

Meerut Development Authority, Meerut Vs. Chaddha Construction Co., New Delhi and Another

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Court : Allahabad

Decided On : Aug-11-1998

Reported in : 1999(4)AWC3378

Judge : Palok Basu and ;P.K. Jain, JJ.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 34, 34(3) and 43; [Limitation Act, 1963](#) - Sections 3 and 4 to 24; Old Arbitration Act; [Code of Civil Procedure \(CPC\), 1908](#) - Order 23, Rule 2; Motor Vehicles Act - Sections 166

Appeal No. : FAFO Nos. 864 and 865 of 1998

Appellant : Meerut Development Authority, Meerut

Respondent : Chaddha Construction Co., New Delhi and Another

Advocate for Def. : W.H. Khan, Adv.

Advocate for Pet/Ap. : B. Dayal, Adv.

Judgement :

Palok Basu, J.

1. Since both these First Appeals From Orders raise similar questions, they are being disposed by this common Judgment after the learned counsel for the parties at substantial length.

2. Two questions of importance have arisen in these two cases. First, whether Section 14 of the Indian Limitation Act has been attracted to the facts of the case and filing of objections before the Court of Civil Judge within the time allowed by law can be taken to be a valid filing for the purposes of getting those objections decided on merits even though it has been ultimately found that those two objections should have been filed before the Court of District Judge, and, second, in filing the said objections against the awards before the Civil Judge bona fides of the objector exists or not. It is undisputed that the awards in these two cases were passed by the Arbitrator on 3.11.97 and 12.11.97 respectively. Objections against the awards were filed on 31.1.98 and 10.2.98 respectively before the Civil Judge, Meerut. On 4.8.98, the Civil Judge, Meerut held that he had no jurisdiction to decide those objections on merits and the District Judge alone was the competent court to deal with them and consequently by his order dated 4.8.98 had directed that the objections should be filed before the District Judge, Meerut. Actually order was obtained from the Court of Civil Judge on 17.8.98 in both the cases and the same was filed before the Court of District Judge on that very date. i.e.. on 17.8.98. It is on these facts and circumstances, the aforesaid two questions have arisen.

3. M/s. Chaddha Construction Company admittedly had entered into two contracts, i.e., Nos. 1 and 9 with Meerut Development Authority, Meerut. Some dispute has arisen. M/s. Chaddha Construction Company filed Suit Nos. 481 of 1997 and 482 of 1997 with regard to contract Nos. 1 and 9 respectively. The matter appears to have been taken up before the Arbitrator. The appellant's case is that the aforesaid awards passed by the Tribunal on 3.11.97 and 12.11.97 were ex parte awards whereas the case of the respondents' is that those awards were decided on merits and it is baseless to say that the aforesaid awards were passed ex parte. Be that as it may. the said orders can and should only be gone into before the appropriate Court.

4. Sri Bhupendra Dayal, learned counsel appearing for the appellant has been heard at substantial length In support of these two appeals and Sri W. H. Khan, learned counsel for the respondents has also been heard at substantial length. He has also filed written arguments. The parties counsel were agreed that these two matters should not be kept pending in this Court for long and it should be decided forthwith because a very short question of law and another of fact as noted above is involved. Consequently, as prayed by the learned counsel for the parties, these two appeals have been heard on merit and are being disposed of finally as stated above.

5. Shri Bhupendra Dayal argued that Meerut Development Authority, Meerut had filed objections within the time allowed before the Civil Judge which can and should not be interpreted as a fact lacking bona fide in any manner whatsoever. Sri W. H. Khan, on the other hand, said that since the Meerut Development Authority, Meerut. has senior counsel and it could have got legal advice for filing the objections before the Court of District Judge which is Principal Court where such objections could have been taken and. therefore, he strongly contended that filing of the objections lack bona fides.

6. It may be mentioned that no mala fide could be pointed out or found out by the Court about filing of the objections before the Civil Judge. It may be stated here that the respondents did not raise objection before the Civil Judge about lack of jurisdiction on several dates but when they had put in appearance, objections were raised and arguments were heard. The moment decision came against Meerut Development Authority. Meerut it took steps to file objections before the Principal Court, i.e., Court of the District Judge. Meerut and therefore, it cannot be said that any moment of the time was lost by the Meerul Development Authority, Meerut, for prosecuting the legal remedies available to H against the awards under the Act. One might like to go into the question of advice of counsel if and when in a given case to determine the issue as to whether such advice was wrong or right, in the instant case the District Judge himself had recorded a finding of fact that the issues which were raised through objections before the Civil Judge were civil proceedings and consequently, it could have been filed before the Civil Judge.

7. There is no doubt on the present facts of the case that the objections by the Meerut Development Authority, Meerut, challenging the awards dated 3.11.97 and 12.11.97 were filed within time. The respondents came up to this Court through a writ petition praying that a direction be Issued that the matter which was pending before the Civil Judge should be decided expeditiously. Sri Dayal argued further that some of the objections taken by the Meerut Development Authority, Meerut, also relate to change of the Arbitrator by filing a suit as was provided under the Old Arbitration Act since one of the issues was whether the old Arbitration Act would apply or not and consequently, this Court had simultaneously directed in the aforesaid writ petition filed by the respondents that the suit should also be decided expeditiously along with the objections to the award.

8. In this view of the matter, the action of the Meerut Development Authority, Meerut, in preferring the objections before the Court of Civil Judge, Meerut, was well within its rights and no mala fides are involved in preferring the said objections before the Court of Civil Judge.

