State of Karnataka Vs. Samarth Constructions and Another

State of Karnataka Vs. Samarth Constructions and Another

SooperKanoon Citation : sooperkanoon.com/378007

Court : Karnataka

Decided On : Jun-22-2000

Reported in : ILR2000KAR2989; 2001(3)KarLJ196

Judge : Hari Nath Tilhari and ;T.N. Vallinayagam, JJ.

Acts : Arbitration Act, 1940 - Sections 17, 30 and 39; Limitation Act, 1963 - Sections 17 - Schedule - Articles 119 and 158; Code of Civil Procedure (CPC), 1908 - Sections 96

Appeal No. : Miscellaneous First Appeal No. 313 of 1996 (AC).

Appellant : State of Karnataka

Respondent : Samarth Constructions and Another

Advocate for Def. : Sri S.V. Shastry, Adv.

Advocate for Pet/Ap. : Sri Sunderakumar, Government Adv.

Judgement :

1. This appeal is directed against the judgment and decree dated 5-7-1995 delivered by the Civil Judge, Sirsi, in Arbitration Miscellaneous Case No. 2 of 1994.

2. The facts of the case in the nutshell are that, an application under Section 14(2) of the Arbitration Act was made for permission to file the award and for issuance of

notice of filing of the award to the parties. That the sole Arbitrator in the case between the parties had been the applicant who had moved the application under Section 14(2) on 28-1-1993. He entered upon the reference and after consideration of the matter and hearing both the parties, the Arbitrator passed/delivered the award on 30-12-1993. The said award was submitted before the Court with all the documents and the notices were ordered to be issued to both the parties. On 26-2-1994 both the parties were duly served with the notice. The parties though put in appearance through Counsels, but they did not file any objections nor any application for setting aside of the award within the period of limitation prescribed under Article 119(b) of the Limitation Act. The present appellant-the State of Karnataka filed its objections on 27-9-1994. That the learned Civil Court opining that the objections were not filed within time by the parties i.e., within aperiod of 30 days from the date of service of notice which notice was served on 26-7-1994, passed the order making the award a rule of the Court and no doubt, it mentioned that the Court had awarded interest from the date of decree till the date of its realisation as well at the rate of 18% p.a. The Court made the award a rule of the Court and passed the decree. Feeling aggrieved from the judgment and decree dated 5-7-1995, as mentioned earlier, the State of Karnataka has come up in appeal and the appeal has been filed under Section 39 of the Arbitration Act.

3. The learned Government Advocate contended that no doubt the Court had granted time, even after the expiry of 30 days period, to file the objections/application for setting aside abatement which could not be filed within that period and it was filed only in the month of September 1994. When the Court had granted time to file the objections, the objections should have been considered before making the award a rule of the Court,

4. This contention of the learned Government Advocate has hotly been contested by Sri S.V. Shastry.

5. We have applied our mind to the contention raised by the learned Counsel for the appellant. In our opinion, the contention made by the learned Counsel for the appellant is without force and substance, for the undermentioned reasons.

Section 17 of the Arbitration Act mandates and provides that if an application for setting aside the award has not been filed within time, then the Court shall proceed to pronounce judgment according to the award and the decree shall follow. It will be appropriate to quote Section 17 of the Arbitration Act in extenso. It reads as under:

'Section 17. Judgment in terms of award.--Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award'.

(emphasis supplied)

One thing also to be noted is that this section, apart from directing the Court to pronounce the judgment and pass decree, further provides that if the objection against the award or application for setting aside the award has not been filed within time, the Court shall, in that case, pass that judgment and decree. No appeal shall lie on any ground against the decree, except on one ground namely, that it is in excess of, or not otherwise in accordance with the award. It means even if under Section 96 of the CPC the decree passed aforesaid is appealable, but the scope of appeal under Section 96 is curtailed and is controlled by the provisions of Section 17, because Section 17 is a special provision indicating theground on which an appeal against the decree can be filed and on no other grounds. Similar matter had come up before their Lordships of the Supreme Court on the question, what is the duty of the Court, in the case of Madan Lal (dead) by L.Rs v Sunder Lal and Another . Their Lordships of the Supreme Court considered the question and laid down the proposition of law, as mentioned hereinafter. It will be appropriate to quote paragraphs (10) and (11) of that judgment in extenso.

