

**Durga Enterprises Vs. Union of India (Uoi) and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/444262](http://sooperkanoon.com/444262)

**Court :** Andhra Pradesh

**Decided On :** Nov-14-2003

**Reported in :** 2004(2)ALD573

**Judge :** G. Yethirajulu, J.

**Acts :** [Arbitration and Conciliation Act, 1996](#) - Sections 34, 34(2) and 34(3);  
[Limitation Act, 1963](#) - Sections 4, 5 and 29(2)

**Appeal No. :** CRP No. 2497 of 2001

**Appellant :** Durga Enterprises

**Respondent :** Union of India (Uoi) and ors.

**Advocate for Def. :** Government Pleader for Arbitration

**Advocate for Pet/Ap. :** B. Nalin Kumar, Adv.

**Disposition :** Revision dismissed

**Judgement :**

**G. Yethirajulu, J.**

1. This revision petition is filed by the first respondent in I.A. No. 2598 of 1998 in O.P. (SR) No. 7956 of 1998 against the order dated 28-2-2001 of the Chief Judge, City Civil Court, Hyderabad.

2. The Union of India represented by the Chief Engineer, South Central Railway, Secunderabad filed O.P. (SR) No. 7956 of 1998 to set aside the award of the Arbitrators dated 19-1-1998 on the ground that the Arbitrators did not consider the counter-claims made by the Union of India along with LA. No. 2598 of 1998 to condone the delay of 30 days in filing the petition under Section 34(3) of the [Arbitration and Conciliation Act, 1996](#) ('the Arbitration Act, 1996' for brevity). The Chief Judge, City Civil Court, allowed the said application. The revision petitioner being aggrieved by the order of the lower Court preferred this revision challenging the validity and legality of the order of the lower Court dated 28-2-2001.

3. The revision petitioner is a contractor. He entered into an agreement with the first respondent-Union of India on 19-1-1995 for execution of the work of providing RCC Washable Aprons for Platform No. 4 at Vijayawada. The work was agreed to be completed within 45 days from the date of issuing of acceptance letter i.e., from 10-10-1995. After issuing of acceptance letter the work was entrusted to the revision petitioner, but he failed to execute the work as per the time schedule. He abandoned the work despite extension of time. Subsequently the revision petitioner raised certain claims and sought for appointment of Arbitrators. The Arbitrators after considering the claims of both parties passed an award on 19-1-1998 and the copy of the said award was received by the first respondent on 21-1-1998.

4. As per Section 34(3) of the Arbitration Act, 1996 the petition has to be filed before a Civil Court within three months and if there are sufficient causes preventing the petitioner from making the application within the said period of three months, the Court may entertain the application within a further period of thirty (30) days. The extended period of time also expires by 21-5-1998 and the O.P. was supposed to be filed on or before 22-5-1998, but it was filed on 6-6-1998, which was the reopening day of the Court after summer vacation. The Chief Judge, City Civil Court having satisfied with the reasons given by the first respondent allowed the petition by condoning the delay of thirty days by observing that as the petition was filed on the reopening day after summer vacation, the petition is within time. The contractor being aggrieved by the order of the lower Court preferred this revision petition.

5. The point for consideration is whether the O.P. filed by the first respondent-contractor on 6-6-1998 was within the period of limitation?

Point :

6. The arbitrators passed the award on 19-1-1998. It is an undisputed fact that the first respondent received the copy of the award on 21-1-1998. It is also an undisputed fact that the OP. was presented before the lower Court on 6-6-1998. Section 34 of the Arbitration Act, 1996 prescribed limitation for filing a petition for setting aside the arbitral award. It reads as follows:

34. Application for setting aside arbitral award:

(1) ...

(2) ...

(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 application 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. A plain reading of the above provision clearly indicates that no application for setting aside the arbitral award can be made after three months from the date on which the party making the application had received the arbitration award. It is also indicated that the Court in appropriate cases may extend the period of three months for filing the application for a further period of thirty days if the petitioner gives sufficient grounds, which prevented him from filing the application within time. The first respondent mentioned in the delay condonation petition that as per the railway procedure, the award has to be referred to the Financial Advisor and Chief Accounts Officer and the opinion of the Law Officer has to be obtained. On

19-2-1998 the matter was referred for legal opinion and the opinion of the Law Officer was communicated on 20-2-1998. Later the Chief Engineer referred the matter to the Financial Advisor and Chief Accounts Officer and his opinion was also communicated. After getting their information the matter was referred to the Law Officer on 12-5-1998 and the Law Officer gave his advice on 22-5-1998. The concerned Divisional Engineer approached the Standing Counsel for Railways, got the O.P. prepared and filed into Court on 6-6-1998, which was the reopening day after summer vacation. The Counsel for the first respondent therefore submitted that since the vacation intervened, they could not file the O.P. on the last day of limitation i.e., on 21-5-1998 and it was filed only on 6-6-1998. The Chief Judge, City Civil Court, Hyderabad after satisfying with the explanation given by the first respondent condoned the delay in filing the petition.

8. The learned Counsel for the revision petitioner submitted that since there is an express provision provided under the Arbitration Act, 1996 through Section 34, Sections 4 - 24 of the [Limitation Act, 1963](#) has no application, therefore, the application filed under Section 34(3) for condonation of the delay in filing the O.P. could not be allowed. He drew the attention of the Court to Section 33 of the Civil Courts Act, 1972, Section 43 of the Arbitration Act, 1996 and Section 29(2) of the [Limitation Act, 1963](#) which read as follows:

Section 33 of the Civil Courts Act, 1972:

33. High Court to receive suits and appeals when no Vacation Civil Judge is appointed :--When District Court or the Court of Senior Civil Judge or the Court of Junior Civil Judge to which a suit, an appeal or other proceeding lies is adjourned under Section 31 and when no Vacation Civil Judge is appointed under Section 32, the High Court shall have the power to receive such suits, appeals and other proceedings. Section 43 of the [Arbitration and Conciliation Act, 1996](#):

43. Limitations:--(1) The [Limitation Act, 1963](#), (36 of 1963), shall apply to arbitrations as it applies to proceedings in Court.

