

State of Raj Vs. M/S. Manda Developers and Builders

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SooperKanoon Citation : sooperkanoon.com/1088531

Court : Rajasthan Jodhpur

Decided On : Sep-10-2013

Appellant : State of Raj

Respondent : M/S. Manda Developers and Builders

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
S.B.CIVIL MISC.

APPEAL NO.1607/2013 State of Rajasthan versus M/s Manda Developers & Builders PVT.LTD.Date of Order : September 10, 2013 HON'BLE Mr.JUSTICE P.K.LOHRA, J.

Mr.L.K.PUrohit, Addl.

Govt.

Counsel for the appellant.

Mr.DLR Vyas, for the respondent.

The appellant-State of Rajasthan has laid this appeal under Section 39 of the Arbitration & Conciliation Act, 1996 (For short referred to as the Act of 1996) against the impugned order dated 23.5.2013, passed by the learned District Judge, Hanumangarh, whereby the application of the appellant under Section 5 of

the Limitation Act was rejected.

The appellant preferred an application before the learned District Judge under Section 34 of the Act of 1996 for setting aside the an arbitral award.

The application was submitted after a lapse of six months, and therefore, the appellant State made an endeavour for condonation of delay by submitting an application under Section 5 of the 2 Limitation Act.

The Court below after examining Section 34 (3) and the proviso attached with the said sub-section rejected the application by concluding that the provisions of Section 5 of the Limitation Act are not applicable and the Court is not empowered to extend the period of limitation beyond four months.

The learned Additional Government Counsel has argued that the provisions of Limitation Act are applicable in arbitral proceedings by virtue of Section 37 of the Act of 1996 and, as such, Section 5 can be applied even for an application under Section 34 of the Act of 1996.

Mr.Purohit has strenuously urged that the learned Court Below has not examined the provisions of Section 34 in right perspective and, as such, rejection of the application for condonation of delay is not sustainable.

Per contra, Mr.DLR Vyas has submitted that if the legislature in its wisdom has provided the period of limitation under Sub-Section (3) of Section 34 of the Act of 1996 for three months and under proviso to Sub-Section (3) of the Section 34 further grace period of 30 days is provided if endeavour is made by a party seeking relief under the aforesaid provision, and therefore, beyond four months, condonation of delay is not envisaged under Section 34 for 3 entertaining application.

Mr.Vyas has further argued that in an application under Section 34 of the Act of 1996, provisions contained under Section 5 of the Limitation Act are not applicable.

For substantiating this contention learned counsel has placed reliance on a decision of the Hon'ble Apex Court in Union of India versus Popular Construction Co.(2001) 8 SCC470 The Apex Court has observed in this behalf in para 14 as infra:- 14.Here the history and scheme of the 1996 Act support the conclusion that the time- limit prescribed under Section 34 to challenge an award is absolute and unextendible by court under Section 5 of the Limitation Act.

The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need to minimise the supervisory role of courts in the arbitral process.This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms.Mr.Vyas has also placed reliance on three Judges' Bench decision of the Apex Court in Consolidated Engineering Enterprises versus Principal Secretary, Irrigation Department and Others (2008) 7 Supreme Court Cases 169 wherein the similar issue arose and the Court recorded a finding in clear and unequivocal terms that in relation to proceedings under Section 34 of the Act of 1996, the provisions under Section 5 & 14 are not attracted.

Para 20 of the verdict reads as under:- 4 Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law.

When any special statute prescribes certain period of limitation as well as provision for extension up to specified time limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded.

As the intention of the legislature in enacting sub- section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by

another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act.

However, merely because it is held that Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable to an application submitted under Section 34 of the Act of 1996.

The Hon'ble Apex Court in a recent verdict in case of Assam Urban Water Supply and Sewerage Board versus Subash Projects and Marketing Limited (2012) 2 SCC6245 while reiterating the principle enunciated in its earlier verdict in case of Consolidated Engineering Enterprises versus Principal Secretary, Irrigation Department and Others (supra) held in para 9 as under;- Section 43(1) of the 1996 Act provides that the 1963 Act shall apply to arbitrations as it applies to proceedings in court.

The 1963 Act is thus applicable to the matters of arbitration covered by the 1996 Act save and except to the extent its applicability has been excluded by virtue of the express provision contained in Section 34(3) of the 1996 Act.

Thus, on examining the matter in its entirety, I find that there is no doubt that Section 5 is not available to a party in a arbitral dispute, when it is invoking the provisions contained under Section 34 of the Act of 1996, therefore, I find no infirmity, much less legal infirmity, in the impugned order passed by the learned court below.

The net result of the above discussion is that the present appeal sans merit and the same is accordingly dismissed.

(P.K.LOHRA).J.

ns.

