parties, six issues were framed and out of these only the following three are relevant for the decision of this appeal:—

(1) Has this Court jurisdiction to try the suit ?

(2) Is the suit within time?

(3) Was the defendant justified in forfeiting the security in dispute?

The trial Court decided all the issues in favour of the plaintiff and against the defendant and decreed the suit. Being dissatisfied with the judgment and decree of the trial Court, the defendant has come up in this Court by way of this appeal.

(5) Mr. Wasu, appearing for the appellant, reiterate before me the submissions only on the abovesaid three issues which, as already noticed, did not find favour with the trial Court and so rightly.

(6) The Courts at Ludhiana, in my opinion, do enjoy territorial jurisdiction in the matter as, according to Inder Pal Dhir (P.W. 1), partner of the plaintiff-firm, the contract was entered into and signed at Ludhiana. In cross-examination the above assertion was not challenged and hence part of cause of action in terms of section 20, Civil Procedure Code, having arisen at Ludhiana, the trial Court, therefore, rightly decided the issue pertaining to the jurisdiction against the defendant and in favour of the plaintiff. The matter can be looked at from yet another angle. The final intimation that the security had been forfeited by the defendant-State was received by the plaintiff-firm at Ludhiana and on facts somewhat similar to one in hand occurring in an unreported decision in *Shri Sanatan Dharam College, Managing Committee, Hoshiarpur,* v. *The Punjab University and others* (1), following *Fertilizer Corporation of India Ltd.* v. *Sanjit Kumar Ghosh and another* (2), it was held by me that the Court where the letter of revocation of affiliation was received had the jurisdiction and not the place wherefrom it was despatched. In this view of the matter also, the Court at Ludhiana would have jurisdiction in the matter.

(7) As to the question of limitation, the contention advanced by Mr. Wasu is that the expression 'the Court' appearing in section 37 sub-section (5) of the Indian Arbitration Act, 1940 (hereinafter referred to as the Act) would mean 'the Court of first instance' and so only the time spent between the commencement of the arbitration and the date of the order of the Court of first instance refusing to make the award the rule of Court could be excluded and not the time spent further in pursuing the appeal or revision against the order

(1) S.A.O. 12 of 1970 decided on 18th August, 1970.
(2) A.I.R. 1965 Pb. 107.

of the Court of first instance, Mr. Wasu sought to strengthen his submission in this regard by referring to the different phraseology used in section 14 of the Indian Limitation Act. For facility of reference, the relevant provisions of section 37 of the Arbitration Act (Act No. 10 of 1940) and section 14 of the Limitation Act (Act No. 36 of 1963), are extracted below:—

"37 (1) * * *.
* *.

(2) * * *.
* *.

*(3) * * *.
* *.

(4) * * *.
* *.

(5) 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."

"14(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceedings relate to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) * * *.

(3) * * * *."

(8) Whether the contention advanced has merit—would depend on the fact whether the expression 'Court' could be construed to mean

the Court of first instance. I do not think such a restrictive construction would be justified.

(9) To demonstrate the limitation of such a narrow construction, I may cite an example, viz.,—where the Court of first instance quashes the award, the High Court in appeal reverses the order of the Court below and it is the Supreme Court that finally quashes the award. In a situation like this whether it is the Court of first instance that would be taken to have set aside the award in terms of section 37(5) or the Supreme Court. Obviously the order of the Court of first instance having been reversed by the High Court would be non-existent and the only order setting aside the award that holds the field is that of the Supeme Court and hence in terms of section 37(5) Supreme Court is the Court which can be said to be ordering that the award be set aside. Therefore, the expression 'Court' does not mean the Court of first instance but refers to the Court which finally passes the order setting aside the award.

(10) Specification of heirarchy of Courts in section 14 of the Limitation Act and the absence thereof in section 37(5) cannot lead to an inference that the legislature while enacting section 37(5) intended to limit the concession in question up to the Court of first instance.

