Binod Bihari Singh

Vs

Union of India

Civil Appeal No. 2224 of 1982

(B.P. Jeevan Reddy, G.N. Ray JJ)

08.12.1992

JUDGMENT

G. N. RAY, J. -

1. This appeal arises out of a judgment dated June 30, 1976 passed by a Division Bench of the Patna High Court, in Miscellaneous Appeal No. 194 of 1967 arising out of the decision of the learned Additional Subordinate Judge, Patna in Miscellaneous Case No. 38 of 1961 since renumbered as Miscellaneous Case No. 14 of 1962. The said miscellaneous case arises out of an application made by the appellant Binod Bihari Singh for making an award in an arbitration proceeding, a Rule of Court after directing the arbitrator to file the award. The relevant facts relating to the appeal may be indicated as follows.

2. A contract was entered between the appellant Shri Binod Bihari Singh and the President of India on December 10, 1957 for loading, unloading and handling of goods at Gaya Goods Shed of the Eastern Railway for the period of 3 years. Such contract however was terminated by the railway administration before the completion of the period of contract namely with effect from August 2, 1960. In terms of arbitration clause in the argument for reference of the dispute arising out of the contract, an arbitrator was initially appointed by the General Manager, Eastern Railway. There was dispute about such appointment. Ultimately, the High Court of Patna, appointed Shri J. C. Mehta, Deputy General Manager, Eastern Railway as the sole arbitrator by consent of the parties, and such arbitrator entered upon the reference and after hearing the parties, made an award in favour of the appellant for a sum of Rs. 82,100. Such award was made on February 26, 1965. The arbitrator sent carbon copies of the award signed by him to both the parties. So far as the appellant is concerned, the arbitrator forwarded the signed copy of the award to the appellant along with a forwarding letter dated February 20(sic 26), 1965, indicating theren that he had signed and published the award on February 26, 1965, and the same was being sent for the information of the appellant. There is a dispute as regards the date when the said copy of the arbitration award and the forwarding letter dated February 26, 1965 of the arbitrator were received by the appellant.

3. The appellant made an application on May 20, 1966 for making the award a Rule of Court and for directing the arbitrator to file the award in court before the learned Subordinate Judge, Patna. The case of the appellant was that the said application was made by him under Section 17 of the Arbitration Act and not under Section 14 of the said Act. In the petition of objection to the said application for making the award a Rule of Court the plea of bar of limitation was not taken by the respondent and only at the stage of arguments, such contention of bar of limitation was raised by the respondent. The learned Subordinate Judge upheld the award as valid. The learned Subordinate Judge also rejected the plea of bar of limitation. Accordingly the miscellaneous case was allowed by

the learned Subordinate Judge and the award was made a Rule of Court.

4. Being aggrieved by such decision of the learned Subordinate Judge, the respondent Union of India preferred a Miscellaneous Appeal No. 194 of 1961 in the High Court at Patna. In the appeal, the bar of limitation was raised by the Union of India for challenging the correctness of the decision made by the learned Sub-Judge. It was contended on behalf of the applicant Shri Binod Bihari Singh that the application was not barred by limitation and in any event, it was a fit case where delay, even if any, in presenting the application for making the award a Rule of Court should be condoned. It was contended by the applicant that he had received the signed copy of the award along with forwarding letter of the arbitrator only in first week of May 1965 and as such the application made by him was not time barred. The High Court made a limited remand for answering tow issues framed by it by the learned Subordinate Judge by keeping the miscellaneous appeal pending. The issues directed to be decided by the learned Subordinate Judge are to the following effect :

> (i) When did the petitioner-respondent get notice of the making of the award from the arbitrator ?
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> (ii) Whether on the findings arrived at by the court below, the application itself is barred by limitation ?

5. After hearing the parties and considering the evidences and material on record the learned Subordinate Judge came to the finding that in view of the presumption that the registered cover containing the signed award and the said forwarding letter should reach the addressee (the appellant) in time, it should be held that such signed copy of the award and the forwarding letter must have reached by first week of March 1965.

