

2022 LiveLaw (SC) 348

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
AJAY RASTOGI; (SANJIV KHANNA, JJ.
MARCH 30, 2022

HARYANA URBAN DEVELOPMENT AUTHORITY, KARNAL
VERSUS
M/S. MEHTA CONSTRUCTION COMPANY AND ANOTHER

Arbitration and Conciliation Act, 1996; Section 34 - Arbitral award can be set aside by the court if the court finds the award is vitiated by patent illegality appearing on the face of the award - The award shall not be set aside merely on the ground of erroneous application of law or by misappreciation of evidence. (Para 15)

Arbitration and Conciliation Act, 1996; Section 34 - The court may condone delay of a period up to thirty days in filing of the objections if it is satisfied that the applicant is prevented by sufficient cause from making an application under Section 34(1) of the Act. (Para 10)

CIVIL APPEAL NO. 2693 OF 2022 (SPECIAL LEAVE PETITION (CIVIL) NO. 6137 OF 2022) (DIARY NO. 23287 OF 2020); (Arising out of impugned final judgment and order dated 11-12-2019 in CR No. 2340/2019 passed by the High Court Of Punjab & Haryana At Chandigarh)

For Petitioner(s) Mr. Vikrant Y.S. Narula, Adv. Mr. Pritesh Bhardwaj, Adv. Dr. Sandeep Chauhan, Adv. Mr. Naman Gupta, Adv. Mr. Vishwa Pal Singh, AOR Ms. Kiran Bala Dewangan, Adv. Mr. Jhingan Ashwani Omprakash, Adv. Mr. Y.P. Singh, Adv. Mr. Surjeet Singh, Adv.

For Respondent(s) Mr. Ashutosh Dubey, AOR Mr. Abhishek Chauhan, Adv. Mr. Achin Mittal, Adv. Mr. Amit P. Shahi, Adv. Mr. Rajshri Dubey, Adv. Mr. Amit Kumar, Adv.

ORDER

Delay condoned. Leave granted.

2. The appellant before us – Haryana Urban Development Authority, Karnal, Haryana, and the respondent – M/s. Mehta Construction Company, on 6th July 1998, had entered into an agreement whereby the respondent was to construct water body, water body fall, pedestrian bridge, backwall of deck, pump chamber (partly above and partly below the GI pipe), lay CI and RCC pipes and all other works contingent thereto for development of town park in Sector 8 and 9 (Phase – II), Karnal, for an amount not exceeding Rs.32.50 lakhs. The scope of the work was enhanced to Rs.40,23,962/- and then to Rs.45,87,326/-.

3. The contractual work was completed on 24th August 1999. It is the case of the appellant that the respondent had failed to comply with the terms and conditions of the contract and complete the work within the contractual period, whereas it is the

case of the respondent that the appellant was responsible for the delay in completion of the work.

4. In April 2012, the respondent filed an application before the Punjab and Haryana High Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, the 'Act') for appointment of an arbitrator for adjudication of disputes in the subject contract.

5. The application was disposed of vide order dated 19th October 2012 with a direction to the parties to approach the Arbitrator-cum- Superintending Engineer, HUDA Circle, Karnal in terms of Clause 25-A of the agreement for settlement of disputes.

6. The sole arbitrator passed an award dated 20th December 2013 awarding an amount of Rs.1,19,69,945/- along with interest @ 18% per annum on the delayed payments.

7. On 28th March 2014, the appellant filed objections to the award before the Additional District Judge, Karnal, under Section 34 of the Act along with an application for condonation of delay. Upon notice, the respondent filed reply to both the objections under Section 34 and the application seeking condonation of delay.

8. By order dated 8th January 2018, the Additional District Judge, Karnal, held that the objections were barred by limitation and no plausible explanation was given to explain the delay. On the other hand, the respondents had duly proved the issues by "leading cogent and convincing evidence". He also held that the award dated 20th December 2013 is perfect and a legal one and the fact that the respondent had completed the work after thirteen and a half months proved that the respondent was not able to comply with the terms and conditions of the contract. The appellant had granted extension for completion of work time and again without imposing penalty. Further, it was an admitted case that time was essence of the contract as there was a default clause.

