

Chhotelal Vs. Jamnadas

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Court : Madhya Pradesh

Decided On : Mar-31-1962

Reported in : AIR1963MP20

Judge : Shiv Dayal and ;P.R. Sharma, JJ.

Acts : Limitation Act, 1908 - Sections 5, 14 and 14(2) - Schedule - Article 152 and 158; [Arbitration Act, 1940](#) - Sections 14(2) and 14(3); [Code of Civil Procedure \(CPC\) , 1908](#) - Order 3, Rule 3

Appeal No. : Misc. Appeal No. 44 of 1960

Appellant : Chhotelal

Respondent : Jamnadas

Advocate for Def. : Patankar, Adv.

Advocate for Pet/Ap. : H.N. Dwivedi, Adv.

Disposition : Appeal dismissed

Judgement :

Shiv Dayal, J.

1. This is an appeal under section 30 of the Arbitration Act from an order disallowing objections filed by the non-petitioner Chhotelal (appellant). A

preliminary objection has been raised by Shri Patankar learned counsel for the respondent Jaraunadas that the appeal is barred by time.

2. Material facts are that Jamuna Das made a petition under section 14 of the Arbitration Act to the District Judge, Gwalior, for filing of an award. Notice of this petition was sent to the non-petitioner Chhotelal to appear on 19-3-1953. On the last mentioned date the non-petitioner appeared and filed certain objections. The award dated 26-12-1952 was also filed on that very day as is clear from the proceedings recorded by the Trial Judge. The counsel for the non-petitioner has signed below the order passed by the trial Judge on 19-3-1953. However, it was on 5-10-1953 that the non-applicant filed his objections to the award. These objections were dismissed as barred by time by the trial Judge on 9-2-1959. It is against this order that the non-petitioner filed this appeal on 27-6-1960. Obviously enough, the appeal is barred by time.

3. However, on 6-7-1960 an application under section 5 of the Limitation Act was made for condonation of delay on the ground that from the order dated 9-2-1953 the appellant had filed an application for review on 4-4-1959; the review application was admitted and notice was issued to the petitioner, but it was eventually dismissed on 21-3-1960. The appellant prays that the period between 4-4-1959 and 21-3-1960 be excluded. Shri Dwivedi relies on *Brij Indar Singh v. Kanshi Ram*, AIR 1917 PC 156. The facts of that case were rather peculiar as set out in the decision of Mr. Justice Johnstone. A review had in that case been allowed but later on the decision accepting the review was held to be ultra vires and was set aside. Thereafter an appeal was filed. Their Lordships of the Judicial Committee were told on the basis of certain decision of the Punjab and Calcutta High Courts that there was a general rule to exclude the time spent in review proceedings from the time to be computed for an appeal. We do not find in that decision that the Privy Council independently held that view. It is one thing to say that diligently prosecuting a review proceeding is sufficient cause for excusing delay within the meaning of section 5 of the Limitation Act and another to hold that the entire period spent must be excluded from computing the period of limitation. For, if it were so, section 14 would have been made applicable to appeals, as it has been to suits. By accepting the proposition that the period spent in prosecuting

a review application must be excluded while computing the period for appeal, will tantamount to add the words 'or appeal' after the word 'suit' in section 14 Sub-section (1). The scheme of the Limitation Act leaves no manner of doubt that certain provisions are made applicable to suits and some others to appeals and yet some others to both; so about applications, We have no quarrel with the proposition that principles of certain provisions applicable to suits may within legitimate limits be applied to appeals, for instance, if an appeal is otherwise competent but is presented to a wrong Court, then on its return for being presented to proper Court the principle of section 14 can be applied, while condoning the delay under section 5 of the Limitation Act. But the difference will be that if section 14 were applied in terms the whole period spent in the wrong Court will be excluded while if that is deemed to be a sufficient cause within the meaning of section 5, the delay after the return of the appeal for presentation to proper Court up to the time that it is actually presented will have to be accounted for.

4. In our opinion the correct law was laid down in Ram Rup v. Naik Ram, AIR 1926 All 252. It is well established that when an appeal is filed in a wrong Court and is therefore taken back, it must be presented to the proper Court as speedily as possible. There is no reason for applying a different rule to a case where prior to the presentation of an appeal, the appellant was engaged unsuccessfully in review proceedings. As soon as the review is rejected, the appeal must be filed without delay and if there is any delay it must be duly accounted for. When extension of limitation is prayed for under section 5 on a ground analogous to that provided under Section 14, it is imperative that the party asking for the indulgence must explain the delay which has taken place between the termination of the period sought to be excluded and the presentation of the appeal.

5. Section 14 of the Limitation Act does not apply in terms because it governs only suits and applications. Even the principle of section 14 does not apply to this case because the review application was not dismissed for any defect of jurisdiction or any cause of like nature. The further question whether the period spent in pursuing the remedy by way of review unsuccessfully can at all be taken into account or not is not necessary to be gone into in this case because, even assuming that it could be, we could only condone the delay up to. 21-3-1960 (when the review

application was decided). In the present case 'there is nothing to show why the appellant did not file the present appeal without any further delay. It is for the appellant to explain the delay but he has not said a word in his application why he did not file the appeal between 21-3-1960 and 2-5-1960 when this Court closed for the summer vacation. Their Lordships have laid down the scope of sections 5 and 14 of the Limitation Act and have also considered the Privy Council decisions in *Ram Narain Joshi v. Parmeshwar Narain Mahta*, 30 Ind App 20 (PC) and 44 Ind App 218 : (AIR 1917 PC 156). (See *Ramial v. Rewa Coalfields*, AIR 1962 SC 361 Paras. 12, 13 and 14). In this case no sufficient cause -- no cause at all -- has been shown for the appellant's inaction after 21-3-1960.