'(10) Learned Counsel for the appellant, however, urges that Section 17 gives power to the Court to set aside the award and that such power can be exercised

even where an objection in the form of a written statement has been made more than 30 days after the filing of the award as the Court can do so suo motu. He relies in this connection on Hastimal Dalichand v Hiralal Motichand and Saha and Company v Isharsingh Kirpalsingh. Assuming that the Court has power to set aside the award suo motu, we are of opinion that that power cannot be exercised to set aside an award on grounds which fall under Section 30 of the Act, if taken in an objection petition filed more than 30 days after service of notice of filing of the award, for if that were so the limitation provided under Article 158 of the Limitation Act would be completely negatived. The two cases on which the appellant relies do not in our opinion support him. In Hastimal's case, supra, it was observed that 'if the award directs a party to do an act which is prohibited by law or if it is otherwise patently illegal or void it would be open to the Court to consider this patent defect in the award suo motu, and when the Court acts suo motu no question of limitation pre-scribed by Article 158 can arise'. These observations only show that the Court can act suo motu in certain circumstances which do not fall within Section 30 of the Act.

Saha and Company's case, supra, was a decision of five Judges by a majority of 3:2 and the majority judgment is against the appellant. The minority judgment certainly takes the view that the non-existence or invalidity of an arbitration agreement and an order of reference to arbitration may be raised after the period of limitation for the purpose of setting aside an award because they are not grounds for setting aside the award under Section 30. It is not necessary in the present case to resolve the conflict between the majority and the minority Judges in Saha and Company's case, supra, for even the minority judgment shows that it is only where the grounds are not those falling within Section 30, that the award may be set aside on an objection made beyond the period of limitation, even though no application has been made for setting aside the award within the period of limitation. Clearly, therefore, where an objection as in the present case raises grounds which fallsquarely within Section 30 of the Act that objection cannot be heard by the Court and cannot be treated as an application for setting aside the award unless it is made within the period of limitation. Saha and Company's case, supra, therefore, also does not help the appellant.

(11) Learned Counsel for the appellant also relies on Mohan Das Gopaldas v Kessumal. In that case, the objection which was made more than 30 days after the service of notice was that the award had been filed by a person not authorised by the arbitrator to do so. The Court held that such an objection did not fall within Section 30 of the Act and, therefore, Article 158 of the Limitation Act did not apply. On these facts the decision in that case may be right. But the Court seems to have made a general observation that Article 168 cannot apply to a written statement by a defendant in reply to an application to have the award made a rule of the Court. If by that general observation the Court means that even if the objection is of the nature falling within Section 30 and is filed more than 30 days after service of notice, it would be open to the Court to set aside the award on such objection, we are of the opinion that the view is incorrect'.

(emphasis supplied)

This judgment clearly negatives the contentions of the learned Counsel that even if objections were filed beyond time, the Court should consider suo motu and set aside the award on such objections. According to the judgment quoted above, objections in the nature of Section 30 if not filed within 30 days, it would not be open to the Court to set aside the award on such objections.

6. The learned Counsel for the appellant further contended that power under Section 5 of the Limitation Act is there. The language of Section 5 of the Limitation Act clearly indicates that an application may be admitted after prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making application within such period. It means the bounded duty of the applicant in such a case is that he has to satisfy the Court about sufficient cause for delay and for not filing the application. No such satisfaction has been shown to have been established. Therefore, even if the Court granted time to file objections, it cannot be said that the Court had acted under Section 5 of the Limitation Act. The case for acting under Section 5 would have arisen when the objections or application for setting aside the award had been filed and application for condonation of delay also would have been filed. But, in the present case, when it has not been filed, there was no question for the Court to condone the delay and

the Court has no jurisdiction to condone the delay. Merely granting time to file the objections will not have the effect of extending limitation prescribed by Article 119(b) of the Limitation Act. When was so observe, we find support for our view from the earlier Division Bench decision of thisCourt in the case of Mohamed Esoof v V.R. Subramanyam and Another, wherein, in paragraph 3, it has been observed:

'The circumstance that on the date on which the Counsel filed a Vakalatnama, the Court granted time to file objection would not save limitation, if the objections were filed beyond limitation'.

7. The learned Counsel for the appellant contended that the objections filed should have been considered. In the case of N'dkantha Sidramappa Ningashetti v Kashinath Somanna Ningashetti and Others , their Lordships of the Supreme Court also observed as under;

'13. The second question is whether the order of the Civil Judge amounted to an order refusing to set aside the award and therefore appealable to the High Court. The High Court held that it was not such an order and we agree. When no party filed an objection praying for the setting aside of the award, no question of refusing to set it aside can arise and therefore no appeal was maintainable under Section 39(1)(vi) of the Arbitration Act which allows an appeal against an order refusing to set aside an award'.

(emphasis supplied)

8. Thus considered in our opinion, the judgment and order passed by the learned Civil Judge making the award a rule of the Court cannot be said to be erroneous and the appeal under Section 39(1) cannot be said to be maintainable especially when the decree has, already been passed in view of Section 17 of the Act.

Thus considered, the appeal is without force and is hereby dismissed.

Costs of the appeal are made easy.