

(1987) 06 CAL CK 0024

Calcutta High Court

Case No: Appeal No. 350 of 979, Aw. Case No. 213 of 1978

Union of India

APPELLANT

Vs

Sewak Ram and Co.

RESPONDENT

Date of Decision: June 17, 1987

Acts Referred:

- Arbitration Act, 1940 - Section 14, 14(1), 14(2), 20, 30
- Constitution of India, 1950 - Article 133, 134A
- Limitation Act, 1963 - Section 12(4)

Hon'ble Judges: Paritosh Kumar Mukherjee, J; Bimal Chandra Basak, J

Bench: Division Bench

Judgement

Bimal Chandra Basak, J.

This appeal is directed against a judgment and order passed by a learned Single Judge of this Court on the 15th of May 1979 whereby the Learned Judge dismissed the application u/s 33 read with Section 30 of the Arbitration Act, 1940 (thereafter referred to as the said Act) for setting aside an Award made by the sole Arbitrator by which a sum of Rs. 83,519 was awarded in favour of the respondent in respect of the claim No. 1 with interest at the rate of 6% per annum from the date of the award to the date of the decree unless paid within sixty days from the date of the Award. We need not go into the facts of the case in detail in view of the ultimate order we propose to pass. In March 1972 the respondent was appointed by the petitioner as a contractor for extension of a hospital at Ichapore for a lump sum amount of Rs. 13,45,575. The said contract contained an Arbitration clause. Certain claims were made by the respondents. Thereafter, the respondent called upon the authority concerned to appoint an Arbitrator in accordance with the Arbitration agreement contained in the parent agreement. The authority concerned declined to appoint an Arbitrator. Subsequently upon an application made by the respondent u/s 20 of the said Act, by an Order, dated 9th September, 1977, a learned Single Judge of this Court directed the said Arbitration agreement, dated 3rd of March 1972 to be filed

in Court and the appropriate authority was directed to appoint an Arbitrator within the period specified therein. All the disputes between the parties which were subject matter of the said application were sent to the Arbitrator for his adjudication. The parties filed their respective statements and counter statements before the Arbitrator. On 30th of June 1978 the Award was signed and published by the Arbitrator. This was communicated by the Arbitrator to the parties by his letter of the same date wherein the signed copy of the Award in question was enclosed. This would appear from one of the annexures to the petition of the appellant herein. On 28th of July 1978 an application was made by the respondent u/s 14 of the Act for a direction upon the Arbitrator to file the award. On 25th September, 1978 the Award was filed in this Court. The admitted position is that the Union of India had the knowledge of the filing of the Award of that date in view of such application u/s 14(1) which was disposed of on 25th of September, 1978. The High Court was closed for long vacation from 30th September, 1978 to 5th November, 1978. On 6th November, 1978 the High Court reopened when, according to the appellant, they filed an application for certified copy of the Award. Pursuant to leave granted to the respondents, formal notice u/s 14(2) of the Act was served on the appellant through the Commander, Works Engineer on 28th November, 6th December, 1978. On 31st of January, 1979 this application for setting aside the Award was filed by the appellant. It is stated that by that time no certified copy of the award had been obtained but on 9th of January, 1979 the Officer of this Court notified the folio stamp for the copy and on the same day they were put in. It is stated that ultimately on 9th of February, 1979 the certified copy was obtained. Upon filing of affidavits, this application was heard by the learned Judge and as stated hereunder the application for setting aside the Award was dismissed. The Learned Judge upheld the preliminary objection of the respondent regarding the maintainability of the petition and held that the said application was barred by limitation. The Learned Judge in this context referred to the decision of the Supreme Court in the case of Nilkanta Sidremeppe Ningschetti vs. Kashinath Ningschetti and others reported in AIR 1062 S.C. 666. Following the decision in the case of [Bhagwan Swarup Vs. Municipal Board, Ujhani and Others](#), the learned Judge held that if the applicant, does not annexe a certified copy of the Award to the petition for setting aside, it is not entitled to any exclusion of time on that account. Accordingly, the Learned Judge held that whether the time u/s 14(2) of the Act, in either view of the matter this application must be held to be barred by limitation. In view of the other arguments advanced, the learned Judge briefly referred to them. Other objections raised were based on the question of manifest error of law. It was a case of non-speak-d Judge held .that there was no error of law apparent on the face of the Award. There was no legal proposition which appeared on the face of the Award or some note or document appended to the Award on the basis of which the Award is made. It was also held that when a specific question of construction of a contract which is a question of law, is referred to the Arbitrator, even if. the Arbitrator commits an error in deciding the local proposition, the award cannot be assailed on the question of

