

(2010) 08 P&H CK 0480

High Court Of Punjab And Haryana At Chandigarh**Case No:** First Appeal from Order No. 301 of 2010 (O and M)Senior Executive Engineer, MHC
(O and M) Division PSEB

APPELLANT

Vs

Minhas Builders

RESPONDENT

Date of Decision: Aug. 4, 2010**Acts Referred:**

- Arbitration and Conciliation Act, 1996 - Section 33, 34, 34(3), 37
- Limitation Act, 1963 - Section 5

Citation: (2010) 4 CivCC 374 : (2011) 161 PLR 592**Hon'ble Judges:** Rakesh Kumar Jain, J**Bench:** Single Bench

Judgement

Rakesh Kumar Jain, J.

This appeal is directed against the order passed by learned District Judge, Hoshiarpur dated 13.8.2008 by which the objections filed by the Appellant u/s 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act") against the ex parte arbitral award dated 30.4.2003 has been dismissed on the ground of limitation.

2. Shorn of unnecessary details, an agreement between the Appellant and the Respondent for the work of "making protection of side slopes in deep cutting reach on right side of MHC in between RD17000M to RD17500M" was entered into on 14.12.1990. There was a dispute between the parties in respect of the work contract, which was referred to the sole Arbitrator for adjudication. On a few dates, the Appellant had appeared before the Arbitrator but from 29.8.2002, the Appellant stopped appearing, resultantly, the Arbitrator carried out ex parte proceedings and announced his award under various heads of the claim set up by the claimant/Respondent herein. The objections filed by the Appellant u/s 34 of the Act have been dismissed by the Court primarily on the ground of limitation observing that the award was announced on 30.4.2003, copy of the award was received by the

Appellant on 13.5.2003 but the objections u/s 34 of the Act were filed on 22.9.2003 after a period of 4 months and 9 days of the passing of the award. The learned Court below has observed that total period of limitation for filing of objection u/s 34 of the Act is 90 days u/s 34(3) of the Act, which can be further extended for a period of 30 days, but not thereafter. Thus, even if a period of extra 30 days is provided to the Appellant, the objections filed by the Appellants were still beyond limitation. Therefore, finding no alternative, the objections were dismissed by the Court below as the Court does not have the jurisdiction to extend the time even for any sufficient cause thereafter.

3. The present appeal is filed by the Appellant along with a Civil Misc. Application No. 1725-CII-2010 u/s 5 of the Limitation Act, 1963 for condonation of delay of 385 days in filing of the appeal. Application is supported by an affidavit of Er. Rand-hir Singh, Sr. Executive Engineer, MHC (O&M), Division, Punjab State Electricity Board, Talwara, District Hoshiarpur. Before touching the merits of this case, notice in the application was issued by this Court on 25.1.2010. Pursuant to which Respondent has put in appearance through Mr. Vivek Suri, Advocate, who has contested the application by filing reply thereto. While the case was being heard on the application for condonation of delay, learned Counsel for the Respondent has submitted that de hors the delay in filing of the present appeal, the objections filed by the Appellant before the Court below u/s 34 of the Act were beyond limitation and there is no error in the order of the Court below which can be cured by this Court in this appeal. This Court then asked Mr. Sukhbir Singh, learned Counsel appearing on behalf of the Appellant to argue the main case instead. Learned Counsel for the Appellant has submitted that award passed by the Arbitrator is a nullity, yet he could not satisfy the Court that the impugned order passed by the Arbitrator dated 30.4.2003 suffers from any illegality. He has admitted that the award was passed on 30.4.2003. The Department had received copy of the award on 13.5.2003 and the objections were filed on 22.9.2003. He has also stated that even if all the period provided u/s 34(3) of the Act is used in favour of the Appellant, still there is a delay of 9 days in filing of the appeal. The question is thus, whether learned Court below or even this Court has the jurisdiction to extend the period of limitation beyond the period of 90 days + 30 days as provided u/s 34(3) of the Act even in the case where the award is a nullity?

