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**Court :** Orissa

**Decided On :** Apr-13-1983

**Reported in :** AIR1983Ori262

**Judge :** B.K. Behera, J.

**Acts :** [Arbitration Act, 1940](#) - Sections 33; [Limitation Act, 1963](#) - Sections 5 and 119

**Appeal No. :** Misc. Appeal No. 159 of 1978 and Civil Revn. No. 517 of 1978

**Appellant :** Gangaram Chhapolia

**Respondent :** Chief Engineer (Projects) and ors.

**Advocate for Def. :** P.K. Mohanty, ;Addl. Govt. Adv.

**Advocate for Pet/Ap. :** B.H. Mohanty, ;A.K. Tripathy and ;S.C. Misra, Adv.

**Judgement :**

ORDER

**B.K. Behera, J.**

1. By order dated 26-8-1976, passed by the learned Subordinate Judge, Cuttack, in Miscellaneous Case No. 240 of 1976, Mr. Baradakanta Misra, Advocate, was appointed as arbitrator with regard to the dispute between the parties in

connection with reconstruction of weak and narrow culverts over National High Way No. 5 from miles 718/0 to 727/9 existing within the Khurda P. W. D. subdivision in the district of Puri, under F-2 agreement No. 3 of 1974-75. In the course of hearing before the arbitrator, the appellant in Misc. Appeal No. 159 of 1978 who is the petitioner in Civil Revision No. 517 of 1978 (hereinafter referred to as the claimant) was examined on Dec. 3, 4 and 5-12-1976. The matter was adjourned and notice of the adjourned date, it is said, was not given to the claimant. On 23-12-1976, the claimant moved the learned Subordinate Judge for revoking the authority of the arbitrator on various grounds. The application was dismissed as infructuous because prior to its disposal, the arbitrator had completed the enquiry and submitted his award. But this order was set aside by this Court in Civil Revision No. 227 of 1977 with a direction that the application for revocation should be considered after disposal of the application under Section 33, Arbitration Act, (for short, the Act). The application was finally dismissed on July 24, 1978 and the present Civil Revision has been directed against that order. During the pendency of the Civil Revision, however, the arbitrator died and it has been submitted by the learned counsel for the claimant that the Civil Revision has become infructuoug.

2. After making of the application for revocation, the arbitrator had taken up the hearing of the case on 24-12-1976, examined a number of witnesses on behalf of the Department, marked several documents as Exhibits and completed the hearing on that day, signed the award on the day following and filed it in the Court of the learned Subordinate Judge on 3-1-1977, the reopening day of the Court after the Winter Holidays. The award is a reasoned one. On 19-12-1976, the arbitrator had recorded an order in the order-sheet to the effect that on the request by Mr. M. N. Das, Advocate for the claimant, on telephone, the case was adjourned to 24-12-1976. This was disputed by the claimant on the ground that he had not engaged Mr. M. N. Das. As a matter of fact, Mr. M. N. Das had been examined by the claimant and his statement that he had not been engaged as his advocate had been accepted by the learned Subordinate Judge. According to the claimant, he had no notice of the date of hearing and all proceedings taken after 5-12-1976, were behind his back. On these among other grounds, the claimant objected to the award under Sections 30 and 33 of the Act. The Department had controverted the allegations made by the claimant.

3. The learned Subordinate Judge, on a consideration of the evidence, oral and documentary, found that the claimant had notice of the award on 14-4-1977 when he was present in the Court and his advocate had endorsed on the body of the order-sheet acknowledging receipt of the notice of the filing of the award and the period for making an application to set aside the award being thirty days from the date of service of notice of the filing of the award as provided in Section 119(b), Limitation Act, the objection raised by the claimant in his application filed on 21-6-1977 was beyond time and barred by limitation. Instead of deciding the case only on the question of limitation, the learned Subordinate Judge then proceeded to examine the evidence and decide the points of controversy between the parties as both the parties had adduced evidence. The allegations of misconduct made by the claimant against the arbitrator were not accepted by the Court. The award was made the rule of the Court with a direction to draw up a decree in terms of the award.

