

**Krishan Kumar Vs. Municipal Committee and anr.**

**Krishan Kumar Vs. Municipal Committee and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/625135](http://sooperkanoon.com/625135)

**Court :** Punjab and Haryana

**Decided On :** Nov-25-1992

**Reported in :** (1993)103PLR587

**Judge :** V.K. Bali, J.

**Acts :** [Arbitration Act, 1940](#); Code of Civil Procedure (CPC) - Sections 115

**Appeal No. :** Civil Revision No. 184 of 1992

**Appellant :** Krishan Kumar

**Respondent :** Municipal Committee and anr.

**Advocate for Def. :** Kanwaljeet Singh, Adv.

**Advocate for Pet/Ap. :** J.K. Sibal, Sr. Adv.,; Naresh K. Joshi and; Swaranjeet K

**Disposition :** Petition allowed

**Judgement :**

V.K. Bali, J.

1. Krishan Kumar, Government Contractor, petitioner herein, being aggrieved of the judgment rendered by Additional District Judge, Patiala, on September 20, 1991 vide which the appeal of the Municipal Committee, Patiala, respondent herein, against the order of Sub Judge 1st Class, Patiala, dated May 22, 1989 vide which the objections raised by it against the award of Superintending Engineer, Patiala Circle, P. W. D. (B. & R.), Patiala, were rejected, has come in this Court by way of the present revision petition.

2. The facts as spelled out from the pleadings of the parties as also from the two judgments referred to above manifest that on July 15, 1985, the petitioner submitted a tender for the development of foot path in Rajindra Tank, Patiala and that his tender was accepted on July, 18, 1985. The agreement was signed between the petitioner and the Municipal Committee through its Executive Officer. One of the clauses of the agreement runs thus : --

'In case of dispute between the contractor and the department, the matter shall be referred for arbitration to the Superintending Engineer, Incharge of the Circle concerned, within 90 days from the date of payment of final bill to the contractor or from the date of stoppage of work by the contractor, whose decision shall be final and binding'.

On January 1, 1987, the petitioner submitted a fourth running bill to the Municipal Committee, Patiala, which was passed on May 11, 1987. There arose a dispute with regard to this bill. The petitioner stopped the work in the month of September, 1987 and asked for arbitration. During the arbitration proceedings, it is not disputed that the parties mutually consented for extension of time for making the award and admittedly, the

time limit was extended up to June 6, 1988. Few days prior thereto, that is on May 31, 1988, the Arbitrator gave an award of Rs. 1,31,508/- in favour of the petitioner against his claim of Rs. 3,88,886/-. On June 8, 1988, the petitioner moved the trial Court for making the award 'Rule of the Court. The respondent,, however, filed objections and contested the matter on the grounds that the Arbitrator had misconducted himself in the proceedings ; that at the time of making of reference to the Arbitrator, the Municipal Committee did not exist as it had already been superseded and the Executive Officer was not a juristic person and could not be sued and the entire arbitration proceedings had, thus, no legal force ; that the Arbitrator has illegally awarded the interest and it is not a speaking award and is not based on any evidence and the same had been pronounced after the statutory period for announcing the award. It requires to be specifically noticed at this stage that there was absolutely no objection that on account of non-existence of the written agreement, the matter could not be referred to Arbitrator at all. It, however, appears in the order passed by the trial Court that even though the aforesaid point was not. raised in the objection petition as such, some arguments were addressed on this point but the plea on that behalf was turned down on the ground that there was no explanation forthcoming from the objector i e. the respondent herein, that there was no arbitration agreement then why on no occasion, it had raised the plea before the Arbitrator that such an agreement was not there However, while noticing the facts under Issue No. 1 (paragraph 8), it was mentioned that there was no dispute that on reference made by Krishan Kumar before the Arbitrator and on notice to the respondent-objector both the parties submitted claim and counter claim before the Arbitrator in terms of the agreement that was there and executed in between the petitioner and the Municipal Committee. The objections were, however, rejected by the trial Court Thereafter, the Municipal Committee, filed an appeal before the District Judge, Patiala, which ultimately, came for decision before the Additional District Judge, Patiala, who accepted the appeal on the ground that there was no written agreement between the parties and the Arbitrator had no jurisdiction to extend the time which under the statute was four months and the award having been announced after the expiry of the period aforesaid, award had to be set aside. As noticed above, this is against this order that the present revision petition has been filed.