6. The learned Subordinate Judge, however held that the case of the applicant, Shri Singh, was that he had filed the award in the court under the authority of the arbitrator. Although the arbitrator in his evidence had stated that he had not given any authority to the applicant for filing the award in court, but a she had sent the signed copy of the award to the applicant for appropriate action, it should be held that although no written authority was given by the arbitrator, an implied authority of the arbitrator was there. The learned Subordinate Judge further held that the signed copy of the award filed by the applicant should be treated as an original award and as such the prayer made by the applicant for calling for the award from the arbitrator was simply redundant and superfluous. The court was competent to pass appropriate order on the basis of the signed copy of the award since filed by the applicant. In such circumstances, the provisions of Article 119(a) of the Limitation Act was not attracted. The learned Subordinate Judge also held that in the aforesaid facts, the residuary Article, namely, Article 137 of the Limitation Act was attracted and the period of limitation being three years under the residuary Article, the application made by the applicant was not time barred. The learned Subordinate Judge further held that even if it was assumed that the case was governed by Article 119(a) of the Limitation Act, it was a fit case for condoning the delay in presenting the application beyond the period of limitation. In view of the conflicting decisions as to the applicability of the said Article 119(a) when a party to the agreement filed the original award and also in view of the fact that the arbitration proceeding was initiated as far back as in the year 1961 when the old Limitation Act was in force and the period of limitation for filing an application for making the award Rule of Court was ninety days under article 178 of the old Limitation Act and the new Limitation Act having come into force only with effect from January 1964 prescribing the period of limitation as thirty days, a litigant might bona fide think that the arbitration proceeding having been initiated in 1961, the old Limitation Act would be applicable. In the aforesaid facts, it

was a fit case where the delay, even if any, in presenting the application should be condoned under Section 5 of the Limitation Act.

7. Such findings on the aforesaid two issues were issues were taken into consideration by the High Court in disposing of the Miscellaneous Appeal No. 194 of 1967. It may be noted here that the High Court has come to the finding that the award was otherwise valid and there was no misconduct on the part of the arbitrator for which the award was liable to be set aside. The postal receipt and the acknowledgment receipt of the postal cover by the appellant since sent to the Court of the learned Subordinate Judge along with the responsibility for the loss of those papers could not be found with the record of the case and the responsibility for the loss of those papers could not be precisely fixed. The High Court, however took into consideration the account of postage expenses incurred in connection with the sending of the arbitration award (Ext.'B') to the appellant which showed that of February 27, 1965 the said award was sent under a registered cover. The stenographer of the arbitrator had also deposed to the effect that he had received the acknowledgment receipt of the registered letter from the applicant with in ten days from the date of despatch and he had handed over the same to the arbitrator. The High Court was of the view that the evidence of posting of the award and the deposition of the stenographer that he had received the acknowledgment receipt got corroboration form the documentary evidence and also from the facts and circumstances of the case. The High Court was of the view that the evidences of the arbitrator and the stenographer were more reliable than the oral evidence adduced on behalf of the applicant. The High Court also drew adverse inference against the applicant for not producing the registered cover which admittedly the applicant received from the arbitrator. Considering the fact that at the relevant time there was no disturbance in Calcutta during the period when the registered cover was addressed to the applicant, the High Court was of the view that it should be presumed that the said registered cover had reached by the fist week of March 1965. The High Court referred to a decision of this Court made in the case of Kumbha Mawji v. Dominion of India [AIR 1953 SC 313] wherein it has been held that mere handing over a signed copy of the award to a party does not mean that there was any implied authority form the arbitrator to file the award in Court on his behalf. Such authority form the arbitrator is required to be satisfactorily alleged and approved. The High Court has come to the finding that there was no implied authority form the arbitrator given to the applicant to file the same to make it a rule of court and the forwarding letter of the arbitrator had indicated that the same was sent only for information of the concerned party. Accordingly, the application made by the applicant must be held to be made under Section 14(2) of the Arbitration Act and Article 119(a) of the Limitation Act was attracted in the facts of the case. The contention of the applicant that the application presented by the applicant should be treated as an application under Section 17 of the Arbitration Act was not accepted by the High Court and the contention that the case was governed by the residuary Article 137 and not by Article 119(a) of the Limitation Act was also not accepted by the High Court. The High Court also did not accept the case of the applicant for condonation of delay under Section 5 of the Act in view of the fact that it was the positive case of the applicant that he had filed his application within three weeks from the date of receipt of the award. In such circumstances, the contention of the applicant that the was not aware of the change of the law of limitation as sought to be contended was completely contradictory to the firm stand taken by the applicant that he had filed the award within three weeks from the date of receipt of the award. The High Court was of the view that in the aforesaid facts, the case of the applicant that he was misled because of the provisions of the old Limitation Act, was not acceptable. The High Court also noted that the applicant had not consulted any lawyer after receiving the copy of the award and if the appellant had not cared to ascertain the period of limitation he was squarely to be blamed and there was no occasion to condone the delay by the court. The applicant also contended that the application

