

SUPREME COURT OF INDIA

Union of India

Vs.

Neelam Engineering & Contruction Co.

C.A.No.2283 of 2010

(Altamas Kabir and Cyriac Joseph JJ.)

10.03.2010

JUDGEMENT

Altamas Kabir, J.

1. Leave granted.

2. An Agreement No.GE/CHD-61/88-89 was entered into between the Appellant, Union of India, and the Respondent, M/s Neelam Engineering & Construction Company, for providing additional security lighting arrangement in various zones at TBRL Range, Ramgarh, near Chandigarh. Certain disputes arose between the Appellants and the Respondent which were referred to the arbitration of Col. T.S. Plaha, appointed as the sole Arbitrator for adjudication of the said disputes between the parties. The sole Arbitrator made his Award on 27th January, 1996, for a sum of Rs.1,70,020/-, together with interest at the rate of 18% per annum from 31st December, 1991, till the date of decree or payment, whichever was earlier, in favour of the Respondent.

“On 27th February, 1996, the Respondent filed a petition in the Civil Court under Sections 14(2), 17 and 29 of the Arbitration Act, 1940, for making the Award dated 27th January, 1996, a Rule of Court.”

3. After an interval of about two years, on 3rd January, 1998, the Appellants filed an objection petition under Sections 30 and 33 of the Arbitration Act, 1940, for setting aside the Award published by the sole Arbitrator, on the ground that the Arbitrator had misconducted himself while giving his finding on the claims of the parties.

4. On 18th February, 1998, the Court directed the Arbitrator to file the Award in Court. When the matter was listed for hearing on 27th May, 1998, the Court recorded that reply had been received to the objection petition which had been filed and that the original arbitration file had been received from the Arbitrator. The case was, therefore, adjourned till 27th July, 1998, for filing rejoinder. After considering the application made by the Respondent under

Sections 14(2), 17 and 29 of the Arbitration Act, 1940, and the objection filed by the Appellant, the Civil Court rejected the said objection by holding that since the objection had been filed prior to filing of the Award, the same was premature and could not be taken note of and further that the objection had been filed beyond the period of limitation as prescribed under Article 119 of the Limitation Act. The Civil Court accordingly allowed the Appellants' application under Sections 14(2), 17 and 29 of the Arbitration Act, 1940, and ordered that the Award dated 27th January, 1996, be made a Rule of Court, and granted interest at the rate of 18% per annum thereupon from the date of order till realization.

5. Aggrieved by the said order of the learned Civil Judge, Junior Division, Chandigarh, the Appellants herein filed an appeal against the same before the learned Additional District Judge, Chandigarh, being C.R. No.52 dated 8th August, 2003, under Section 39 of the aforesaid Act.

6. The submissions which had been made before the learned Civil Judge, Junior Division, Chandigarh, were reiterated in the Appeal. It was contended that while the Award was passed by the Arbitrator on 22nd January, 1996, the petition under Sections 14(2), 17 and 29 of the Arbitration Act, 1940, was filed by the Respondent Company on 27th February, 1996. Directions were, thereafter, given by the Trial Court to the Arbitrator to produce the Award in Court and the same appears to have been sent by the learned Arbitrator by post and was received by the Trial Court on 18th February, 1998. It also appears that notice was issued to both the parties, but ultimately on account of inadvertence, on subsequent dates it was recorded that the Award had not been received. Ultimately, on 27th May, 1998, the Trial Court recorded that the original arbitration file had been received and the case was adjourned till 27th July, 1998, for filing rejoinder. The Appeal Court, therefore, held that legally and technically both the parties came to know about the filing of the Award in Court for the first time on 27th May, 1998, although, the Award had been received through the post in the Court on 18th February, 1998. Having regard to the above, 27th May, 1998, was held to be the date when the parties had notice of filing of the Award. It was also observed that under Article 119 of the Limitation Act, 1963, a party to an Arbitration Award could file objection, with a prayer to set aside or modify the Award, within 30 days from the date of notice of filing of the Award in Court.

“The Appeal Court also recorded the fact that in this case without waiting for the filing of the Award in Court, the Appellants herein filed their objections to the Award on 3rd January, 1998, before the Award had been received in the Court and the parties had notice thereof. It was accordingly held that it could not be said that the objections were barred by limitation, but they were in fact pre- mature and could not, therefore, be taken note of.

In fact, during the course of arguments, it was also the case of the Respondent Company that the objection filed on behalf of the Appellants could not be held to be barred by limitation, but was pre-mature and the Appellants were not competent to file the said objection before the Award was received in the Court.”

