

Joseph Philip Vs. Varkey Mathai and ors.

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Court : Kerala

Decided On : Feb-21-1978

Reported in : AIR1978Ker208

Judge : P. Subramonian Poti and; T. Kochu Thommen, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 17, 30 and 33; [Limitation Act, 1963](#) - Schedule - Articles 119 and 136

Appeal No. : A.S. No. 61 of 1974 and C.M.P. No. 16423 of 1977

Appellant : Joseph Philip

Respondent : Varkey Mathai and ors.

Advocate for Def. : Jose Vithayathil,; P.N. Sankaranarayana Pillai and; M.P.

Advocate for Pet/Ap. : P.K. Kesavan Nair and; K.N. Narayana Pillai, Advs.

Disposition : Appeal dismissed

Judgement :

Kochu Thommen, J.

1. This appeal arises from the order of the learned Subordinate Judge, Ernakulam, dated 15th March 1973 rejecting the appellant's application for setting aside an award dated 19-11-1969 on the around that the application was barred by

limitation.

2. The appellant is the 1st respondent in Arb. O. P. No. 6 of 1970 on the file of the lower court. He and the present 3rd respondent (2nd respondent in the O.P.) were parties to the award. Present respondents 1 and 2 (the petitioners in the O.P.) were the arbitrators.

3. The arbitrators filed the award on 13-3-1970 in terms of Section 14(2) of the [Arbitration Act, 1940](#) (the 'Act'). Notice of the filing of the award was issued by the court on 8-4-1970 and it was served on the 1st respondent (appellant here) on 18-4-1970. He engaged counsel on 4-6-1970 to represent him in the proceedings before the lower court. His objection to the award with a prayer to set aside the same was filed on 22-7-1970. The sequence of events shows that the application to set aside the award was filed long after the expiry of the period of limitation under Article 119 of the [Limitation Act, 1963](#) -- that is, 30 days from the date of service of the notice of the filing of the award. The court therefore refused to set aside the Award. It pronounced judgment according to the award and a decree was passed in terms thereof.

4. The main objections raised by the present appellant in the lower court were that the award was a nullity because no agreement existed between the parties for a reference of any dispute to arbitrators; that there was in any case no dispute which needed a reference to arbitration; that the notice of the passing of the award was not served on the appellant; and, that the award was not filed in court in accordance with law. For these reasons the appellant requested the court below to set aside the award.

5. In the present appeal, counsel for the appellant contends before us that the award is a nullity and Article 119 of the [Limitation Act, 1963](#), has therefore no application. Such award, according to him, is liable to be set aside within three years from the date on which the right to apply accrued in terms of Article 137 of the Limitation Act.

6. Assuming that the award is a nullity for the reasons alleged by the appellant, the question is whether a declaration to that effect can be made under the Act

otherwise than in terms of Section 17, read with Ss. 30 and 33 of the Act. In other words, can an award be declared to be null and void except by means of setting it aside in accordance with the above provisions. If the answer is that even a void award needs to be avoided in terms of the above provisions, the period of limitation within which such application would lie is not the period prescribed under the residuary article of the Limitation Act but the period of 30 days as prescribed under Article 119 of the Limitation Act.

7. Section 17 of the Act says that the court is bound to pronounce judgment according to the award and pass a decree in terms thereof after the time for making an application to set aside the award has expired or an application having been made was rejected by the court. If no application was made within the period of 30 days as prescribed under Article 119 of the Limitation Act and the delay was not condoned by the court in terms of Section 5 of the said Act, the court has to proceed to pronounce judgment.

8. Sections 30 and 33 mention the grounds on which an award is liable to be set aside and the application for setting aside the award on any one of the grounds mentioned is specifically re-ferred to in Section 33. If no application is made within the time stipulated as aforesaid that is, within 30 days from the date of service of the notice of the filing of the award, as provided under Article 119 of the Limitation Act (and not under Article 137 as wrongly contended on behalf of the appellant), the consequences mentioned under Section 17 will immediately follow: See *Sana and Co. v. Ishar Singh Kripal Singh and Co.* (AIR 1956 Cal 321, 330) (FB); *A. R. Savkur v. Amritlal Kali-das* (AIR 1954 Bom 293).

9. As stated above, the application for setting aside the award, albeit on the alleged ground of nullity, was filed long after the period of limitation expired; and no application for condonation of delay was made to the court below. The award is therefore not liable to be set aside,

10. Counsel for the appellant however submits before us that although his contention that the period of limitation is three years as provided under Article 137 of the Limitation Act is found to be unsustainable, this Court has nevertheless the power to entertain a motion for condonation of delay, and for that purpose a

petition has been filed (C. M. P. No. 16423/77). In our view condonation of delay is a matter of discretion of the court to which an application to set aside the award has to be made, and with that discretion this Court is loath to interfere, especially when no such request was made to that court. C. M. P. No, 16423/77 is therefore dismissed.

11. In the circumstances and for the reasons stated above, we are satisfied that the learned subordinate Judge was perfectly justified in rejecting the application for setting aside the award.

12. The appeal therefore fails and we dismiss the same with costs.

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