for making the award a Rule of Court having been served on the counsel of the opposite party, the objection to the said application should have been filed within a period of thirty days from the date of such service. When admittedly such objection had not been filed within thirty days, such objection must be held to be time barred and the application of the applicant should have been accepted by the court without considering any of the objections of the opposite party. The High Court rejected such contention. The High Court held that service of a copy of the application on a counsel of the opposite party who had appeared in an earlier proceeding under Section 8 of the Arbitration Act did not amount to service of notice of filing the award as contemplated by the Arbitration Act and Article 119(b) of the Limitation Act. The High Court held that the award was actually filed in court on June 12, 1965 by the arbitrator and on June 20, 1965 the court directed that the opposite party should be informed about the filing of the award and objection petition was filed within thirty days form the date of such direction. Accordingly, there was no occasion to hold that the objection petition was itself barred by limitation. In that view of the matter, the High Court allowed this appeal, set aside the order passed by the learned Subordinate Judge and dismissed the application made by the applicant to make the said award a Rule of Court. The Cross-objection filed by the applicant for future and pendente lite interest on the sum awarded was also dismissed.

8. Mr. Ranjit Kumar, learned counsel for the appellant has very strenuously contended that the plea of limitation had never been taken by the objector-respondent either in the petition of objection or even in the two applications for amending the objection petition. It was only during the argument, a plea of limitation was vaguely raised. In such circumstances, the High Court was not justified in allowing the parties to raise the plea of limitation and sending the aforesaid two issues to the learned Subordinate Judge for deciding and reporting back to the High Court. Mr. Ranjit Kumar has also contended that unfortunately the appellant could not file the registered cover but it was specifically stated by the appellant that the registered cover was received by him only in the first week of May. In the absence of any document showing such service of the copy of the award along with the forwarding letter of the arbitrator, the High Court was not justified in proceeding on the presumption that the registered cover must have been received within reasonable time, namely, buy first week of March 1965. He has contended that the evidence adduced by the arbitrator and his stenographer should not have been accepted by the High Court for coming to the finding that the registered cover had in fact been sent on February 27, 1965. Mr. Kumar has contended that in the instant case, the award made by the arbitrator who was the Dy. General Manager of the Eastern Railway, was otherwise found to be valid and the same was not liable to be discarded on account of the misconduct of the arbitrator. It is only unfortunate that the application of the said award has not been made a Rule of Court and the application has been set aside only on the ground of limitation. Referring to a decision of this Court made in the case of Madras Port Trust v. Hymanshu International((1979) 4 SCC 176: AIR 1979 SC 1144) wherein this Court has held that resort to plea of limitation by a government or public authority to defeat a just claim of a citizen is not fair and such practice should be depreciated, Mr. Kumar has submitted that a belated plea of bar of limitation should not be allowed to be raised to defeat a just claim of the appellant whose contract had been unduly terminated to his serious loss and prejudice. He has also submitted that the original applicant has died and it will cause serious hardship to the heirs of the original applicant to refund the awarded sum since received by the applicant. Mr. Ranjit Kumar has also contended that it is an admitted case of the parties that the carbon copy of the signed award had been sent to the applicant and such copy had been filed by the applicant to make the award a Rule of Court. Although the applicant in his application has stated that the direction should be given to the arbitrator to produce the award in court, such statement, in the facts of the case, should not have weighed with the court because the original ward itself had been filed by the applicant. In the aforesaid circumstances, the

provision of Section 14 of the Arbitration Act was not attracted and the case being governed by section 17 of the Arbitration Act, the limitation for presenting the application for making the award filed by the applicant a Rule of Court was not referable to Article 119(a) of the Limitation Act but such case was squarely governed by article 137. Mr. Ranjit Kumar has further submitted that even if such contention is not accepted by this Court, in the special facts and circumstances of the case, the delay in presenting the application should be condoned. In this connection, he has referred to the decisions of this Court in G. Ramegowda v. Special Land Acquisition Officer, Bangalore ((1988) 2 SCC 142: AIR 1988 SC 897) and in Banarsi Das v. Seth Kanshi Ram ((1964) 1 SCR 316: AIR 1963 SC 1165) wherein this Court indicated that 'sufficient cause' appearing in Section 5 of the Limitation Act should be considered with a pragmatic approach and the court should be slow in shutting the door of justice to a litigant on the score of limitation to defeat a just claim because a litigant does not stand to gain by coming late to a court and then suffer a prejudice by making his case barred by limitation.