awarding interest the learned Judge held that the Arbitrator had full authority and jurisdiction to pass such award. Regarding the contention of the petitioners, that in view of the no claim certificate there was no dispute and no scope for any award, the learned Judge referred to a decision by the learned Judge in Union of India vs. D. Bose and Company (Award Case No. 124 of 1978) wherein following a Supreme Court decision, the learned Judge had held that the question whether a no claim certificate extinguished the claim was itself a dispute decided by the Arbitrator. It was lastly contended before the learned Judge that the Arbitrator acted without any evidence and therefore the award contained an error of law apparent on the face of it. The learned Judge rejected such contention. The learned Judge held that there was enough evidence before the Arbitrator to come to his finding on the claims.

2. Being aggrieved by the same, this appeal has been preferred. In support of the appeal Mr. Chatterjee appearing on behalf of the Union of India has submitted very frankly that if the time to obtain certified copy of the award is not excluded in calculating the period of limitation in respect of the application, then admittedly the application was barred by limitation. However, he has drawn our attention to Section 12(4) of the Limitation Act and submitted that in the facts of this case such time should be excluded and in that event the application for setting aside the award is not barred by limitation.

3. We have already stated the relevant dates. We set out hereinbelow Section 12(4) of the Limitation Act and Section 14(1) and (2) of the Arbitration Act. Sec. 12(4) of the Limitation Act: "In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award be excluded."

Section 14(1) & (2) of the Arbitration Act:

14(1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in the Court, and the Court shall, thereupon, give notice to the parties of the filing of the award.

4. Mr. Bose learned Advocate appearing on behalf of the respondent has submitted that it is clear that the application of the appellant herein was barred by limitation. He has drawn our attention to a letter sent on 20th June 1978 whereby the Arbitrator communicated to the parties about his signing and publishing the award and enclosed, along with the said letter, the signed copy of the award. This, in his opinion, was the knowledge of the award within the meaning of Section 14(2) of the

Arbitration Act and admittedly on that basis the application was barred by limitation. He has next submitted that in any event when the award was filed in this Court on 25th September 1978 already such an application was barred by limitation. He has further submitted that in any event the award was filed in this Hon"ble Court on the 25th September and admittedly the respondent had knowledge of the same because of the order passed in the application u/s 14(1) of the Act. We may point out that the fact of this knowledge was not disputed on behalf of the appellant before us. Calculating from the date also the application is barred by limitation. Even assuming for a moment that time did not start to run either from 30th June 1978 or 25th September 1978, time started to run in any event on 6th December, 1978 when the notice u/s 14(2) of the Act was served on the Union of India. With regard to exclusion of time for certified copy he has drawn our attention to the fact that Section 12(4) does not mention about certified copy; it only mentions about copies. He has also submitted that in any event, if a copy is received from the source or it emanates from the authority who has passed the award, then the purpose of Section 12(4) of the Act is satisfied and filing of an application u/s 12(4) of the act in Court long time thereafter, would not help the matter and Section 12(4) can not be read in that fashion. It was for the purpose of making an effective application or appeal that the time is excluded, but when it was not necessary to obtain such certified copy for the purpose of making such application, the time taken for obtaining certified copy is not to be excluded. He has relied on [Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others](#), ; [State of West Bengal Vs. A. Mondal](#), ; [Sree Sree Ma Engineering & Co. vs. State of West Bengal and Anr.](#) AIR (1986) Cal. 270.

