

SUPREME COURT OF INDIA

F.C.I. Represented By Managing Director

Vs.

A.M. Ahmed & Co. Through Md

(S V Manohar and B Kirpal JJ.)

13.11.1998

ORDER

1. Leave granted.

2. The arbitration award, in the present case, pertaining to the disputes between the appellants and the respondents, was published on 10-4-1992 and was filed in the Court of Subordinate Judge at Tuticorin on 30-6-1992. The notice of filing of this award was served on the appellants on 18-7-1992.

3. The appellants moved the High Court contending that the Subordinate Court at Tuticorin was a court without jurisdiction for the purposes of filing the award. Ultimately, the Division Bench of the Madras High Court, by its judgment and order dated 23-3-1993, held that since the arbitrator had been appointed under the orders of the High Court, no other court had any jurisdiction over the arbitration or in respect of the award therein. The High Court, however, in addition, said that in any event, under Section 24 of the CPC, the Court had the power to order withdrawal of the proceedings from the Subordinate Court at Tuticorin to the High Court. The High Court, thereupon, directed that the award and the proceedings in the Subordinate Court, Tuticorin be withdrawn from that court to the High Court for disposal in accordance with law. Thereafter on 2-9-1993, the appellants received a notice of transfer of the said proceeding from the High Court. The exact contents of the notice are not before us. However, the notice pertains to the transfer of the award to the High Court and

requires the appellant to pay additional court fees.

4. The appellants have filed objections to the award in a petition to set aside the award, on 29-9-1993. By the impugned judgment and order, the High Court has held that since the petition to set aside the award has been filed more than 30 days after the date of service of the notice on the appellants, the petition/objections are barred by limitation.

5. If the notice of filing of the award is taken as the notice served by the Subordinate Court at Tuticorin, obviously, the objections have been filed more than 30 days after the notice. However, in the present case, the Division Bench in its judgment of 23-3-1993 has clearly held that the Subordinate Court at Tuticorin had no jurisdiction to take the award on file or to consider the application for a decree in terms of the award. Thereafter, the High Court has also referred to Section 24 of the CPC and directed transfer of the award and proceedings to the High Court. The order under Section 24 has been passed because the High Court was of the view that the Subordinate Court at Tuticorin has no jurisdiction. In this view of the matter, any notice issued by the Subordinate Court at Tuticorin is a notice issued by a court without jurisdiction and is not a valid notice for the purpose of Article 119(a) of the Limitation Act.

6. Under Section 31 of the Arbitration Act, 1940, an award may be filed in any court having jurisdiction in the matter to which the reference relates. Under Sub-section (4) of Section 31, where in any reference any application under the Arbitration Act has been made in a court competent to entertain it, that court alone has jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference. The High Court has held that the Subordinate Court at Tuticorin has no jurisdiction in view of the earlier orders of the High Court. The notice of the Subordinate Court is, therefore, invalid.

7. The appeals are, therefore, allowed and the impugned order of the High Court is set aside and the matters are remitted to the Division Bench of the High Court for disposal of objections on merit.

8. Since a considerable time has been spent already in litigating the matter after the publication of the award, if the parties make an application to the High Court for expeditious hearing, the High Court may consider that application sympathetically.