4. The learned counsel for the claimant has submitted that the findings recorded by the learned Subordinate Judge with regard to the misconduct of the arbitrator are not tenable and the learned Subordinate Judge was not correct in holding that the claimant was responsible for interpolations in the certificates given by him in his statements before the arbitrator on the three days of his examination. It has also been submitted on behalf of the claimant that the learned Subordinate Judge, improperly and without justifiable reasons, shut out evidence from the side of the claimant by not affording an opportunity to examine two officials of the Court in order to substantiate his case and refute the allegation made against him that interpolations had been made by him in the certificates appended to the statements made by him before the arbitrator after the filing of the award in the Court. It has been submitted on behalf of the claimant that the claimant had no notice of the award on 14-4-1977 and even assuming that he did have notice, in view of the fact that the Court issued a notice on April 15, 1977 to put in objection, if any, within thirty days thereafter, the objection raised by the claimant was in time. In this connection, reliance has been placed on the principles laid down in (1981) 52 Cut LT 369 : (AIR 1981 Orissa 188), Union of India v. Builders Union and (1981) 52 Cut LT 458 : (AIR 1982 Orissa 18), Executive Engineer, Rural Engineering Division, Puri v. Construction India. An application for condonation of

delay has been filed under Section 5, Limitation Act, and the learned counsel for the claimant has submitted before me that this application may be considered and delay may be condoned in case this Court holds that the objection to the award had not been made in time.

The learned Additional Government Advocate has submitted that the contention raised on behalf of the claimant with regard to limitation cannot prevail as the claimant had notice of the filing of the award and had not come up in time and the findings recorded by the Court below against the claimant with regard to the misconduct of the claimant, as alleged, were unassailable. He has, however, submitted that if this Court finds that the claimant had not been afforded a reasonable opportunity for examining two persons named by him to controvert the allegation made against him about interpolations in his statements before the arbitrator, it would be open to this Court to remit the case for examination of those witnesses and dispose of the case in accordance with law afresh. He has, however, submitted that according to him, the examination of the two witnesses was not necessary.

5. Coming to the question of limitation, the learned Subordinate Judge had held :

'..... The period of limitation prescribed under Article 119 (b), Limitation Act, for setting aside an award or getting an award remitted for consideration, is 'thirty days from the date of service of the notice of the filing of the award. Even if 14-4-77 was taken as the date of service of notice of filing of the award, the last date for filing objection to the award was 14-5-77 which was a working day for the Civil Courts at Cut-tack. Therefore, the intervention of Summer Vacation from 16-5-77 to 19-6-77 does not come to the rescue of the plaintiff-petitioner to save limitation. There is no case made out for condonation of delay. Even otherwise, in view of the decision reported in AIR 1965 Orissa 17, Section 5, Limitation Act will not apply to an application to set aside an award. Therefore, the objections for acceptability of the award and the petition for setting aside the award filed on 21-6-77 are clearly barred by time under Article. 119 (b), Limitation Act.'

As earlier indicated, the award was signed on 25-12-1976 and filed in Court on 3-1-1977. On its basis. Title Suit No, 45 of 1977 was registered. By that time, the

application made by the claimant for revocation had been pending in Miscellaneous Case No. 240 of 1976. Both the suit and the Miscellaneous Case had been posted to 14-4-1977. The Miscellaneous Case was adjourned to 15-4-1977 and the suit to April 29, 1977. The order-sheet was shown to the learned advocate appearing for the claimant who signed in the order-sheet. On 14-4-1977, an order was passed in the Title Suit directing issue of notices to the parties and such notices were issued on 15-4-1977. The notice to the claimant was served on him on 25-4-1977. The notice dated 15-4-1977, in terms, directed the parties to file their objections within thirty days from the date of receipt of the notice, although the suit stood posted to 29-4-1977. The notice read :

'IN THE COURT OF THE SUBORDINATE JUDGE, CUTTACK. NOTICE

To

Sri Gangaram happolia,

Nimchouri, P. S. Lalbag, Cuttack.

Notice is hereby given of the filing of the Award by the arbitrator Sri B. K. Misra in Misc. Case No. 240 of 1976. The Award was signed by the arbitrator on 25-12-76 and submitted to this Court on 3-1-77. Objections, if any, be filed within 30 days of receipt of this notice. The plaintiff Gangaram Chappolia is directed to pay the requisite court-fee on or before 29-4-77.

