

Union of India Vs. M/S. Build-India Construction Systems

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Court : Mumbai

Decided On : Jul-21-1999

Reported in : 1999(3)ALLMR638; 1999(4)BomCR719; (1999)3BOMLR490

Judge : S. Radhakrishnan, J.

Acts : [Arbitration Act, 1940](#) - Sections 14(1 and 2); [Limitation Act, 1963](#) - Sections 5 and 119 - Schedule - Articles 119 and 158

Appeal No. : Chamber Summons No. of 1999 in Arbitration Petition No. 93 of 1999 in Arbitration Award No. 45 of 19

Appellant : Union of India

Respondent : M/S. Build-India Construction Systems

Advocate for Def. : C.U. Singh and ;S.R. Pandey, Advs., i/by ;Ramesh Chandra

Advocate for Pet/Ap. : S.M. Shah and ;Ms. S.I. Shah, Advs.

Judgement :

ORDER

S. Radhakrishnan, J.

1. Leave under Rule 127 of the High Court, Original Side, Rules is granted to the petitioner to take out the Chamber Summons in terms of the draft Chamber

Summons. Chamber Summons is made returnable forthwith. Respondent waive service. By consent taken up for hearing forthwith.

2. Heard the learned Counsel for the petitioner and respondent. This is a Chamber Summons taken out by the petitioner for condonation of delay in filing the Arbitration Petition No. 93 of 1999. The brief facts involved in this matter is that there were certain disputes between the respondent and petitioner. The said disputes were referred for arbitration and ultimately the learned Arbitrator passed an award on 29th November, 1997. It appears that on the very same day on 29th November, 1997 the learned Arbitrator had informed both the parties regarding publication of the said Award under section 14(1) of the Arbitrator Act, 1940. Thereafter, the learned Arbitrator by his letter dated 31st January, 1998 addressed to the present petitioner viz., Union of India through the Director General of Naval Project (M) requested the petitioner to file the original Award which was kept in a sealed cover along with the connected documents. The learned Arbitrator in the said letter of authority dated 31st January, 1998 had authorised the petitioner to file the said Award in the Court on his behalf. The said letter of authority is annexed as Exhibit 'A' in the affidavit of the respondent dated 19th July, 1999. The said letter of authority very clearly authorises the present petitioner to fill in the name of the person who will be carrying on the said letter for the purposes of filing the Award in the High Court, Thereafter, by a letter dated 11th February, 1998 the petitioner herein has informed the learned Arbitrator that all the original documents including the Award which were received as per the letter dated 31st January, 1998 were filed in the High Court at Bombay on 11th February, 1998 and even a receipt with regard to the said filing was obtained from the High Court and the same was forwarded back to the learned Arbitrator for his information and record. It appears that the learned Arbitrator was also required to file an affidavit with regard to filing of the said Award and the said affidavit was also filed on 13th April, 1998.

3. Finally the present petitioner received a notice dated 9th September, 1998 of the High Court regarding filing of the said Award. The petitioner contends that the said notice was received by them only on 21st September, 1998 and the present petition being Arbitration Petition No. 93 of 1998 was lodged in this Court on 16th

October, 1998.

4. Therefore, according to the learned Counsel for the petitioners that there is no delay whatsoever in filing the Arbitration Petition in the sense that the notice under section 14(2) of the [Arbitration Act, 1940](#) was received by the petitioner only on 21st September, 1998 and the petition was filed on 16th October, 1998 and as such there is no delay whatsoever. In any event, alternatively, he plead that if this Court were to construe that there was some delay, it ought to be condoned to meet the larger interests of justice.

5. Mr. Shah, the learned Counsel for the petitioner also contended that the Award, though lodged in this Court on 11th February, 1998 was numbered only in the month of September, 1998, the notice was issued by this Court only on 9th September, 1998 and which was received by the petitioner on 21st September, 1998, there is no question of petitioner challenging the same till then. According to Mr. Shah in view of Rule 787 of the High Court, Original Side, Rules, which contemplates service of notice of filing of such an Award and the liberty to the parties to challenge the same within 30 days of filing of such an Award. Therefore, the learned Counsel for the petitioner contends that unless and until the said Award is numbered and the notice is received by the petitioner from the High Court, the petitioner could not have challenged the same. Mr. Shah also went to extent to contend that even if the Award were to be lodged in this Court the same is not numbered for a year and no notice has been issued with regard to the filing of such an Award the petitioner could have waited till the same was issued, to challenge the same. In this context it may be noted that Rule 787 of the High Court, Original Side, Rules does not lay down that unless and until the said Award is numbered the same could not be challenged or that no notice will be issued unless it is numbered.