6. On the view that we have taken this appeal should be dismissed as barred by time. However, having regard to the observations in AIR 1917 PC 156, it is possible to hold that the appellant in good faith believed that the entire period spent in review proceedings would be excluded. We have not been able to lay our hands on any decision of this Court (nor has the learned counsel (or the other side) cited any, holding that in such a case the delay after the termination of the review proceedings must be explained by the appellant. In these exceptional circumstances we would exercise our power under section 5 of the Limitation Act in favour of the appellant and condone the delay.

7. Adverting now to the main question in this appeal, there cannot be the slightest doubt that the objection filed by the appellant before the trial Judge was barred by time. There is no dispute as to the applicability of Article 158 of the Limitation Act. That Article enacts that an application to set aside an award must be made within 30 days from the date of service of the notice of filing of the award. Here on the respondent's application under section 14 for filing of the award a notice was issued to the appellant to appear on March 19, 1953, to meet the petitioner's application. A notice was also issued to the arbitrators to file their award on the date so fixed. On the last mentioned date, that is, March 19, 1953, as is clear from the order-sheet, the arbitrators filed their award and the non-petitioner also filed his objections to the petitioner's application dated February 23, 1953. The objection was that the notice issued to him was premature. The objection was correct because the notice contemplated under section 14(2) of the Arbitration Act

is one to be issued when an award is filed. The word 'thereupon' is significant. At any rate, the award having been filed on that date in the presence of the learned counsel for the non-applicant, objections to the award should have been filed within 30 days from March 19, 1953. As to this Shri Dwivedi, learned counsel for the appellant, raises two objections With vehemence. Firstly, he had appeared before the trial Judge on the 19th March in obedience only to the notice issued to the non-petitioner, and, moreover, the award appears to have been returned the same day to the arbitrators for certain formalities to be completed. We would have gone into these objections with some seriousness, but we think it unnecessary in view of the order passed by the trial Judge on July 19, 1953, which when rendered into English reads as under:

'Order separately passed today in respect of Injunction. In this case, the arbitrators have filed the award and the connected papers. The non-applicant defendant has put in appearance through counsel. Therefore, whatever objections to the award the defendant's counsel has, should be filed on September 10, 1953.'

8. It is quite clear from the order-sheets that both sides had been appearing on all the dates of hearing which had been fixed earlier in connection with the petitioner's application praying for injunction. Whatever else it may be, on July 15, 1953, the trial Judge made an unequivocal order calling upon the non-petitioner's counsel to file objections to the award. It is equally clear that the award had been filed again, presumably, after completing the technical formalities, from this date it was incumbent upon the non-petitioner to file his objections within 30 days because this was adequate service under Section 14(2). But the objections were not filed within time, they were actually filed on October 5, 1953. It must be mentioned here that the learned trial Judge had no jurisdiction to fix a date beyond 30 days for filing of the objections but the appellant did not file them even on September 10, 1953.

9. The only question which now remains to be considered is whether the notice to the counsel appearing for the appellant was sufficient notice within the meaning of section 14(2) of the Arbitration Act. Our answer is in the affirmative. All that section 14(2) requires is that on the award having been filed in the Court it would

thereupon give notice to the parties of the filing of the award. No form of notice nor procedure as to its service is prescribed in section 14. Section 41 of the Act, however, lays down that subject to the provisions of the Act and of rules made thereunder, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court. Shri Dwivedi does not say that there were any rules under the Arbitration Act framed and applicable to the present proceedings. In the absence of such rules and in the absence of any provision in the Arbitration Act itself, Order 3 of Code of Civil Procedure becomes applicable and Rule 3 of that Order enacts that processes served on the recognised agent of a party shall be as effectual as if the same had been served on the party in person unless the Court otherwise directs. This is a rule of law which imputes the knowledge of the recognised agent (recognised under Order 3, Rule 2, C.P.C.J to the principal. In this view we are supported by a decision of this Court in *Kawal Singh v. Baldeo Singn*, 1957 MPLJ 713 : (AIR 1957 Nag 57). The same view was taken in *Ram Bharosey v. Pearey Lal*, (S) AIR 1957 All 265. Shri Dwivedi relies on *Chatu'rbhuj Das v. Ganeshram*, ILR 20 All 474. But that decision does not apply here at all. This is not a case where a party had received information aliunde that the award had been filed. In the Allahabad case the question with which we are dealing was not called for determination.

10. Learned counsel further relies on *Holaram v. Governor-General*, AIR 1947 Sind 145. In that case it seems that in a pending suit arbitration was resorted to. If that decision goes to the extent of holding that a notice to the counsel is no notice to the party, of the filing of the award with respect, we do not agree. We have already stated our reasons. In the Sind case it does not appear that the attention of the learned Judge was invited to the provisions of law upon which we have relied.

11. The result of all this discussion is that we find no error in the judgment of the Courts below when it held that the objections to the award were time-barred.

12. This appeal is dismissed. We direct that the parties shall bear their own costs in this appeal.

Sharma, J.

13. I agree.

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