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Dsa Engineers (Bombay) and ors. Vs. Housing and Urban Development Corporation (Hudco)

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Court : Delhi

Decided On : Nov-29-2002

Reported in : 2003(66)DRJ466

Judge : K.S. Gupta, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 33, 34, 34(3) and 43; Code of Civil Procedure (CPC) - Sections 151; [Arbitration Act, 1940](#) - Sections 14; Delhi High Court (O.S) Rules, 1967 - Rules 1 and 2

Appeal No. : I.A. Nos. 10715 and 11576/01 in OMP 367/2001

Appellant : Dsa Engineers (Bombay) and ors.

Respondent : Housing and Urban Development Corporation (Hudco)

Advocate for Def. : P.N. Kumar and ; Anurag Kumar, Advs.

Advocate for Pet/Ap. : Chetan Sharma,; Vikas Sharma and; B.S. Shukla, Advs

Judgement :

K.S. Gupta, J.

1. This order will govern the disposal of I.A. 1015/01 under Sections 34 and 43 of the [Arbitration and Conciliation Act, 1996](#) (for short the 'Act of 1996') and I.A. 11576/01 under Section 151 CPC filed by the Objector.

2. I.A. 10715/01 was filed on 29th October, 2001 alleging that objector has filed objections under Section 34 impugning the award dated 30th June 2001. On receipt of copy of award, Objector filed application under Section 14 of the [Arbitration Act, 1940](#) (for short the 'Act of 1940') for getting the award filed in original Along with depositions and documents in court which was contested by Non-objector/claimant. By the order dated 4th October 2001 this application was dismissed. Objector was prevented by sufficient cause from filing the objections within the period of 3 months. It was prayed that by invoking proviso appended to Sub-section (3) of Section 34 of the Act of 1996 the objections may be allowed to be entertained.

3. I.A. 11576/01 was filed in continuation of I.A. 10715/01 on 12th December 2001 for entertaining the Objections explaining the circumstances how the Objector was under the bonafide belief that award dated 30th June 2001 was governed by act of 1940 and not by Act of 1996.

4. Non-Objector/claimant has chosen not to file reply to the applications.

5. Admittedly, said application under Section 14 of the Act of 1940 for getting the award filed in original together with depositions and documents, was moved by the Objector on 27th July 2001 and the same was dismissed by the order dated 4th October 2001. Appeal taken out against this order by the Objector was dismissed by a Division Bench of this court on 12th December 2001. SLP filed by the Objector was also dismissed on 23rd August 2002 by the Supreme Court. It is also not in dispute that Objections against the award under Section 34 being OMP 367/2001 was filed on 29th October, 2001 and the same was returned for removing objections on 9th November 2001. From 10th to 16th November 2001 this court was closed on account of holidays and the Objections (OMP 367/01) was refiled after removing objections by the Objector on 17th November 2001.

6. A preliminary objection was raised by Sh. Chetan Sharma for Non-Objector that Objections (OMP 367/01) itself is not legally maintainable in view of orders dated 4th October 2001, 12th December 2001 and 23rd August 2002. Copy of order dated 4th October 2001 dismissing application under Section 14 registered as Suit No. 1582-A/01, is placed on the file and bare perusal thereof would show that said application was dismissed on the ground of being not maintainable as the parties in view of Clause 91.4 of the agreement executed between them, were governed by the Act of 1996 and not the Act of 1940. This finding was upheld in appeal by the Division Bench by the order dated 12th December 2001 and in SLP by the Supreme Court by the order dated 23rd August 2002. In my opinion, these orders would not come in the way of Objector as regards entertaining of Objections under the proviso to Sub-section (3) of Section 34 of the Act of 1996 as they pertained only to the non-maintainability of application under Section 14 of the Act of 1940.