9. The learned counsel appearing for the respondent has, however, disputed the contentions made by Mr. Kumar and has contended that the case is squarely governed by Article 119(a) of the Limitation Act and the application presented by the applicant cannot be held to be an application made under Section 17 of the Arbitration Act. In the instant case, there was no express authority form the arbitrator to file the award for making it a Rule of Court and the decision of this Court in Kumbha Mawji case is squarely applicable. The learned counsel has further contended that the appellant did not come with a clean hand and he made a false statement and stuck to such false case that he had received the signed copy of the award in the first week of May 1965. In the aforesaid circumstances, the High Court was justified in not accepting the prayer for condonation of delay. The High Court has clearly come to the finding that the case of the appellant was untrue and he had received the copy of the award some time in the first week of March 1965. The learned counsel has submitted that the High Court has given very cogent reasons for allowing the appeal and setting aside the decision of the learned Subordinate Judge in making the said award a Rule of Court and interference by this Court is not called for.

10. After giving our anxious consideration to the facts and circumstances of the case, we do not find any reason to interfere with the decision of the High Court. In our view, the High Court has rightly held that the application made by the appellant was an application for directing the arbitrator to file the award in Court so that such award is made a Rule of Court. In this case, there was no express authority given by the arbitrator to the applicant to file the award to make it a Rule of Court although a signed copy of the award was sent to the applicant. The forwarding letter clearly indicates that the award was sent for information. Accordingly, the decision of this Court made in Kumbha Mawji case is applicable. The High Court has given very cogent reasons which, we have indicated in some details, for not accepting the case of the appellant that he had received a signed copy of the award and the forwarding letter some time in May 1965 and we do not find any reason to take a contrary view. The applicant has not produced the registered cover received by him which would have established the actual date of the receipt of the postal cover by the applicant convincingly. We are also not inclined to hold that the delay in presenting the application deserves to be condoned in the facts and circumstances of the case. The appellant has taken a very bold stand that he had received the signed copy of the award only in May 1965 and only within three weeks of such receipt, he had filed the application. On the face of such statement, the plea of ignorance of the change in the Limitation Act need not be considered and accepted. As the case sought to be made out by the appellant that he had received the signed copy of the award only in May 1965 has not been accepted, and we may add, very rightly by the court, the question of condonation of delay could not and did not arise. In our view, it is not at all a fit case where in the anxiety to render

justice to a party so that a just cause is not defeated, a pragmatic view should be taken by the court in considering the sufficient cause for condonation of delay under Section 5 of the Limitation Act. Coming to the contention of Mr. Ranjit Kumar that to defeat just claim of the appellant, the ignoble plea of bar of limitation sought to be raised by the respondent should not be taken into consideration, we may indicate that it may not be desirable for the government or the public authority to take shelter under the plea of limitation to defeat a just claim of a citizen. But if a claim is barred by limitation and such plea is raised specifically the court cannot straightway dismiss the plea simply on the score that such plea is ignoble. A bar of limitation may be considered even if such plea has not been specifically raised. Limitation Act is a statute of repose and bar of a cause of action in a court of law, which is otherwise lawful and valid, because of undesirable lapse of time as contained in the Limitation Act, has been made on a well accepted principle of jurisprudence and public policy. That apart, the appellant, in this case, having taken a false stand on the question of receipt of the signed copy of the award to get rid of the bar of limitation, should not be encouraged to get any premium on the falsehood on his part by rejecting the plea of limitation raised by the respondent. We may also indicate here that the High Court is justified in its finding that the objection petition has been filed within time by the respondent and the service of the copy of the application made by the appellant on the counsel of the respondent who had appeared in an earlier proceeding did not constitute a notice as contemplated under Article 119(b) of the Limitation Act. In the aforesaid circumstances, the appeal must fail and is dismissed but we make no order as to costs.

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