9. Sri W. H. Khan, learned counsel for the respondents argued that in the teeth of the provisions contained in the [Arbitration and Conciliation Act, 1996](#), read with provisions contained in the Indian Limitation Act, the exclusion of the period consumed while litigating the matter in the Court of the Civil Judge is not permissible and since admittedly, the objections have been filed by Meerut Development Authority, Meerut, in the Court of the District Judge on 17.8.98 in both the matters whereas the awards were passed on 3.11.97 and 12.11.97 respectively, they should be dismissed as not maintainable in view of the provisions contained in Section 34 of the Arbitration and Conciliation Act, 1996.

10. It has been strongly contended by Sri W. H. Khan that sub-section (3) of Section 34 of the said Act is in negative form and puts a bar at the first instance of 3 months and in the second instance of 30 days and thereafter puts a complete blockade in preferring the objections. There can possibly be no quarrel with the said provisions as has been rightly interpreted by Sri W. H. Khan but the question is whether in the instant case, filing of the objections in the Court of Civil Judge which admittedly was done well within time as provided by sub-section (3) of

Section 34 of the said Act can be taken up a valid Institution or not. If it is held that objections were rightly filed before the Court of Civil Judge. Meerut and rightly returned by it for being filed before the Court of District Judge, should principle behind Section 34 of the said Act would apply or not? Therefore, the only scrutiny this Court is now to make Is about the applicability of the principle behind Section 34 of the said Act for the purposes of giving benefit to the appellant.

11. For ready reference, the relevant portion of Section 34 of the Arbitration and Conciliation Act. 1996, are quoted below :

'34. Application for setting aside arbitral award.--(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and subsection (3).

(2) An arbitral award may be set aside by the Court only if :

(a) the party making the application furnishes proof that :

(i) x x x x x

(ii) x x x x x

(iii) x x x x x

(iv) x x x x x

(v) x x x x x

(b) the Court finds that :

(i) x x x x x

(ii) x x x x x

Explanation.--x x x x x x x x .

(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 applicant 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.

(4) x x x x x.'

12. Section 14 of the Indian Limitation Act reads as under :

'Exclusion of time of proceeding bona fide in Court without Jurisdiction.--(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of subsection (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature.

Explanation.--For the purposes of this section :

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted :

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding ;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of Jurisdiction.'

13. Before proceeding further to deal with factual arguments advanced by the learned counsel for the parties, it would be relevant to quote the provisions of Section 43 of the Arbitration and Conciliation Act. 1996 which read as under :

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

(2) For the purposes of this section and the [Limitation Act, 1963](#) (XXXVI 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 some step to commence arbitral proceedings is taken within a time fixed by the agreement, and 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 (XXXVI of 1963), for the commencement of the proceedings (Including arbitration) with respect to the dispute so submitted.'

14. It may be pointed out that It has been provided under Section 3 of the Indian Limitation Act that subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. Simultaneously Section 29 of the Indian Limitation Act provides that the provisions of Section 3 of the Limitation Act shall apply when specific period of limitation is not demarcated in the special law and simultaneously provides that the provisions contained In Sections 4 to 24, (inclusive) shall apply even in those special law unless it is expressly excluded by such special or local law.

15. The question has been seen above already that can all the provisions contained in Sections 4 to 24 of the Indian [Limitation Act, 1963](#). be applied in toto to the provisions contained in Arbitration and Conciliation Act. 1996. as it applies to civil proceedings in Court.

16. In view of the aforesaid provisions in Section 43, It is clear that the provisions of the Indian Limitation Act are applicable in the matters which are governed by the provisions contained in the Arbitration and Conciliation Act. 1996.

17. Sri W. H. Khan has placed reliance on the Supreme Court's decision In Commissioner of Sales Tax v. M/s. Parson Tools and Plants. AIR 1975 SC 1039. Paras in which it has been held that the Commissioners of Sales Tax are such Tribunal which deal with the cases arising out of Sales Tax and are not Courts and consequently the provisions of Section 14 of the Indian Limitation Act and even the principles behind Section 14 of the said Act are not applicable. In the said decision, no such provisions as comparable to the provisions contained in Section 43 of the Arbitration and Conciliation Act were available. Consequently, the aforesaid law is clearly distinguishable. Shri Khan has then placed reliance on two other decisions in Vtnod Gurudas u. National Insurance Co., 1991 (4) SCC 333 and Mukri Gopalan v. Cheppilet Abubakar, 1995 (5) SCC 5. Both these decisions are interpreting the provisions contained in Section 166 of the Motor Vehicles Act. As stated above, such type of provision as is contained in Section 43 is not found in the Motor Vehicles Act. Consequently, these two rulings are also not applicable. The other decisions referred to in the written arguments are on other points.

Hence, needs no discussion.

18. In view of the aforesaid observations. It is hereby held that the provisions of Section 14 of the Indian Limitation Act as well as the principles behind this section are fully applicable to proceedings under the Arbitration and Conciliation Act, 1996, in view of what is contained in Section 43 thereof.

19. Shri W. H. Khan then contended that the respondents have got two awards in their favour but they are not getting money and if the proceedings take long time, the respondents will suffer irreparable loss. Mr. Khan has again said that the Meerut Development Authority is not at all interested for determining the matter and a direction be given to the District Judge, Meerut, to decide the objections on merit within a specified period.

20. Consequently, the appeals succeed and are allowed. The impugned orders dated 22.8.98 passed in both these appeals by the Court below are set aside. It is hereby directed that the objections preferred by the Meerut Development Authority, Meerut, on 17.8.98 with regard to the awards dated 3.11.97 and 12.11.97 shall be decided by the District Judge, Meerut, within a period of 3 months from the date of filing of a certified copy of this order.

The parties will bear their own costs.

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