6. Mr. Singh, the learned Counsel appearing for respondent brought to my notice a judgment of this Court in Arbitration Petition No. 138 of 1995 in Award No. 27 of 1995 dated 19th March, 1998 between the very same parties with regard to another Award. This very issue cropped up in the said petition also. In the sense that the present petitioners were fully aware of filing of the Award in this Court and

the plea was taken that unless and until a notice under section 14(2) of the said Act was received by the petitioner, there is no question of period of limitation running against them. In the aforesaid matter, the following judgment of the Supreme Court in the case of Secretary to Government of Karnataka v. V. Harishbabu, reported in : AIR 1996 SC3421 was relied upon by the petitioner, wherein the Supreme Court had interpreted the scope of section 14(2) of the [Arbitration Act, 1940](#) in the following words were quoted :

'.....Where the arbitrator himself files on award in the Court, the Court is bound to give notice to the parties that the award has been filed and the Court cannot pass a decree in terms of the award, unless such notice has been served on the party concerned and till after the expiry of a period of 30 days from the date of service of such a notice as contemplated by Article 119(b) of the [Limitation Act, 1963](#). In a case where a party has knowledge aliunde of the filing of the award and seeks time to file objections to the award, absence of a formal notice from the Court would be rendered immaterial and in such a case the date when the party enters its appearance and either through an application in writing or orally seeks time to file objections to the award, shall be deemed to be the date of service of the notice within the meaning of sub-section (b) of Section 119 of the Limitation Act read with section 14(2) of the Act.'

7. This Court, after referring to the above ruling, has held that the above ruling, in fact, supports the respondent, in the sense where a party had knowledge aliunde i.e. knowledge from any other source from elsewhere or outside that is evidence from any outside source for the filing of the award and seeks time to file objection to the award, absence of the formal notice from the Court would be rendered immaterial. The Court has also held that in such a case where the party enters its appearance either through an application in writing or orally seeks time to file objections, the said date shall be deemed to be the date of service within the meaning of Article 119(b) of the Limitation Act read with 14(2) of the Arbitration Act. After observing as above, the Court also ruled that as the petitioners in that case as well as the petitioner in this case who had filed Award in this Court had notice of the Award having been filed and no formal notice was required to challenge or set aside the Award.

8. The Court has also observed that the very same party in another Arbitration Petition No. 260 of 1996 wherein my learned Brother K.G. Shah, J., had taken a view that the petitioners having filed the Award in Court had knowledge of the Award having filed and the period of limitation as contemplated under Article 119 of the Limitation Act is to be computed from the date when they filed the award.

9. Therefore, the present petitioner was aware of the position of law very clearly in view of the aforesaid judgments in Arbitration Petition No. 260 of 1996 and Arbitration Petition No. 138 of 1995.

10. The learned Counsel for the respondent also brought to my notice that the judgment of this Court in Devandas Kishani and others v. Nanikram Kishani & others, reported in : AIR1993 Bom76 . This Court while dealing with the requirement of service of notice under section 14(2) of the [Arbitration Act, 1940](#) has observed as under :-

'....Since formal service of the formal notice of filing of the award is not required in cases where the objector can be proved to have knowledge of the filing of the award....'

11. Mr. Singh also brought to my notice a judgment of the Supreme Court in Nilkantha v. Kashinath, reported in : [1962]2SCR551 . While dealing with the scope of section 14(2) of the [Arbitration Act, 1940](#), the Supreme Court has very categorically held that the notice which the Court is to give under section 14(2) of the said Act to the parties of the filing of the award need not be a notice in writing. The notice can be given orally. The Supreme Court has further observed that communication of the information that an award has been filed is sufficient compliance with the requirements of sub-section (2) of section 14 with respect to the giving of the notice to the parties concerned about the filing of the award. The Apex Court has observed as under :-

'.....Notice does not necessarily mean 'communication in writing'. Notice according to the Oxford Concise Dictionary, means intimation, intelligence, warning and has this meaning in expressions like 'give notice, have notice' and it also means 'formal intimation of something, or instructions to do something' and has such a meaning

in expressions like 'notice to quit, till further notice'.'

12. Further the Supreme Court in the above case has observed the word 'service' according to Webster's New International Dictionary, II Edition, means act of bringing to notice, either actually or constructively, in such manner as is prescribed by law. Oral communication will therefore amount to service too, when no particular mode of service is prescribed.