9. The appellant preferred an appeal under Section 37 of the Act, which has been dismissed by the impugned judgment dated 11th December 2019 passed by the Single Judge of the Punjab and Haryana High Court. The reasoning given by the High Court reads as under:

"5. The Addl. District Judge, Karnal, while dismissing the objections filed by the appellant under Section 34 of the Act has observed that the arbitration award dated 20.12.2013 passed by the arbitrator is perfect and legal one and there is no ground proved on the file at the instance of the objector that the award suffers from any infirmities at all. It was further observed that the objections filed by the objector are barred by limitation as the same were not filed within the prescribed period. No plausible explanation could be given by the objector, for filing the objections at a

belated stage. The Addl. District Judge, Karnal came to hold that the objections filed by the objector are not maintainable and the objections are also barred by limitation. Counsel for the appellant fails to point out any perversity in the findings returned by the court below. Counsel for the appellant miserably failed to point out as to how the objections filed by the appellant were within limitation.”

10. As per sub-section (3) to Section 34 of the Act, an application for setting aside an award is to be made within three months from the date on which a party filing objections under sub-section (1) to Section 34 has received the arbitral award; or, if a request has been made under Section 33, from the date on which that request has been disposed of by the arbitral tribunal. However, the proviso states that the court may condone delay of a period up to thirty days in filing of the objections if it is satisfied that the applicant is prevented by sufficient cause from making an application under Section 34(1) of the Act.

11. In the present case, it is an accepted position that the application for setting aside of the award dated 20th December 2013 was made on 28th March 2014 accompanied by an application for condonation of delay. The court, therefore, had the power to condone the eight days' delay, which was less than thirty days, in terms of the proviso to sub-section (3) to Section 34 of the Act. In the application seeking condonation of delay, it was *inter alia* stated that after receiving a copy of the award at about 6:50 p.m. on 20th March 2014, the appellant had engaged an empanelled advocate and the records pertaining to the arbitration case were constructed and examined. The short delay had also occurred as sanctions and approvals were required from the higher/competent authority.

12. Given the aforesaid background and the short condonable delay which had occurred, we do not think that the High Court and the Additional District Judge, Karnal were justified in refusing to condone the delay. The application for condonation of delay in filing of the objections should have been allowed.

13. Learned counsel for the respondent, however, contends that the Additional District Judge, Karnal had also dismissed the objections on merits. We have considered this contention but observe that the observation and findings recorded by the Additional District Judge are cryptic and perfunctory. The same is equally true of the reasoning given by the High Court in the impugned order, which is full of generalisation and does not deal with specific issues and contentions raised by the appellant in the objections. In particular, the objection that the claims of the respondent were barred by limitation.

14. Sub-section (1) to Section 43 of the Act states that the Limitation Act, 1963 shall apply to arbitrations as it applies to the proceedings in court. Sub-section (2) to Section 43 states that for the purpose of Section 43 and Limitation Act, an arbitration shall be deemed to have commenced on the date referred to in Section 21 of the Act.¹ In the context of the present case, several issues would arise for consideration,

including the date on which the respondent had invoked the arbitration clause, and whether there was delay thereafter in filing the application under Section 11(6) of the Act, the legal effect and consequences of the delay, the effect of the order dated 19th October 2012, etc.

1 For the purpose of this decision, we need not refer to sub-section (3) to Section 43 of the Act, which provision, if relied, can be examined.

15. Sub-section (2)(a) to Section 34 of the Act inserted with effect from 23rd October 2015 states that the arbitral award may be set aside by the court if the court finds the award is vitiated by patent illegality appearing on the face of the award. The proviso stipulates that the award shall not be set aside merely on the ground of erroneous application of law or by misappreciation of evidence. An award can also be set aside under sub-clause (ii) to clause (b) of Section 34(2) on the ground that it is in conflict with the public policy of India, which expression has been explained in the *Explanation(s)* to the said Section.

16. We have briefly noted the provisions of the Act only to highlight that the objections under Section 34 of the Act did require consideration and in-depth examination and should not have been dismissed without proper and full application of mind with reference to the provisions of the Limitation Act and the Act.

17. In these circumstances, and for the reasons stated, we have no option but to allow the present appeal and set aside the impugned order dated 11th December 2019 passed by the High Court as well as the order dated 8th January 2018 passed by the Additional District Judge, Karnal.

18. We would remit the matter to the file of the Additional District Judge, Karnal, who would hear the objections afresh and on merits without being influenced by the earlier orders and also the present order. We clarify that the observations made in this order are for the disposal of the present appeal and would not be treated as observations that are binding on the Additional District Judge, Karnal, when he examines and decides the objections under Section 34 of the Act on merits.

19. The appeal is allowed in the above terms with no order as to costs.