



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ON THE 3rd DAY OF DECEMBER, 2021

BEFORE
HON'BLE MR. JUSTICE SANDEEP SHARMA

ARBITRATION APPEAL NO.5 OF 2021

Between:

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

....PETITIONERS

(BY MR. SUDHIR BHATNAGAR AND MR.
DESH RAJ THAKUR, ADDITIONAL ADVOCATE
GENERAL WITH MR. NARENDER THAKUR,
DEPUTY ADVOCATE GENERAL).

AND

SH. SANJAY CHAUHAN SON OF SH. BALWAN
SINGH, R/O VILLAGE SHAROG, P.O. ARHAL,
TEHSIL ROHRU, DISTRICT SHIMLA, H.P.

....RESPONDENT

(BY SH. J. S. BHOGAL, SENIOR ADVOCATE
WITH MR. TARUNJEET SINGH BHOGAL AND
MS. SRISHTI VERMA, ADVOCATE).

Whether approved for reporting?

This appeal coming on for orders this day, the Court passed the following:

JUDGMENT

Instant appeal filed under Section 37 of the Arbitration and Conciliation Act, 1966 (*for short 'Act'*), lays challenge to order/ judgment dated 6.4.2021, passed by learned District Judge, Shimla,

District Shimla, H.P., in CMP No.52-S/6 of 2020, titled as *The State of Himachal Pradesh and another versus Sh. Sanjay Chauhan*, whereby an application under Section 34(3) of the Act, having been filed by the appellants, praying therein for condonation of delay in filing the objections under Section 34 of the Act, came to be dismissed.

2. Ms. Srishti Verma, Advocate, appears and waives service of notice on behalf of the respondent. Before the case at hand could be heard and decided on its own merit, learned Senior counsel representing the respondent while inviting attention of this Court to the judgment dated 23.11.2021, passed by Co-Ordinate Bench of this Court in Arbitration Appeal No.31 of 2021, titled as *The State of Himachal Pradesh versus Sh. Bal Krishan*, submits that instant appeal having been filed by the appellant-State deserves to be rejected in the light of aforesaid judgment rendered by Co-ordinate Bench of this Court.

3. Though, Mr. Desh Raj Thakur, learned Additional Advocate General, made an attempt to carve out a case that facts of the case at hand are disguisable from the case relied upon by counsel representing the respondent, but having carefully perused judgment rendered by Co-Ordinate Bench of this Court, as detailed hereinabove, this Court finds no merit in the submission of learned Additional Advocate General and same deserves outright rejection.

4. The facts of the case as emerge from the record are that the appellants being aggrieved and dissatisfied with award

dated 1st October, 2019, passed by learned Arbitrator, filed objections under Section 34 of the Act. Since, objections were filed beyond period of limitation, an application under Section 34(3) came to be filed alongwith the objections, seeking therein condonation of delay in the Court of learned District Judge, Shimla, but fact remains that aforesaid application, as detailed hereinabove, was dismissed vide order dated 6.4.2021, as a consequence of which, objections filed by the appellants also came to be dismissed. In the aforesaid background, appellant-State has approached this Court in the instant appeal.

5. In the case at hand, arbitration award was passed on 1st October, 2019 and copy thereof was made available on the same day to the parties to the */is* and as such, being aggrieved and dissatisfied, if any, with the award, party intending to file objections under section 34 of the Act, was under obligation to file the same within a period of three months in terms of provision contained under Section 34(3) of the Act, but in the case at hand record reveals that appellants being aggrieved and dissatisfied with the award, filed objections on 17.2.2020, which was admittedly beyond the period of three months from passing of the award by the learned Arbitrator and as such, an application under Section 36(4) of the Act came to be filed, seeking therein condonation of delay.

6. At this stage, it would be profitable to take note of provision contained under Section 34(3) of the Act hereinbelow:-

“Section 34(3) in THE ARBITRATION AND CONCILIATION ACT, 1996

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

7. Careful perusal of aforesaid provisions of law clearly reveals that an application for setting aside arbitration award may not be made after three months from the date of receipt of signed copy of the award, but such time can be extended by the Court, if it is satisfied that the applicant was prevented by sufficient cause from filing the objections within the said period of three months, but definitely such time cannot be extended beyond 30 days, meaning thereby even Court has power to extend the time of 30 days over and above period of three months provided under Section 34(3) of the Act. Since in the case at hand, objections under Section 34(3) of the Act came to be filed after expiry of 30 days grace time, which court could have granted in terms of proviso to Section 34(1), if it was satisfied with the explanation, learned District Judge rightly dismissed the application, praying therein for condonation of delay.

8. Question, which needs to be determined in the case at hand is “whether time beyond grace period of 30 days can be extended by the Court” stands already adjudicated by the Co-ordinate Bench of this Court in its judgment dated 23rd November,

2021 in case titled *The State of Himachal Pradesh and another versus Sh. Bal Krishan*, which is clearly based upon the judgment rendered by Hon'ble Apex Court in **Assam Urban Water Supply and Sewerage Board versus M/s Subhash Projects and Marketing Limited (2012) 2 Supreme Court Cases 624**. It would be profitable to reproduce para Nos. 6 and 7 of the aforesaid judgment hereinbelow:-

"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."

9. Precisely, the case of the appellants is that since they immediately after reopening of the Court after winter vacation filed

the objections under Section 34 of the Act, same could not be held to be barred by limitation. However, such plea is totally devoid of any merit on account of the judgment rendered by Hon'ble Apex Court qua this issue only, as has been taken note hereinabove. Moreover, in the case at hand, it is not in dispute that grace period of 30 days over and above period of three months, as prescribed under Section 34(3) of the Act, had lapsed when objections under Section 34 of the Act were filed. Otherwise, there was no occasion, if any, for the appellants to claim that since they filed appeal on the opening day their objections deserves to be held within limitation.

10. Hon'ble Apex Court in ***Assam Urban Water Supply and Sewerage case*** (supra) while interpreting Section 4 of the Limitation Act, has categorically held that Section 4 talks about the "prescribed period" not about the "grace period", meaning thereby section 4 of the Limitation Act cannot be applied to "grace period" which is over and above the period prescribed under Section 34(3) of the Act and it is discretion of the Court after being satisfied to grant grace period.

11. At this stage, learned Additional Advocate General vehemently argued that since provision of Section 34(3) of the Act enable the Court to condone the delay, if any, in filing the objections beyond period of three months, objections filed by the appellants in the case at hand could not be held to be barred by limitation, especially when these objections were filed during the

winter vacation, which period otherwise could not be counted towards calculating limitation. However, this Court is not persuaded to agree with the aforesaid contention of learned Additional Advocate General for the reason that Section 4 of the Limitation Act, 1963 talks about “prescribed period” and “prescribed period” in the case at hand is three months, as provided under Section 34(3) of the Act. Admittedly, in the case at hand, no objections, if any, ever came to be filed within the prescribed period, rather same were filed after expiry of 137 days i.e. opening day of the Court after winter vacation. As has been held by Hon’ble Apex Court as well as Co-Ordinate Bench of this Court that Court considering prayer for condonation of delay could not grant time more than 30 days over and above period of three months, as prescribed under Section 34(3) of the Act and as such, no illegality can be said to be committed by the Court below while dismissing the objections.

12. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds no merit in the present appeal and same is accordingly dismissed being devoid of any merit. Pending application(s), if any, also stands disposed of.

(Sandeep Sharma),
Judge

3rd December, 2021
(shankar)