13. While dealing with the provisions of Article 158 of the Limitation Act, the Supreme Court in the above case, has also observed as under :-

'(10) We see no ground to construe the expression 'date of service of notice' in col. 3 of Article 158 of the Limitation Act to mean only a notice in writing served in a formal manner. When the Legislature used the word notice it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly, it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice. If its intention were to exclude the latter sense of the words 'notice' and 'service' it would have said so explicitly. It has not done so here. More over to construe the expression as meaning only a written notice served formally on the party to be affected, will leave the door open to that party, even though with full knowledge of the filing of the award he has taken part in the subsequent proceedings, to challenge the decree based upon the award at any time upon the ground that for want of a proper notice his right to object to the filing of the award had not even accrued. Such a result would stultify the whole object which underlies the process of arbitration-the speedy decision of a dispute by a tribunal chosen by the parties.'

14. Thereafter the learned Counsel for the respondent brought to my notice a judgment of the Supreme Court in Food Corporation of India v. E. Kuttappan reported in : [1993]3SCR1028 . In the said case also the Supreme Court after referring to the aforesaid Nilkantha Shidramanna's case as well as Indian Rayon Corporation Ltd.'s case has categorically held as under:-

'11.It does not lie in the mouth of the respondent to say that though he filed the award in Court through his Counsel, with or without the implied or express

authority of the arbitrator, he did not have the corresponding knowledge of the filing of the award, when the award was readily received by the Court. It seems to us that the mute language inherent in the action of the Court did convey to the party placing the award before it, the factum of the award being filed in Court. The mere fact that at a subsequent stage, the Court issued notice to the parties informing them of the filing of the award in Court for the purpose of anyone to object to the award being made the rule of the Court is an act of the Court which cannot in law prejudice the rights of the parties. If once it is taken that the period of limitation for the purposes of filing the objection, insofar as the respondent was concerned, had begun on October 25, 1998, the objections filed by it on December 6, 1998 were obviously barred by time, those having been filed beyond the prescribed period of thirty days.'

15. The learned Counsel for the respondent also brought to my notice a judgment of the Supreme Court in *Indian Rayon Corporation Ltd. v. Raunaq & Co. Pvt. Ltd.*, reported in : AIR 1988 SC2054 , wherein the Apex Court has very categorically held as under :-

'6. If the substance is clear, the form of notice is irrelevant but the notice of the award having been filed in the Court, is necessary. The filing in the Court is necessary and the intimation thereof by the Registry of the Court to the parties concerned, is essential. Beyond this there is no statutory requirement of any technical nature under section 14(2) of the Act.'

16. Even the judgment strongly relied upon by the petitioner with regard to the mandatory nature of notice under section 14(2) of the [Arbitration Act, 1940](#) viz. judgment of the Supreme Court in *Secretary to Government of Karnataka v. V. Harishbabu*, reported in : AIR 1996 SC3421 , the Supreme Court has held as under :

'10.Where the arbitrator himself files an award in the Court, the Court is bound to give notice to the parties that the award has been filed and the Court cannot pass a decree in terms of the award, unless such notice has been served on the party concerned and till after the expiry of a period of 30 days from the date of service of such a notice as contemplated by Article 119(b) of the Limitation Act.

1963. In a case where a party has knowledge altitude of the filing of the award and seeks time to file objections to the award, absence of a formal notice from the Court would be rendered immaterial and in such a case the date when the party enters its appearance and either through an application in writing or orally seeks time to file objections to the award, shall be deemed to be the date of service of the notice within the meaning of sub-section (b) of section 119 of the Limitation Act read with section 14(2) of the Act..... No formality in the act of filing of the award in the Court is required but what is required is that the filing of the award must be by or on behalf of the arbitrator and after the same has been filed the notice of the filing of the award must follow from the Court under sub-section (2) of section 14 of the Act.'

17. Under the aforesaid facts and circumstances and essentially in view of the very clear legal position that as the petitioners were fully aware of the fact that the impugned award was filed in this Court on 11th February, 1998 by themselves acting on behalf of the learned Arbitrator with a proper letter of authority and it is not correct to state that unless and until a notice of filing of an Award is received from this Court on 21st September, 1998 the petitioners could not have approached this Court. The said contention is patently baseless. The petitioners were fully aware and had full of knowledge of filing of the Award in this Court by themselves on 11th February, 1998 as such the present petition is grossly beyond the time prescribed that is to say the period of 30 days. With regard to above contention of condonation of delay, Mr. Singh, the learned Counsel appearing for the respondent also states that section 5 of the Limitation Act cannot apply at all in the instant case as this is with regard to appeals and applications as contemplated under section 5 of the Limitation Act. In any event there is a gross delay and there is no sufficient cause shown for condonation.

18. Under the aforesaid facts and circumstances I do not find any merit in the present Chamber Summons for condonation of delay. Hence the Chamber Summons stands dismissed, however, with no order as to correct.

19. Chamber Summons dismissed.