7. Aggrieved by the order of the Appeal Court, the Appellants filed a Civil Revision in the High Court. However, the said Civil Revision was dismissed by the High Court as per the order impugned in this appeal.

8. Learned Additional Solicitor General, Ms. Indira Jaising, submitted that both the Trial Court and the High Court erred in holding that the objection filed on behalf of the Appellants under Sections 30 and 33 of the Arbitration Act, 1940, could not be taken note of, having been filed even before notice of filing of the Award had been issued. Ms. Jaising contended that since the objection was already on record, the same ought to have been taken into consideration while considering the respondent's application under Section 14(2) of the above Act for making the Award a Rule of Court, instead of holding the same to be premature and disregarding the same. Ms. Jaising submitted that in order to do complete justice to the parties, the Trial Court should not have relied upon technicalities, which only served to defeat the very purpose of Sections 30 and 33 of the above Act. Ms. Jaising submitted that this was not a case of negligence on the part of the Appellants, but that the Appellants had acted promptly on receiving a copy of the Award.

9. Ms. Jaising submitted that the consequence of the order passed by the learned Trial Judge, as endorsed by the Appeal Court and the High Court, will have far reaching consequences since under the Award the Appellants are to pay the awarded amount to the Respondent together with interest at the rate of 18% per annum from 31st December, 1991 upto the date of decree or payment, whichever was earlier.

10. Ms. Jaising submitted that since notice had not been issued to the parties upon filing of the Award in Court and Article 119 of the Limitation Act, 1963, provided for a period of 30 days from the date of service of notice to file an application for setting aside an Award, it could not be contended that the objection was barred since notice had not at all been issued to the parties after filing of the Award. Ms. Jaising submitted that the finding of the Trial Court as also that of the High Court that the object of notice was merely to make parties aware of the filing of the Award and that the said object had been satisfied, since on 27th May, 1998, the parties had knowledge of the filing of the Award in Court, was contrary to the aforesaid provisions of the Limitation Act and was liable to be set aside. Ms. Jaising submitted that the notice contemplated under Article 119 of the Limitation Act was not meant to be oral, particularly when Section 14(2) of the Arbitration Act, 1940, made it absolutely clear that upon the Arbitration Award being filed in Court, the Court is required to give notice to the parties of the filing of the Award. Ms. Jaising submitted that the language of Section 14(2) was mandatory and cast a duty upon the Court to give notice to the parties regarding the filing of the Award so that objection, if any, thereto could be taken as provided under the Act. Ms. Jaising submitted that not having done so, the High Court could not have held that the objection filed under Section 30 and 33 of the Arbitration Act, 1940, was barred by limitation.

11. Appearing on behalf of the respondent, Mr. Mahabir Singh, learned Senior Advocate, submitted that service of notice is only to inform the parties regarding filing of the Award in Court and it was not mandatory that the same would have to be in writing. In the absence of any prescribed mode of service of notice, even oral notice would be sufficient. In support of his submission, Mr. Singh referred to the judgment of this Court in *East India Hotels Ltd. vs. Agra Development Authority* [(2001) 4 SCC 175], wherein it was held that service of notice was an essential requirement under Section 14(2) of the aforesaid Act and that mere recording of the presence of the parties in Court would not amount to service of notice. This Court, in fact, observed that when the Trial Court had recorded that the Award had been filed by the Umpire and directed that the counsel for parties be informed and counsel for both the parties had in due course taken note of the said order by endorsing the proceeding sheet, in such case the provisions of Section 14(2) would have been held to be duly complied with. It was also held that notice need not be issued in writing, but could also be oral, but that the fact of filing of the Award by the Umpire had to be informed to the learned counsel for the parties and was to be noted by them. In such a situation, it was held that the essential requirement of Sub-section (2) of Section 14 had been complied with, inasmuch as, intimation of filing of the Award had been given to the parties.

12. Mr. Mahabir Singh then referred to the decision of this Court in *Nilkantha Shidramappa Ningashetti vs. Kashinath Somanna Ningashetti and others*¹, wherein the question of notice under Section 14(2) of the 1940 Act fell for consideration together with Article 158 of the Indian Limitation Act, 1908, relating to filing of objections against the Award of the Arbitrator.

“While dealing with the said question, a Bench of four Judges of this Court held that communication by the Court to the parties or through counsel of the information that an Award had been filed was sufficient compliance with the requirements of Sub-Section (2) of Section 14 of the 1940 Act with respect to the giving of notice to the parties concerned about the filing of the Award. This Court went on to say that notice did not necessarily contemplate communication in writing.

The expression "give notice" in Sub-Section (2) of Section 14 of the 1940 Act simply means giving intimation of the filing of the Award. Such intimation need not be given in writing and could be communicated orally and that the same would amount to service of notice when no particular mode of service was prescribed.”

13. Mr. Mahabir Singh also referred to the decision of this Court in *Secretary to Government of Karnataka & Anr. vs. V. Harishbabu*², wherein also it was emphasized that in the absence of any formal mode of service, notice need not be in writing and may also be given orally.

“What was essential was that notice or intimation or a communication of filing of the Award would have to be issued by the Court to the parties and served upon them. It was also held that the period of limitation for filing objections seeking the setting aside of an arbitration Award commenced from the date of service of notice issued by

the Court upon the parties regarding the filing of the Award under Section 14(2) of the Act. The issuance of such notice by the Court is a mandatory requirement and limitation would begin only after notice of the filing of the Award is given by the Court.”

14. Mr. Mahabir Singh, learned counsel, referred to a decision of the Bombay High Court in *Ratanji Virpal & Co. vs. Dhirajlal Manilal*³, where a similar question had fallen for consideration of the learned Judge. While considering the provisions of Sections 14 and 31 of the Arbitration Act, 1940, the Court held that till an Award was filed in Court, no application could be filed for setting aside the same. While holding as above, the High Court took into consideration the amendment in Schedule I of the Limitation Act, 1908, where Article 158 was substituted with a new Article which provided that under the 1940 Act, to set aside an Award or to get an Award remitted for reconsideration, the period of limitation is 30 days from the date of service of notice of filing of the Award. The Bombay High Court held that in amending the Limitation Act, the legislature contemplated that an application for setting aside the Award could only be made after the date of service of notice of filing of the Award and, therefore, the limitation of 30 days is fixed after that particular date. The Court ultimately held that it was not competent for a party to the arbitration Award to file a petition for setting aside the Award till the Award had been filed. Mr. Singh submitted that having regard to the views expressed in the aforesaid judgment and having particular regard to the provisions of Article 119 of the Limitation Act, 1963, where limitation for making an application under the 1940 Act for setting aside an Award has been fixed as 30 days from the date of service of notice of the filing of the Award, the question of filing an objection under Sections 30 and 33 of the said Act prior to the filing of the Award, did not arise. Mr. Singh submitted that the appeal was without merit and was liable to be dismissed.

15. We have carefully considered the submissions made on behalf of the Appellants and though they appear to be attractive, we are unable to accept the same.

16. In view of Section 19 of the Limitation Act, 1963, the period of limitation for filing an application commences only after the date of service of the notice of the making of the Award.

“The *raison d'etre* for filing objection under Sections 30 and 33 of the Arbitration Act, 1940, is the Award which has to be filed in Court either by the Arbitrator or at the instance of any of the parties requiring the Arbitrator to do so. Even the Court may direct the Arbitrator to file his Award on the application made by any of the parties thereto. Filing an objection against something which did not exist on the date when the objection was filed is unacceptable and must be rejected. All the decisions cited by Mr. Mahabir Singh take a similar view. The objections filed under Sections 30 and 33 of the Arbitration Act, 1940, by the Appellants herein, therefore, have been rightly held to be pre-mature and could not be treated to be an objection filed after the filing of the Award. While the original Award was filed in Court on 27th May, 1998, the objections filed under Sections 30 and 33 of the Arbitration Act, 1940, for setting

aside the Award was filed on 3rd January, 1998. There was, therefore, no occasion for such an objection to be filed in terms of Article 119 of the Limitation Act, 1963.”

17. The objection filed by the Appellant under Sections 30 and 33 of the Arbitration Act, 1940, for setting aside the Award on 3rd January, 1998, was obviously on account of the fact that the Respondent had filed a petition in the Civil Court on 27th February, 1996, for making the Award a Rule of Court. At the time when the objection was filed, it was noted on 18th February, 1998, that the Award had not been received in Court and notice was issued to the Arbitrator to file the original Award in pursuance whereof the original Award was filed in Court on 27th May, 1998.

18. It is unfortunate that although the Appellants filed their objection under Sections 30 and 33 of the Arbitration Act, 1940, the same was done prematurely even before the filing of the Award and such objection could not be treated as a valid objection under Sections 30 and 33 of the Act in view of the provisions of Article 119 of the Limitation Act, 1963.

19. We, therefore, have no option, but to dismiss the appeal. The appeal is, accordingly, dismissed, but without any order as to costs.

¹(1962) 2 SCR 551

²(1996) 5 SCC 400

³AIR 1942 Bom. 101