Given under my hand and seal of this Court this day the 15-4-1977.

Sd/- R. S. P. Patnaik

Subordinate Judge, Cuttack.'

A similar notice was issued to the Executive Engineer, National Highway Division, on the same day.

6. On 29-4-1977, the claimant filed a memo stating that he would file his objection within time. The Department also prayed for time on that ground. Thirty days from the date of issue of the notice, i. e. 15-4-1977, had not expired by 29-4-1977 on

which date the Court adjourned the suit to 20-6-1977 for filing objections and on this date, the claimant filed his objection under Sections 30 and 33 of the Act. On 20-6-1977, the claimant prayed for time to file his objection. No specific order was passed thereon. It had been mentioned in the order-sheet of that day that neither side had filed any objection. On 21-6-1917, the following order had been passed in Title Suit No 45 of 1977:

'Plff. files objection. Copy not served. Put up on the date fixed. Copy be served in the meantime.

Sd/- R. S. Patnaik

S. J.'

On the basis of the objection, Miscellaneous Case No. 146 of 1977 was registered with the following order :

'39. 20-6-77 Petition Under Sections 30 and 33 of 21-6-77 the Arbitration Act for setting aside the award filed by the Arbitrator Sri B. K. Mishra on 25-12-76 is filed. Register as a Misc. Case and put up on 24-6-77 with office note.

Sd/- R. S. Patnaik

S. J.'

It is noticed from the date seal of the Court affixed on the objection that it was, in fact, filed on 20-6-1977. No objection seems to have been raised by the office that the objection had not been made in time. According to the learned Subordinate Judge, the dale of notice of filing of the award should be taken as 14-4-1977 when the learned advocate for the claimant signed the order-sheet and, therefore, the objection should have been filed within thirty days, i. e., within 14-5-1977. In spite of the fact that the learned advocate for the claimant had signed the order-sheet on 14-4-1977, notice had, in fact, been issued to the parties on 15-4-1977 directing them to put in objections within thirty days therefrom. Under these circumstances, the claimant must have been confused and misled and it has, therefore, been contended on his behalf that the delay, if any, should be taken to

have been condoned. This contention finds support in the principles laid down in (1981) 52 Cut LT 369 : (AIR 1981 Orissa 188) (supra) where it has been held that by granting time to file objection, the Court had impliedly extended the time even without a formal application under Section 5. Limitation Act, and delay could be condoned. In my view, the principles laid down in the aforesaid two reported cases of this Court would apply to the facts of this case and I would hold, in the circumstances of the case, that the claimant had raised the objections in time.

7. Coming to the merits of the case, I do not feel myself called upon to enter into the arena of disputes and discuss the evidence thereon as, in my view, it would be just and proper to remit the case for giving the claimant an opportunity of examining the Sheristadar and the Suits Clerk of the Court of the learned Subordinate Judge to refute the allegation made by the arbitrator in his evidence against him (claimant) that he had made interpolations in the statements made before the arbitrator after the filing of the award and while the records were in the Court. An application was made by the claimant on 26-6-1978 for examination of these persons as his witnesses. Undoubtedly, on the facts and in the circumstances of the case, the statements of these two persons would be material for the purpose of refuting the allegation made against the claimant referred to above. Without proper application of mind, the learned Subordinate Judge shut out this evidence by observing that the point raised was outside the scope of the enquiry and such evidence would be irrelevant. No person should be condemned unheard without affording a reasonable opportunity to him to adduce necessary evidence on his behalf. In my view, the claimant should be given an opportunity of examining the two witnesses. Their evidence should be recorded and considered for what it is worth.

8. In the result, the Civil Revision is dismissed as infructuous. The Miscellaneous Appeal is allowed and the impugned order is set aside. The case is remitted to the Court of the learned Subordinate Judge, First Court, Cuttack, with a direction to record the evidence of the Sheristadar and the Suits Clerk of the Court of the Subordinate Judge whom the claimant intended to examine and to dispose of the suit afresh in accordance with law. There would be no order as to costs.

Both the parties are directed to appear in the Court of the learned Subordinate Judge, First Court, Cuttack, on 22-6-1983, for directions.

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