5. In our opinion, Mr. Bose is right in his contention. We are unable to accept the interpretation sought to be given by Mr. Chatterjee appearing on behalf of the appellant regarding the scope of Section 12(4) of the Limitation Act of Section 14(2) of the Arbitration Act. In the case of Nilkanta Sidramappa Ningashetti vs. Kashinath Somanma Ningashetti and Ors. (ibid), the Supreme Court held that the period of limitation for an application to set aside an award under the Arbitration Act, begins to run from the date of service of the notice of the filing of the award. The Supreme Court held that there was no ground to construe the expression "date of service of notice" to mean only a notice in writing served in a formal manner. It means not only a formal intimation but also an informal one. Such service of notice would include constructive or informal notice. In this content the Supreme" Court observed as follows:

the notice which the Court is to give u/s 14(2) to the parties of the filing of the award need not be a notice in writing. It can be given orally, No question of the service of the notice in the formal way of delivering the notice or tendering it to the party can arise in the case of a notice given orally. The communication of the information to the pleader of the party that an award has been filed is sufficient compliance with the requirements of sub-section (2) of Section 14 with respect to the giving of the

notice to the parties concerned about the filing of the award, Notice to the pleader is notice to the party in view of the Rule 5 of Order III of the Civil Procedure Code.

The question and the decision of the Supreme Court as above came up for consideration before a Division Bench of this Court in the case of State of West Bengal v. A. Mondal (ibid). The learned Judges therein held as follows:

the notice referred to in Article 119, of the Limitation Act is a notice u/s 14(2) of the Arbitration Act. Such a notice may be formal, informal or constructive. But it must emanate from the Court.

In that case a letter written by a party informing about filing of the award in Court was held not to provide a starting point of limitation for setting aside the award.

6. In the case of Sree Sree Ma Engineering & Co. v. State of West Bengal and Anr. (ibid) a Division Bench of this Court held similarly as held by the earlier Division Bench. It was held that:

the notice of filing of the award must emanate from Court and that the provisions contained in Section 14(2) of the Arbitration Act are clear on the point.

It was held that the notice of filing of the award referred to in Art. 119(b) of the Limitation Act should be a notice contemplated u/s 14(2) of the Arbitration Act, 1940 and not a notice from any other source. It was further held:

the starting point of limitation for an application to set aside an award is the date of service of notice issued by the Court u/s 14(2) of the Arbitration Act.

7. We shall consider the question of limitation at first without taking into consideration whether Section 14(2) of Limitation Act is attracted, i.e., whether in the facts and circumstances of this case the appellant petitioner's are entitled to exclusion of the period u/s 12(4) of the Limitation. Act. Admittedly, formal notice u/s 14(2) of the Arbitration Act was served on the Union of India on 6th December, 1978 and the application for setting aside the award was filed on 31st January, 1979. Therefore, it is clearly barred by limitation. In our opinion, it is also blurred by limitation at a much earlier date. In our opinion, on the 25th September, 1978 when the award was filed in this Court the admitted position was that the appellant had the knowledge of the filing of the said award irrespective of the question that formal notice u/s 14(2) was served later. This is in terms of the Supreme Court decision. In any view of the matter, much knowledge emanated from the records of this Court, i.e., the application u/s 14(2) of the Arbitration Act. Accordingly even if the tests laid down by the two Division Benches of this Court are applied, the application was barred by limitation.

8. The next question is whether the petitioners were entitled to avail of the provisions of Section 12(4) of the Limitation Act, i.e., whether they are entitled to exclude the time taken for obtaining a certified copy of the Award u/s 12 (4) of

