courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 07/11/2025

(2002) 01 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3772 of 2001

State of Haryana APPELLANT

Vs

Krishan Chand RESPONDENT

Date of Decision: Jan. 28, 2002

Acts Referred:

- Arbitration Act, 1940 - Section 28(3)

Citation: AIR 2002 P&H 306 : (2002) 2 ILR (P&H) 495 : (2002) 2 RCR(Civil) 788

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: N.K. Joshi, for the Appellant;

Final Decision: Dismissed

Judgement

M.M. Kumar, J.
This is a revision petition directed against the judgment dated 30.11.2000 passed by the Additional District Judge, Rohtak dismiss ing the appeal of the petitioners in which the judgment and decree dated 3.5.1999 passed by the Additional Civil Judge (Senior Division), Rohtak was challenged. The Additional Civil Judge vide his judgment and decree dated 3.5.1999 had dismissed the objections of the petitioners and made the award dated 28.2.1994 passed by the arbitra tor as rule of the Court. The Additional District Judge dismissed the appeal by recording the following order:

"No doubt that the award was given by the arbitrator beyond the prescribed period of four months. But the respondents have been taking part in such hearings and proceedings without any objection. Long participation and acquiescence in the proceedings preclude such a party from contending that the proceedings were without jurisdiction. In Prasun Roy Vs. Calcutta Metropolitan Development Authority and Another, it was held that where a party is aware that by reason of some disability the matter is legally incapable of being submitted to arbitration participants in the arbitration proceeding without protest and fully avails of the entire arbitration proceedings cannot be permitted to challenge such

arbitration proceedings at a subsequent stage on finding that the award has gone against him. Long participation and acquiescence in the proceedings preclude such a party from contending that the proceedings were without jurisdiction.

To the similar effect it was held in N. Chellappan Vs. Secretary, Kerala State Electricity Board and Another, . Thus, I replying upon the case law referred to above, hold that the award does not become invalid simply because it was giyen beyond the prescribed period as the respondents remained participating in the proceedings and hearing without any objection."

2. Shri Naresh K. Joshi, learned State Counsel appearing for the petitioners has argued that in view of provisions of Section 3 read with Section 28 and Clause 3 of the First Schedule of the Arbitration Act, 1940 (for brevity, the Act) the arbitrator has lost its jurisdiction to announce the award after the expiry of period of 4 months. According to the learned counsel, (he Arbitrator was appointed on 26.7.1993 and he entered on the reference on 29.9.1993. It has been pointed out that the arguments were concluded before the arbitrator on 23.12.1993 and the next dated fixed was 30.12.1993 for announcement of the award. The case was further adjourned to 28.2.1994 for announcing the award. The arbitrator announced the award on 28.2.1994. The learned counsel submitted that time limit prescribed u/s 3 read with Section 28 and Clause 3 of the Schedule I of the Act the period of 4 months had exceeded and the award could not be announced by the Arbitrator and, therefore, the award is without jurisdiction. He has further argued that the parties have not expressly consented for extension of time limit. According to the learned counsel, there is no participation by the parties after the arguments were concluded on 23.12.1993 and, therefore, it cannot be concluded that the parties have given consent impliedly. In support of his, argument, the learned counsel has relied on a judgment of the Supreme Court in the case of State of Punjab Vs. Hardyal, .

3. In order to analyse the contention pf the learned counsel, it is appropriate to make a reference to the provisions of Section 3, Clause 3 of Schedule 1, and Section 28 of the Act, which read as under:

"3. An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.

Clause 3 of Schedule 1. The arbitrators shall mate their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the court may allow.

28(1) The court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.

(2) Any provision in an arbitration agreement whereby the arbitrator or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect."

These provisions came up for consideration in the case of Hari Krishna Wattal Vs. Vaikunth Nath Pandya (Dead) by Lrs. and Another, and Their Lordships observed that the power to enlarge time occurs only after he is called upon to proceed with the arbitration or he enters upon the reference, hence, it is clear that if the parties agree to the enlargement of time after the arbitrator has entered on the reference, the arbitrator has the power to enlarge it in accordance with the mutual agreement or consent of the parties. That such a consent must be a post-reference consent, is also clear from Section 28(2) which renders null and void a provision in the original agreement to that effect. In a sense where a provision is made in the original agreement that the arbitrator may enlarge the time, such a provision always implies mutual consent for enlargement but such mutual consent initially expressed in the original agreement does not save the provision from being void. It is, therefore, clear that the arbitrator gets the jurisdiction to enlarge the time of making the award only in a case where after entering on the arbitration the parties to the arbitration agreement consent to such enlargement of time." 4. The judgment in the case of H.K. Wattal''s case (supra) came up for consideration before the Supreme Court in Hardayal''s case (supra). The pointed question considered in Hardayal''s case (supra) was as to what would be the effect if the parties to the arbitration took part in the proceedings before the arbitrator even after the expiry of 4 months, that is, the period prescribed for giving the award. The answer to the question has been recorded by Their Lordships in the following words:

"Once we hold that the law precludes parties from extending time after the matter has been referred to the arbitrator, it will be contradiction in terms to hold that the same result can be brought about by the conduct of the parties. The age long established principle is that there can be no estoppel against a statute. It is true that the time to be fixed for making the award was initially one of agreement between the parties but it does not follow that in the face of a clear prohibition by law that the time fixed under Clause3 of the Schedule can only be extended by the court and not by the parties at any stage, it still remains a matter of agreement and the rule of estoppel operates. It need be hardly emphasized that the Act has injuncted the arbitrator to give an award within the prescribed period of four months unless the same is extended by the court. The arbitrator has no jurisdiction to make an award after the fixed time. If the award made beyond the time is invalid the parties are not estopped by their conduct from challenging the award on the ground that it was made beyond time merely because of their having participated in the proceedings before the "arbitrator" after the expiry of the prescribed period.

The policy of law seems to be that the arbitration proceedings should not be unduly prolonged. The arbitrator therefore has to give the award within the time prescribed or such extended time as the court concerned may in its discretion extend and the court alone has been given the power to extend time for giving the award. As observed earlier,

the court has got the power to extend time even after the award has been given or after the expiry of the period prescribed for the award. But the court has to exercise its discretion in a judicial manner. The High Court in our opinion was justified in taking the view that it did. This power however, can be exercised even by the appellate court. The present appeal has remained pending in this Court since 1970. No useful purpose will be served in remanding the case to the trial court for deciding whether the time should be enlarged in the circumstances of this case. In view of the policy of law that the arbitration proceedings should not be unduly prolonged and in view of the fact that the parties have been taking willing part in the proceedings before the arbitrator without a demur, this will be a fit case, in our opinion, for the extension of time. We according extend the time of giving the award and the award will be deemed to have been given in time. " (emphasis mine) A perusal of the above paras in Hardayal"s case (supra) itself shows that even the appellate Court could exercise the power to extend time. The policy of law as noticed by their Lordships is that arbitration proceedings should not be unduly prolonged. In G.S.D. Construction v. State of Bihar and Ors. AIR 1999 S.C. 1576 the Su preme Court held that the time could be extended even by the Supreme Court at the hearing of a civil appeal or a Special Leave Petition. While relying on Hardayal"s case (supra) Their Lordships observed as under:

"It is contended on behalf of the appellant that if there was no deemed extension as sought to be pleaded then both the Subordinate Judge as well as the High Court were empowered to enlarge time even when the award had been made and on their failure to do so, it is pleaded that this Court may intervene to do the needful. Reliance has been placed on a decision of this Court in State of Punjab Vs. Hardyal, wherein it has been held that when remanding the case to the High Court for deciding other issues, this Court can enlarge the time for making the award. On behalf of the Respondent, it has not been seriously disputed that such power is there and there is no reason spelled out in the pleading of the parties and the judgments of the Courts below as to why such time be not enlarged by this Court. Rather, it has been impressed that in the event of the matter being remitted back for further consideration as to whether the award need be made the Rule of the Court time may be enlarged.

Agreeing with the submissions made by both counsels, we enlarge the time till the date the award was actually made by the arbitrator and modify the impugned order of the High Court to this extent remitting the matter back to the Court of a Subordinate Judge, Bhabua, for proceeding further towards making the Rule of the Court after deciding such other issues as have arisen."

It is pertinent to mention that this Court in the case of State of Punjab and Ors. v. Parmar Construction Co. and Ors., 1997(1) Arbitration Law Reporter 597 has even extended the time on the oral request of one of the party.

5. If the principles enunciated in the above noticed judgments are applied to the present case, then it would be obvious that the time can be extended. In the present case, the

parties have been taking willing part in the proceedings before the arbitrator and there was never any protest made by them. The argument of Shri Joshi that there was no participation in the proceedings held by the arbitrator after the arguments were concluded on 23.12.1993 cannot be accepted because even thereafter the parties have appeared on the dates when the t,ward was announced. There is nothing on record to show that any objection was raised by either of the parties to the announcement of the award. Therefore, even if the appellate Court has not exercised the power to extend time it would be a fit case for extension of time. The delay in this case appears to be only of one month. The arbitrator entered on the reference on 29.9.1993 and award could have been announced by 28.1.1994. However, the award was announced by 28.2.1994. In my opinion, no useful purpose would be served to send back the case to the appellate Court as the award was announced about eight years back. Therefore, the time of one month is extended.

Before parting, it is necessary to point out that the approach adopted by the appellate Court was not in accordance with law and the time should have been extended rather than placing reliance on judgment delivered u/s 2 of the Act in the case of Prasun Roy (supra). This case deals with entirely different proposition. Therefore, the approach adopted by the appellate Court cannot be countenanced. The reasoning adopted by the appellate Court has to be substituted by the reasoning given in paras above. However, it would not make any difference to the results which has been reached, namely, that the revision petition is devoid of any merit.

For the reasons recorded above, this revision petition fails and the same is dismissed.