7. This brings me to the main question if the applications on hand disclose sufficient cause for entertaining the Objections (OMP 367/01) as also effect of re-filing the Objections after removing objections on 17th November 2001, admittedly, beyond 4 month's period of the receipt of copy of award dated 30th June 2001 by the Objector. As may be seen from office report dated 30th October 2001 the objections pointed out by the Registry were that - (i) Vakalatnama should have been filed and (ii) neither the caveat report was given nor obtained from the Caveat branch. At this stage reference to the decisions in *Ashok Kumar Parmar v. D.C. Sankhla and Ors.* 1995 RLR 85; *D.C. Sankhla v. Ashok Kumar Parmar and Ors.* 1995 I AD (Delhi) 753 and *S.R. Kulkarni v. Birla VXL Ltd.* 1998 RLR 519, has become necessary. In *Ashok Kumar Parmar's* case (supra), preliminary issue which arose for consideration was whether suit was barred by limitation? Suit was for recovery of damages for the tort of libel. Alleged insinuations were alleged to have been made on 11th September 1986 in a newspaper. Plaint was presented before the officer authorised to receive it on 10th September 1987. The office found the presentation of plaint to be defective on three counts: (i) the certified copy of the order accompanying the plaint did not bear the court fee stamp of 75 paise; (ii) photo copies of documents accompanying the plaint were not attested as true copies and (iii) photo copy of a document was in Hindi and was not accompanied by translation in English nor the translation charges paid. Plaint was

returned to the plaintiff for rectifying the objections on 15th September 1987 and it was represented on 16th October, 1987. On 17th October 1987 the office again returned the plaint pointing out objection No. (iii) having not been removed. Plaint was represented on the same day and directed to be listed before the Registrar for admission on 29th October 1987 where after summons were issued to the defendants. Noticing Rules 1 and 2 of Chapter 4 of Delhi High Court (O.S.) Rules, 1967, in Para No. 10 (at page 89) it was held:-

'Looking to the language of the Rules framed by Delhi High Court, it appears that the emphasis is on the nature of defects found in the plaint. If the defects are of such character as would render a plaint, a non-plaint in the eye of law, then the date of presentation would be the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not effecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit.'

In Para No. 12 it was further held:-

'In the case at hand, the defects pointed by the office were defects not so substantial in character as would reduce the plaint to a no-plaint... Thus, re-presentation of plaint would relate back to original presentation.'

8. Suit was, thus, held to be not barred by limitation.

9. Appeal taken out against this order reported in 1995 I AD (Delhi) 753 above by D.C. Sankhla was dismissed by a Division Bench noticing that neither Rule 1 nor Rule 2 purports to extend the period of limitation prescribed in the Schedule to the Limitation Act and the date on which the plaint was presented, even with defects, would, therefore, have to be the date for the purpose of Limitation Act.

10. In S.R. Kulkarni's case (supra), question of condensation of delay in refiling the application seeking leave to defend the suit after removal of defects fell for consideration before a Division Bench of this court. In this case objection was raised by the Registry on 21st August 1995 that names of parties did not tally. Defendant-appellant who received back the application after great delay on 4th

March 1996, re-filed it after necessary correction on the same day. Registry on 16th March 1996 noticed that one of the pages of application was without signature and application was re-filed after removing that objection on 27th March 1996. Delay of about 200 days in re-filing the application was condoned on the ground that apart from casual approach on the part of counsel of defendant there was no malafide intention on the part of defendant to delay the proceedings.

11. Aforementioned twin defects pointed out by the Registry, obviously, were defects not so substantial in character as would render the Objections (OMP 367/01) to a no-objection nor any malafide intention could be attributed to the Objector in filing the objections with defects to delay the proceedings. Taking note of the ratio of aforesaid decisions the re-presentation of Objections after removing defects would, thus, relate back to original presentation. Further, under Sub-section(3) of Section 34 an application for setting aside award has to be made within 3 months and limitation would start running from the date of receipt of award or date of disposal of application under Section 33, if made. Proviso appended to the sub-section permits extension for sufficient cause by a further maximum period of 30 days. Filing of application being Suit No. 1582-A/01 under Section 14 of the Act of 1940 and preferring appeal and SLP against the said order of dismissal thereof, by the Objector would show that Objector's counsel was under a bonafide belief that award dated 30th June 2001 was to be governed by the Act of 1940 and not the Act of 1996. In this backdrop, in my view, there is sufficient cause for entertaining the Objections filed on 29th October, 2001 and the applications, thus, deserve to be allowed.

12. Consequently, while allowing applications, the Objections (OMP 367/01) is allowed to be entertained under the proviso to Sub-section (3) of Section 34 of the Act of 1996.

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