3. Learned counsel for the petitioner Mr. J. K. Sibal, Senior Advocate, contends that there was no objection raised by the respondent with regard to the execution of the agreement between the parties and in fact, it was conceded before the trial Court that such an agreement was there. He further contends that the finding of the Appellate Court holding that there was no agreement, primarily came into being on account of the concession made by the lawyer of the petitioner which concession was totally erroneous He has produced written agreement that came into being on July 18, 1985 which contains the cause of referring the matter to an Arbitrator having jurisdiction. That being the position, the learned counsel contends that the first reason to invalidate the award so taken notice of by the Appellate Court, had no basis whatsoever. On the second point, the contention of the learned counsel for the petitioner is that in the present case, time for pronouncing the award was extended by mutual consent of the parties and, therefore, the case law relied upon by the Appellate Court to hold the award as invalid, being not applicable the present revision deserves to succeed.

4. Mr. Kanwaljit Singh, learned counsel appearing for the Municipal Committee, has, however, joined issues on both the points aforesaid, and contends that in view of the fact that it was conceded before the trial Court that there was no written agreement, the matter could not be agitated, and in case the aforesaid concession of the lawyer was erroneous, the only appropriate remedy with the petitioner ; is to ask for review of the order from the appellate Authority, [a so far as the question of extension of time by mutual consent of the parties is concerned, the contention of the learned counsel is that in no circumstances, the Arbitrator could extend the time and such an exercise could be done only by the Court. It was agreed between the learned counsel for the parties that this case may decided finally at the motion stage.

5. After hearing the learned counsel for the parties, I am of the considered view that there is merit in the points raised by Mr. J. K. Sibal, learned counsel for the petitioner and therefore, the present petition deserves to succeed. It shall be seen from the narration of facts given above that in the objection that were filed by the respondent before the trial Court, nothing at all was stated with regard to the non-existence of the written

agreement between the parties. On the contrary, the trial Court noticed the admission of the respondent in holding the existence of the arbitration agreement. It is true that the Appellate Court relied on the concession of the counsel for the petitioner but in view of the availability of the agreement which has been produced before me and which has not been denied. I have no hesitation in holding that the concession made by the Lawyer before the Appellate Court, was totally erroneous. No useful purpose would be served in asking the petitioner for review of the order passed by the Appellate Court as the facts are absolutely clear and the course suggested by the learned counsel for the respondent would only result in delaying finalisation of the present case. With a view to substantiate the plea that there could not be any extension of time by the Appellate Court and such course could be adopted by the Court alone, the learned counsel for the respondent relied upon the judgment of the Supreme Court in *State of Punjab v. Hardyal*, (1985-1) 87 P. L. R. 683 (S. C.), and a single Bench decision of this Court in *Punjab State Small Industries Corporation Limited v. Shri Vijay Kumar Puri, Government Contractor*, (1990-1) 97 P. L. R. 606. In case, case, *State Punjab v. Hardyal*, (Supra) the Arbitrator had given his award on April 28, 1961 which was after the expiry of prescribed period, but, the respondent in the said case was, however, participating in the proceedings before the Arbitrator even after the expiry of the statutory period. The award was challenged by filing the objections under section 30 of the Arbitration Act, on a number of grounds inclusive of the delay in giving the award. The award was, however upheld by the Court and, therefore, the respondent had taken the matter in appeal to the High Court. When the matter came up before the learned Single Judge, he referred the following two points for decision by a Division Bench on account of the importance of the question involved in the case and also on account of conflict of judicial opinion on the point :-

1. Whether the award given after the expiry of the prescribed period without extension of time by the court was invalid ?
2. Whether the rejection of the objection regarding delay in giving the award on the ground that the objector had participated in the arbitration proceedings even after the expiry of the period of limitation prescribed would by necessary implication amount to extending the time under S. 28 of the Arbitration Act by the Court ?.

The Division Bench allowed the objections of the respondent regarding delay in giving the award holding that the party to an agreement is not estopped from challenging the award on the ground of delay merely because it has participated in the arbitration proceedings even after the expiry of the prescribed period without any demur. On the second point, the High Court held that mere dismissal of the objection regarding delay in the award does not amount to extension of time by the Court under S. 28(1) of the Arbitration Act and indeed time can be extended by the Court by the exercise of sound, judicial discretion. The appeal was thus allowed but the case was sent back to the trial Court for deciding afresh, whether it was a fit case for condoning the delay in giving the award by the Arbitrator after affording opportunity to the parties to adduce evidence. When the State went in appeal before the Supreme Court, same points were reiterated. After noticing section 3 and section 28 of the Arbitration Act and Clause 3 of the First Schedule, the Supreme Court held that it was open to the parties to the Arbitration agreement to fix time within which the Arbitrator must give his award, but it has to be so stated in the agreement itself. If per chance no time has been specified by the parties in the arbitration agreement, then by virtue of operation of section 3 read with Clause 3 of the First Schedule, the award must be given within four months of the arbitrator entering on the reference or after having been called to act by notice in writing from any party to the arbitration agreement or within such extended time as the court may allow While considering section 28, it was further held as follows :-

'Sub-section (1) of S. 28 is very wide and confers full discretion on the court to enlarge time for making the award at any time. The discretion under sub-Section (1) of S. 28 should, however, be exercised judiciously. Sub-section (2) of S. 28 also makes it evident that the court alone has the power to extend time. It further provides that a Clause in the arbitration agreement giving the arbitration power to enlarge time shall be void and of no effect except when all the parties consent to such enlargement. It is not open to the arbitrators at their own pleasure without consent of the parties to the agreement to enlarge time for making the award.'

It is true that from the reading of para extracted above discretion under sub section (1) of section 28, has to be exercised judiciously and that Court alone has power to extend time but last line of the para in no uncertain terms suggest arbitrator can extend time with the consent of the parties to the agreement. Immediately, after so holding as has been mentioned in para extracted above, The Supreme Court referred the decision in H.K. Wattal v. V.N. Pandya, A. I. R. 1973 S. C. 2479, and quoted the following para from the aforesaid report:-

'There is no doubt that the arbitrator is expected to his award within four months of his entering on the referent or on his being called upon to act or within such extended time as the court may allow. Reading clause 3 of the Schedule along with section 28 one finds that the power to enlarge the time is vested in the court and not in the arbitrator. Clause 3 and section 28(2) which provides the even when such a provision giving the arbitrator power to enlarge the time is contained in the agreement, that provisions shall be void and of no effect. The headnote of section 28 brings out the force of this position in law by providing that the power is of the court only to enlarge time for making the award.

Sub-section (2) of section 28, however, indicates one exception to the above rule that the arbitrator cannot enlarge the time, and that is when the parties agree to such and enlargement. The occasion for the arbitrator to enlarge the time occurs only after he is called upon to proceed with the arbitration or he enters upon the reference. Hence, it is clear that if the parties agree to the enlargement of time after the arbitrator has entered on the reference, the arbitrator has the power to enlarge it in accordance with the mutual agreement or consent of the parties. That such a consent must be a post reference consent, is also clear from section 28(2) which renders null and void a provision in the original agreement to that effect. In a sense where a provision is made in the original agreement that the arbitrator may enlarge the time, such a provision always implies mutual consent for enlargement but such mutual consent for enlargement but such mutual consent initially expressed in the original agreement does not save the provision from being void. It is, therefore, clear that the arbitrator gets the jurisdiction to enlarge the time for making the award only in a case where after entering on the arbitration the parties to the arbitration agreement consent to such enlargement of time'.

It appears that there is only one exception where the Court may not and the Arbitrator may extend time and i.e. when it is so extended mutual consent of the parties and that too if it a post-reference consent i.e. where after entering upon the arbitration, the parties to arbitration agreement consent to such an enlargement of time. The Supreme Court in State of Punjab v. Hardyal (supra) after reproducing the para from H. K. Wattal v. V. N. Pandya immediately went to the next question which was with regard to the effect of participation in the arbitration proceedings by the parties beyond the period statutorily provided. With that question we are not con- corned in the present case, as admittedly in the present case, it was not only participation in the arbitration proceedings beyond the period of limitation but such participation was account of mutual consent of the parties so conveyed to the arbitrator in writing on which even order of extension was actually passed.

6. In view of ray findings as above, there would have been no necessity to go into the question as to whether in the facts and circumstances of the present case, the Court should or should not have allowed the extension of time if it all required as admittedly the same can be done even after the passing' of the award. However, as the point has been pressed into service by the learned counsel for the petitioner, it would be in the fitness of things to give finding on that question as well The dispute in the present case was referred to the Arbitrator way back in the year 1987. The award came into being on May 30 1980. There was full participation of both the parties before the Arbitrator and time was extended by mutual consent of the parties upto June 8, 1988 It shall be unjust at this stage to send the case back to the trial Court for examining the justification or otherwise of extending the time. The very concept of the arbitration proceedings is to avoid the time consuming procedural wrangle of the Civil Court and to shorten the litigation. The remand of the case at this stage would frustrate that object. The time thus, if at all required to be extended, the same is hereby extended up to the time the Arbitrator gave award. The judgment of the Single Bench of this Court relied upon by the respondent in which the time was not extended in the revisional jurisdiction of this Court has , no parity to the facts of the case in hand. It is specifically noticed in the aforesaid judgment that the prayer made

by the respondent in the said case so as to produce some documents which were only certified copies and were to be taken from the Court which had not been made available, was declined by the arbitrator and without hearing the parties, the award was made. It is the aforesaid fact which primarily came in the way of the party of the said case, asking for enlargement of time at the revisional stage.

7. For the reasons recorded above, the present petition is allowed. However, in the peculiar facts and circumstances of the case, the parties are left to bear their own costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**