



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 3rd DAY OF DECEMBER, 2021

BEFORE

HON'BLE MR. JUSTICE AJAY MOHAN GOEL

ARBITRATION APPEAL No. 03 OF 2021

Between:-

1. THE STATE OF H.P. THROUGH
PRINCIPAL SECRETARY (PW), H.P.
SECTT. SHIMLA-171002.
2. THE EXECUTIVE ENGINEER, H.P.
PWD, DIVISION DODRA KAWAR,
DISTT. SHIMLA, HP.

.....APPELLANTS

(BY M/S ADARSH SHARMA, SUMESH
RAJ AND SANJEEV SOOD,
ADDITIONAL ADVOCATE GENERALS
WITH MR. KAMAL KANT CHANDEL,
DEPUTY ADOVCATE GENERAL)

AND

SH. PANKAJ S/O SH. VIJAY SINGH
THAKUR, R/O VILLAGE SHEKHAL,
P.O. DHADI GHUNSA, TEHSIL ROHRU,
DISTRICT SHIMLA, H.P.

.....RESPONDENTS

(BY MR. J.S. BHOGAL, SENIOR
ADVOCATE WITH MR. T.S. BHOGAL,
ADVOCATE)

Whether approved for reporting: No

This appeal coming on for hearing this day, Hon'ble Mr.

Ajay Mohan Goel, delivered the following:-

J U D G M E N T

By way of this appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, the appellants have challenged judgment dated 06.04.2021, passed by the Court of learned District Judge, Shimla, in arbitration case titled as The State of H.P. and another versus Sh. Pankaj Thakur, vide which, an application filed under Section 36(4) of the Arbitration and Conciliation Act, for *condonation* of delay in filing the objections under Section 34 of the Arbitration and Conciliation Act, against award dated 01.10.2019, stands dismissed by the learned Court below.

2. Brief facts necessary for the adjudication of this appeal are as under:-

Feeling aggrieved by an award passed under the Arbitration and Conciliation Act, dated 01.10.20219, signed copy whereof was provided to the parties on the same date, Objections were preferred under Section 34 of the Arbitration and Conciliation Act by the State of Himachal Pradesh-Appellants herein. Along with the Objections, an application was filed under Section 36(4) of the Arbitration and Conciliation Act for *condonation* of delay in filing the same. These Objections along with the application for

condonation of delay was filed on 17.02.2020, i.e. on 138th day after passing of the arbitration award.

3. For the purpose of record, it is relevant to mention that post winter vacations, the Court of learned District Judge, Shimla, reopened on 17th February, 2020, on which date, the Objections along with the application for *condonation* of delay, were filed.

4. This application filed for *condonation* of delay in filing the objections stood dismissed by the learned District Judge, by placing reliance upon the judgment of Hon'ble Supreme Court of India in *Assam Urban Water Supply and Sewerage Board* versus *M/s Subash Projects and Marketing Limited*, (2012) 2 Supreme Court Cases 624.

5. I have heard learned Counsel for the parties and have also gone through the documents appended with the appeal, including the order passed by the learned Court below.

6. It is not in dispute that in the present case, as on the date when the Court reopened after winter vacations and the Objections were preferred by the present appellants against the award passed by the learned Arbitrator, the period of three months plus the extended period of 30 days, benefit whereof can be given by the Court, was over. In this view of the matter, this Court is of the Considered view that there is no infirmity in the order which

stands assailed by way of this appeal because learned Court below could not have given the benefit of vacations for the purpose of computing the limitation to the present appellants, in terms of the law laid down by Hon'ble Supreme Court of India in Assam Urban Water Supply and Sewerage Board (supra). In the said judgment, Hon'ble Supreme Court of India has been pleased to hold, while interpreting Section 2(j) and Section 4 of the Limitation Act as under:-

"12. Section 4 of the 1963 Act reads as under :-

"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."

The above Section enables a party to institute a suit, prefer an appeal or make an application on the day court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed.

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) '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 arbitral award is three months. The period of 30 days mentioned in proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the 'period of limitation' and, therefore, not '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 sub-section (3) of Section 34 of the 1996 Act being not the 'period of limitation' or, in other words, 'prescribed period', in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.”

7. Coming back to the facts of this case, the application filed for *condonation* of delay in filing the appeal was dismissed by learned Court below by assigning the following reasons:-

“7. Section 34 of the Arbitration Act is the only remedy for challenging the award under Part-I of the Arbitration Act. Section 34 o(3) of the Arbitration Act is a limitation provision, which is an inbuilt into the remedy provision.

8. A plain reading of sub-section (3) along with proviso to Section 34 of the Arbitration Act shows that application for setting aside the award mentioned in sub-section (2) of Section 34 of the Arbitration Act could be made within three months and the period can be extended for further period of 30 days on showing sufficient grounds and not thereafter. When any special statute prescribes certain period of limitation as well as provision for extension upto specified time limit on sufficient cause being shown, then the period of limitation prescribed under special law shall prevail and to that extent the provision of the Limitation Act shall stand excluded. When the intention of the legislature by enacting Sub Section (3) to Section 34 of the Arbitration Act is explicit that an application for setting aside the award should be made within three months and the

period can be further extended on sufficient cause by another period of 30 days and not thereafter, it implies that the Section 5 of the Limitation Act is not applicable.

9. *In Assam Urban Water Supply and Sewerage Board supra, the Hon'ble Apex Court has explained Section 4 of the Limitation Act, 1963, which enables the period of institute any suit, appeal or application on the day Court reopens where the prescribed period for any suit, appeal or application expires on the day when the Court is closed. The Hon'ble Apex Court has explained the meaning of "prescribed period" as mentioned in Section 4 of the Limitation Act, 1963 to say that period of 30 days mentioned in the proviso that follows in sub-section (3) of Section 34 of the Arbitration Act is not the "period of limitation", therefore, not "prescribed period" for the purpose of making the application for setting aside the arbitral award and accordingly, Section 4 of the Limitation Act, 1963 is not attracted."*

8. This Court is of the considered view that the order so passed by the learned Appellate Court calls for no interference

especially in view of law laid down by Hon'ble Supreme Court of India in case referred to supra. The limitation for assailing the award passed under the Arbitration and Conciliation Act, 1996, is three months as from the date on which the party filing application under Section 34 of the Arbitration and Conciliation Act has received the arbitral award. Extendable period of 30 days referred to in the proviso to Section 34 (3) of the Arbitration and Conciliation Act is not the period of limitation. Therefore, if a party has to get the benefit of limitation on account of vacations in a Court, then, the condition precedent for that is that this period of "three months" must expire during the vacations. In other words, it is not the extendable period, which should expire during the limitation, but the period of three months which should expire during the period of vacation. In the present case, the period of three months as from the date when signed copy of the award was received by the appellant, expired before the learned Court below closed for winter vacations. This is not in dispute. That being the case, as the limitation for filing the Objections under Section 34 of the Arbitration and Conciliation Act, had expired before the Courts closed for vacations and it is the extendable period, which expired during the period of vacations, the appellant herein was not entitled for the benefit of Section 4 of the Limitation Act.

9. In view of findings returned hereinabove, as this Court does not find any infirmity with the order impugned, therefore, the present appeal, being devoid of merit, is dismissed. Pending miscellaneous application(s), if any, also stands disposed of accordingly.

(Ajay Mohan Goel)
Judge

December 03, 2021
(narendar)