(11) The avoidance of use of the phraseology of section 14 of the Limitation Act in section 37(5) of the Arbitration Act, I presume, has been dictated not by any different legislative intent, but by the fact that its adoption would have been inapt and superfluous.

(12) The matter is not *res integra*. A similar argument was raised before the Rajasthan High Court in ***Babulal*** *and* *another* v. *Ramswarup* (3) and Chhangani, J. met the said argument with the following observations:—

> "The matter may be approached from another angle. Section 39 gives a suitor right of appeal against an order setting aside award and very naturally he must be allowed to pursue his right without any kind of restriction or risk. A view that in case of failure in appeal in any subsequent litigation he cannot claim exclusion of time taken in appeal

(3) A.I.R. 1960 Raj. 240.

cannot but seriously restrict, if not altogether deprive him of his right. This could never have been intended by the Legislature.

It will be useful to point out at this stage that section 37 contain provisions relating to limitation, and sub-section (5) corresponds with section 14 of the Limitation Act. Under that section the time taken in conducting proceedings in appeal can be excluded on the wordings of the section itself. It is of course true that section 37(5) does not adopt the language of section 14 of appeal purposes but the difference in language need not be emphasised to infer a different legislative intent. The general principle of section 14 being wellknown the legislature very presumably remained content with general language only.

I have no hesitation in holding that on the general principles of section 14, and on the obvious necessity of adequately recognising and safe-guarding the rights of parties under section 39, section 37(5) should be interpreted to entitle to a suit to claim exclusion of the period taken in appeal against an order setting aside sale and the same principle may in appropriate cases be extended to revisions also.

On a very careful consideration of the various aspect of the matter, I have no doubt that on a fair and reasonable construction of section 37, the word 'Court' should include the appellate and revisional Court and that the plaintiff is entitled to the exclusion of the period taken by him in filing appeal and revision against the order of the court setting aside the award. The view taken by the lower court appears to be quite correct and calls for no interference."

With respect I find myself in entire agreement with the above observations of Chhangani, J., and hold that the expression 'the Court' appearing in section 37 sub-section (5) of the Arbitration Act has to be construed to mean the Court which finally decides the matter whether it is the Court of first instance or the appellate or the revisional Court and hence the time spent by the plaintiff in pursuing the proceedings right from the date of the appointment of the arbitrator till the date of the final order passed by the High Court shall have to be excluded for reckoning the period of limitation.

(13) On merits Mr. Wasu urged that in terms of clause (9) of the agreement, the Director of the Cottage Industries of the U.P. Government or any other officer authorised in this behalf was entitled to inspect the goods 'at any time' to assure himself that the same conformed to the specifications agreed upon in weight, quality and number and the goods having been found not answering to the requisite specifications on a laboratory test, the Director of Cottage Industries in terms of clause (18) of the agreement rightly confiscated security amount in question.

(14) The position in this case is that the goods had been inspected and in token of the satisfaction of the authorities concerned, certificates of inspection Exhibits P. 4 and P. 5 had been issued stating therein that the goods in question on inspection were found in conformity with the requisite specification. It is some 10 months thereafter that some kind of laboratory test was carried out and the goods were found wanting in requisite quality.

(15) So the question here, that falls for determination, does not concern the right of the authorities to inspect the goods at any time, as that right had been exercised in this case. The point for determination is 'can the authorities concerned, after having inspected the goods on arrival and after having certified them to be of the requisite quality, again inspect them and hold that these did not conform to the agreed standard and specifications'. I am afraid it is not open to the Government having once issued the certificates that the goods on inspection had been found to be of requisite quality and standard to turn round later on and say that the earlier certificate was not correctly issued or the earlier inspection was not correctly carried out unless they had expressly reserved such a right and incorporated a condition to that effect in the contract, which is not the case here. I, therefore, hold that the defendant-State had no legal right to confiscate the security.

(16) For the reasons stated, I affirm the judgment and decree of the first Court and dismiss the appeal with costs.

N. K. S: