

SUPREME COURT OF INDIA

Union of India & Anr.

Vs.

Deepak Electric & Trading Co.

C.A.No.1734 of 2006

(P.Sathasivam and A.K.Patnaik,JJ.,)

20.10.2011

JUDGMENT

A.K.Patnaik,J.,

This is an appeal against the order dated 03.01.2003 of the Division Bench of the High Court of Delhi in FAO(OS) No. 551 of 2001 (for short 'the impugned order').

2. The facts very briefly are that the appellants and the respondent No.1 entered into a contract for construction of PMT Complex for NSG at Manesar. The contract contained an arbitration clause for resolving disputes between the parties. As disputes arose between the parties, the respondent No.1 invoked the arbitration clause and an arbitrator was appointed. The arbitrator published his award on 17.06.1996 and on 08.07.1996, the respondents filed a petition in the High Court of Delhi under Sections 14 and 17 of the Arbitration Act, 1940 (for short 'the Act') for filing the award and for making the award a rule of the court and for passing a decree in terms of the award. The petition was registered as Suit No.1673-A/1996. After the award was filed, notice of the filing of the award was directed to be issued to the parties on 13.01.1997. Notice was served on the Union of India, but notice could not be served on the Executive Engineer, C.P.W.D. A letter dated 21.03.1997 was addressed by the Executive Engineer to the Registrar of the Delhi High Court saying that he had not received a formal notice from the court. On 17.07.1997, fresh notice was again directed to be issued to the Executive Engineer.

3. While service of notice on the Executive Engineer was awaited, Union of India filed objections to the award of the arbitrator numbered as IA 9423 of 1997. The respondent No.1 contended that the objections filed by the Union of India to the award of the arbitrator were not within the period of limitation, i.e. 30 days from the date of service of the notice of filing of the award. The appellants, on the other hand, contended that the Executive Engineer had not been served with the notice of filing of award and, therefore, limitation had not been begun to run. The learned Single Judge of the High Court held that under Section 79 of the Code of Civil Procedure (for short 'the CPC') when suits are filed against the Central Government, only the Union of India has to be arrayed as a party and the Executive Engineer

by no stretch of imagination can be taken to be a party in such proceedings. The learned Single Judge further held that as the Union of India had filed objections, the Court was only considering the objections of the Union of India and the Union of India had been served with a notice of filing of the award in November, 1996. The learned Single Judge, therefore, held that the objections of the Union of India to the award were time barred and made the award a rule of the court.

4. Aggrieved, the appellants filed FAO(OS) No. 551 of 2001 before the Division Bench of the High Court. After hearing learned counsel for the parties, the Division Bench held in the impugned order that in *Union of India vs. Surinder Kumar*¹ the Delhi High Court has already taken a view that it was necessary that a notice of filing of the award has to be served on the Executive Engineer as it was the Executive Engineer who on behalf of the Union of India was looking after the proceedings before the arbitrator. The Division Bench, however, held that as the learned counsel on behalf of the Executive Engineer had inspected the record of the case in the court on 21.05.1997, the Executive Engineer will be deemed to have acquired knowledge of the filing of the award on 21.05.1997 and the period of 30 days counted from 21.05.1997 had expired by the time objections were filed by the Union of India and the objections to the award were time barred. Accordingly, the Division Bench of the High Court dismissed the appeal of the appellants by the impugned order.

5. We have heard Mr. A.S. Chandhok, learned Additional Solicitor General for the appellants. No one has appeared for the respondents despite notice.

6. The only question, which we have to decide in this case, is whether the Division Bench of the High Court has taken a correct view in the impugned order that the objections to the award were time barred. Article 119 of the Schedule to the Limitation Act, 1963, which prescribes the period of limitation for filing applications under the Arbitration Act, 1940, is quoted hereinbelow:

" Description of Period of Time from which application limitation period begins to run

119. Under the Arbitration Act, 1940 (10 of 1940)-

(a) for the filing in Thirty The date of service court of an award. days of the notice of the making of the award.

(b) for setting aside an award or getting an Thirty The date of service award remitted for days of the notice of the reconsideration filing of the award."

It will be clear from clause (b) of article 119 of the Schedule to the Limitation Act, 1963 that an application for setting aside of an award has to be filed within 30 days from "the date of service of the notice of the filing of the award". Thus, the starting point of limitation is the date of service of the notice of the filing of the award and not the date of knowledge of the filing of the award.

7. In support of this view that the starting point of limitation for filing objections to an award under the Act is the date of service of notice of the filing of the award, we may cite an authority. In *Deo Narain Choudhury vs. Shree Narain Choudhary*² the facts were that on 16.07.1996 the Court sent a notice to the parties about filing of the award and the notice was received by the respondent on 25.07.1996 and the respondent filed his objections to the award on 21.08.1996. The appellant contended that the objections had been filed beyond the period of limitation as the respondent had received the notice from the arbitrator that the award had been filed and the respondent had also filed a caveat on 11.06.1996. This Court held that mere filing of the caveat did not start the period of limitation and as the notice was received by the respondent on 25.07.1996, the period of limitation started running from that date and, therefore, the objections filed on 21.08.1996 were within the period of 30 days as provided by article 119 of the Limitation Act, 1963.

8. The Division Bench of the High Court has taken a view in the impugned order that as the Executive Engineer was looking after the arbitration proceedings, he was the one who could have filed the objections to the award on behalf of the Union of India and thus notice of the filing of the award on the Executive Engineer was mandatory and the starting point of limitation for filing the application for setting aside the award would be the date of service of notice on the Executive Engineer as provided in article 119(b) of the Schedule to the Limitation Act, 1963. The High Court, therefore, was not right in coming to the conclusion that as the Executive Engineer had knowledge of the filing of the award on 21.05.1997 and as the objections were filed beyond the period of 30 days counted from 21.05.1997, the objections to the award were barred by time.

9. We, accordingly, set aside the order of the learned Single Judge as well as the impugned order of the Division Bench of the High Court and remand the matter to the Single Judge of the High Court for fresh decision in accordance with law. The appeal is allowed with no order as to costs.

Judgment Referred.

¹61 (1996) DLT 42 (D.B.)

²(2008) 8 SCC 0626