4. Learned Counsel for the Appellant could not refer to any precedent in this regard that even in a case where it is presumed that award passed by the Arbitrator is a nullity, the learned Civil Court or this Court has the jurisdiction to extend the period of limitation in the face of Section 34(3) of the Act. On the contrary, learned Counsel for the Respondent has relied upon two judgments, namely, Union of India v. Popular Construction Co. 2002(1) R.C.R. 124 and Daler Singh v. District Food and Supplies Controller, Kurukshetra 2010 (1) R.C.R. 358 to contend that the period of limitation cannot be extended even by invoking Section 5 of the Limitation Act, 1963.

5. I have heard both the learned Counsel for the parties and perused the record with their assistance.

6. Before advertng to the rival contentions of the parties, it would be worthwhile to refer to provision of Section 34(3) of the Act, which is invoked by the Court below for rejecting the claim of the Appellant on the ground of limitation. Section 34(3) of the Act is as under:

An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made u/s 33, from the date on which that request had been disposed of by the arbitral tribunal;

Provided that if the Court is satisfied that the Applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

7. A perusal of the aforesaid section provides two situations in this Clause (i) the limitation would be further counted from the date if an order is passed u/s 33 of the Act which provides that where there is a correction or interpretation of the award, limitation would start from that day on which the additional award was passed by the Arbitrator and (ii) the Court has the jurisdiction to extend the limitation for another 30 days only on a sufficient cause for not filing the appeal within the period of 90 days but not thereafter. 9. However, no such case as envisaged u/s 33 of the Act, is made out. The Court below has even unanimously computed the period of 30 days + 90 days but still the appeal was found to be beyond the period of limitation as it was filed after a period of 4 months and 9 days. There is no plausible explanation given before the Court below. However, even if there is some explanation, in my view, that is of no use as the provision of Section 34(3) is very stringent in its nature and leaves no room for the Courts to extend the time even if the Appellant has a strong case on merit. Needless to say that law of limitation bars the remedy but not the "right". But once the remedy is not available, the Court has no jurisdiction to adjudicate upon the rights of the parties. Moreover, in the present case the Appellant has come even to this Court u/s 37 of the Act for filing the appeal against the order of the Court below after a considerable delay of 385 days which, in my view, is again uncondonable.

8. Now, the question arises as to who is responsible for suffering ex parte award in favour of the Contractor before the Arbitrator, for not filing objections in time u/s 34 of the Act before the Court below and for filing appeal before this Court u/s 37 of the Act after much delay? Is it or not a handiwork of some official of the Appellant who are conniving with the contractor in getting him an undue advantage by way of an ex parte award because on 29.8.2002, the representative of the department had appeared before the Arbitrator but did not wait for attending the proceedings as recorded in the arbitral award and since then no one had appeared before the

Arbitrator, who had passed the award on 30.4.2003 ex parte.

9. It is really a matter of great concern for the Court to protect the public money from being squandered away by these Corporations, who are not looking after public interest seriously and their officers are hobnobbing with contractor in suffering ex parte awards. There is a colossal lapse on their part. Thus, while dismissing the appeal as well as the application for condonation of delay, this Court feels that the matter should be enquired into by the concerned authorities to fix the liability of the erring officers.

10. Mr. Sukhbir Singh, learned Counsel appearing on-behalf of the Appellant informs the Court that the Chairman of the Punjab State Power Corporation is competent to order enquiry. I, thus, direct the Chairman, Punjab State Power Corporation to order an enquiry in this case to find out as to who are at fault in not watching the interest of the Corporation in suffering an ex parte award in favour of the contractor to the extent of about Rs. 67 lacs and then deliberately not filing objection u/s 34 of the Act and appeal before this Court u/s 37 of the Act in time.

11. A copy of this order be sent to the Chairman, Punjab State Power Corporation for compliance. It is directed that the enquiry with regard to fixing the responsibility of the officer/officers at all level, who appeared to have been involved in this case, shall be completed within a period of 6 months from the date of receipt of the certified copy of this order and the action taken against them shall be brought to the notice of this Court by placing on record the report. The Registry is also directed to list this case before this Court, after the receipt of report, for its perusal.