(2) For the purposes of this section and the [Limitation Act, 1963](#), (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in Section

21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the [Limitation Act, 1963](#), (63 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

Section 29 of the [Limitation Act, 1963](#) : 29. Savings:

(1)....

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were 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 - 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

(3).....

(4).....

The learned Counsel also submitted that as the petition was filed beyond the period of 120 days, the Court has no power to condone the delay on account of the statutory bar imposed under Section 34(3), therefore, it must be held that the

delay cannot be condoned and the O.P. is barred by limitation.

9. A plain reading of Section 34(3) of the Arbitration Act, 1996 indicates that an aggrieved party is entitled for a period of three months for filing an application from the date of communication of the order of the Arbitration. The section further provided that the delay of 30 more days could be condoned by the Court by exercising its discretion on being satisfied with the reasons given by the applicant in causing the delay. But the Court has no power to extend the period after 120 days. The period of 120 days expired on 21-5-1998. The learned Counsel for the revision petitioner therefore submits that as Section 34 of the Act is a separate provision under the Special Act regarding the period of limitation, the provisions of the Limitation Act are not applicable.

10. Section 29(2) of the [Limitation Act, 1963](#) provides that when a special or local law provides for any suit, appeal or application, a period of limitation different from the period prescribed by the Limitation Act, it is the provision in the special or local Act that will prevail and not the provisions of the Limitation Act, except to the extent specified in the section. Since there is a specific period of limitation provided under the Arbitration Act, 1996, there is no power for the Court to extend the period any more beyond 120 days. The provision covered by Section 34(3) of the Arbitration Act, 1996 is mandatory and the Court has no power to extend the period or to condone the delay in filing the petition beyond the extended period of limitation.

11. In MIC Electronics Limited and Ors. v. Union of India, : 2002(1)ALD191 , a learned Single Judge of this Court while dealing with Section 34(3) of the Arbitration Act, 1996 and Section 5 of the [Limitation Act, 1963](#) held that Section 5 has no application to condone the delay in filing the petition.

12. In Kaushalya Rani v. Gopal Singh, : [1964]4SCR982 , the Supreme Court observed as follows:

The Limitation Act is a general law laying down the general rules of limitation applicable to all cases dealt with by the Act; but there may be instances of a special law of limitation laid down in other statutes, though not dealing generally

with the law of limitation.

13. In *Bharat Cooking Coal Limited v. L.K. Ahuja*, : [2001]1SCR1152 , the Supreme Court held that an application for condonation of delay is permissible to file objections under Section 30 of the Arbitration Act by resorting to Section 5 of the Limitation Act. Section 5 of the Limitation Act is applicable to all applications under the provisions of the Arbitration Act, 1940 other than those under Order XXI of the Code of Civil Procedure.

14. In *Union of India v. Hanuman Prasad and Brothers*, 2000 (7) Supreme 69, the Supreme Court held that Section 5 of the Limitation Act was normally held inapplicable to the proceedings before Court regarding making the award a Rule of the Court.

15. In *Union of India v. Popular Construction Company*, 2001 (7) Supreme 354, the Supreme Court distinguished the decision in *M/s. Hanuman Prasad* (supra) and held that the decision therein is an authority for the proposition that Section 5 of the Limitation Act is applicable to the proceedings before the Court regarding making the award a Rule of the Court under the Arbitration Act, 1940 and not to Section 34(3) of the Arbitration Act, 1996. The Supreme Court further concluded that the phrase in the proviso under Section 34 of the [Arbitration and Conciliation Act, 1996](#) 'but not thereafter' would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act. To hold that the Court could entertain an application to set aside the award beyond the extended period under the proviso would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result.

16. The principle laid down by the Supreme Court in the above decisions is also an indication that the period of limitation cannot be extended by utilizing Section 5 of the Limitation Act beyond the period mentioned in Section 34(3), therefore, there cannot be any dispute that the period of limitation cannot be extended beyond the period indicated in Section 34(3) of the Act. But, in the case on hand, the question is whether the intervening period from the last date of limitation to the date of filing of the petition which fell during the summer vacation is liable to be excluded.

17. As per Section 29(2) of the Limitation Act, Sections 4 - 24 are applicable to a special law or local law unless they are expressly excluded through a provision under the special law or the local law. There is no express provision under the Arbitration Act, 1996 excluding the applicability of Sections 4 - 24 of the Limitation Act. When once the applicability of those sections is not excluded, whatever such section among those sections is required to be applied can be applied without any hesitation.

18. Section 4 of the Limitation Act reads as follows:

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.

19. Section 4 excludes the period of vacation for the purpose of computation of the period of limitation. The same principle is applicable to the facts of the present case, therefore, it can be safely concluded that by virtue of Section 4 of the Limitation Act the first respondent is entitled to get the intervening period covered by summer vacation excluded in the computation of the period of limitation from the date of receipt of a copy of the order till the date of filing of the petition. I therefore do not find any force in the contention of the learned Counsel for the revision petitioner on the point of limitation.

20. In the result, the revision petition is dismissed. No costs.

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