Limitation Act. The application for certified, copy was filed on 6th November, 1978. In our opinion we cannot read Section 12(4) to the effect that it refers to "certified copy" of the award and not any copy. In our opinion, if we confine the expression "copy" used in the sub-section to a certified copy of the award, then it will be adding something which it was not intended by the Legislature. The principle of *casus omissus* prevents us from adding any such expression, in a section which was not included by the Legislature itself. Accordingly, we cannot proceed on the basis that Section 12 (4) of the Limitation, Act means certified copy of the award and not any copy of the award and, accordingly the whole period taken for obtaining the certified copy is to be included in all circumstances. In our opinion we should apply the same principle in respect of interpretation of Section 12(4) of Limitation Act as followed by Supreme Court and as clarified by the two Division Benches of this Court in respect of "knowledge" u/s 14 of the Arbitration Act. Such copy is not restricted to certified copy alone, it also includes any other copy as long as it is authenticated or emanates from the authority making the Award. In our opinion when such a copy of the Award is obtained from the Arbitrator himself, as in the present case, in that event it is not necessary to, postpone the, making of any application for setting aside the award until and unless a certified copy is obtained. The petitioners were in possession of a signed copy of the award kept by the Arbitrator by himself by his letter, dated 30th June 1978. It, was no longer necessary for them to wait for certified copy of the Award for the purpose of making an effective application. They could have filed such application and proceeded with the same on the basis of the signed copy obtained from the Arbitrator himself and it was not incumbent on them to have waited for the certified copy from the Court itself. As a matter of fact they made the instant application without, such certified copy.

9. For the aforesaid reasons we reject the contention of the learned Advocate appearing for the petitioner-appellant and accept the contentions of the respondent that the application for setting aside the award as made by the petitioner-appellant was barred by limitation. In that view of the matter, it is not necessary for us to go into the merits of the petition and appeal. We make it clear that we heard the parties only on this preliminary point.

10. Accordingly, the appeal is dismissed with costs, Interim order, if any, is vacated.

11. Mr. T. K. Basu, learned Counsel appearing on behalf of the respondent draws our attention to the ad interim order passed by the Appeal Court when the Memorandum of Appeal was filed and an application for stay was made by the appellant herein wherein apart from admitting the appeal it was directed by an order dated 11th September, 1979, that the applicant shall on or before the 3rd of November next, keep in deposit with its own Advocate-on-Record the entire money covered by the said Award. Subsequently at the time of the disposal of that application on 28th January, 1980, it was directed that in the event the respondent furnishes the security to the satisfaction of the Registrar of any property outside the

jurisdiction for a sum of Rs. 2,50,000 (Rupees Two lacs fifty thousand), the Receiver would pay Rs. 2,00,000 (Rupees Two lacs) to the respondent or in the event of furnishing security to the extent of Rs. 1,25,000 (Rupees One lac twentyfive thousand), the Receiver would pay Rs. 1,00,000 (Rupees One lac) to the respondent. It is stated that pursuant thereto not all the monies covered by the said Award were deposited but a sum of Rs. 2,00,000 (Rupees Two lacs) only was deposited with the Receiver and that upon furnishing security to the satisfaction of Registrar for a sum of Rs. 2,50,000 (Rupees Two lacs fifty thousand) the said amount was paid by the Receiver to the Respondent.

12. Under these, circumstances, he prays that the security be discharged and cancelled and liberty be given to him to proceed with the execution of the decree for realisation of the balance amount. This is not opposed by Mr. Chatterjee, learned Advocate appearing on behalf of the appellant.

13. We, therefore, direct that the said security furnished by the appellant for withdrawal of the amount, be discharged and relevant document or documents, if any, be cancelled and returned to the respondent through his Advocate-on-Record. The respondent herein shall also be entitled to execute the said decree for the balance amount due.

14. The Receiver is also discharged upon payment of his remuneration, if not already paid.

15. Prayer on behalf of the appellant for stay of the operation of this order is made but the same is rejected as no proper ground has been made out for the same.

16. Formal prayer on behalf of the appellant is also made for a certificate for appeal to the Supreme Court of India under Article 134A read with Article 133 of the Constitution of India and the same is rejected in review of the fact that in our opinion there is no substantial question of law which, in our opinion, needs to be decided by the Supreme Court.

17. All parties concerned including the Registrar, O.S. of this Court to act on a signed copy of the operative portion of the judgment.

P.K. Mukherjee

18. I agree.