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Calcutta High Court

Case No: Appeal No. 81 of 1984 and Award Case No. 243 of 1983

State of West Bengal		APPELLANT
	Vs	
Messrs. A. Mondal		RESPONDENT

Date of Decision: Sept. 1, 1984

Acts Referred:

- Arbitration Act, 1940 - Section 14, 14(2), 30, 33, 8
- Constitution of India, 1950 - Article 158

Citation: 89 CWN 82

Hon'ble Judges: M.M. Dutt, J; C.K. Banerjee, J

Bench: Division Bench

Advocate: A.P. Chatterjee and Prabir Roy Chowdhury, for the Appellant;P.K. Das, B.S. Sinha and B.B. Sarkar, for the Respondent

Final Decision: Allowed

Judgement

M.M. Dutt, J.

This appeal has been preferred by the appellant, the State of West Bengal, against the judgment and order dated March 1, 1984 of a learned single Judge of this Court dismissing the application of the appellant under sections 30 and 33 of the Arbitration Act, 1940. The appellant invited tenders for the construction of a Primary Health Centre at Madhab Nagar, P. S. Pathar Pratima, District - 24 Parganas. The appellant accepted the tender of the respondent and entered into a contract with it for the construction of the said Primary Health Centre at the rate mentioned in the contract. The contract also contained an arbitration clause.

2. According to the appellant, the construction work was completed by the respondent on November 8, 1974, but according to the respondent the work was completed before June 15, 1976.

3. The respondent by its letter dated August 21, 1981 raised a dispute claiming, inter alia, the enhancement of the rate by 30% in respect of the work done by the

respondent during the extended period. By the said letter the respondent also claimed the appointment of an arbitrator within a period of fifteen days of the date of the letter. After the expiry of the said period, the respondent filed an application before a learned Judge of this Court u/s 8 of the Arbitration Act praying for the appointment of an arbitrator. The appellant opposed the said application on the ground that the claim of the respondent was barred by limitation. The learned Judge, however, by her order dated March 12, 1982 appointed Sri D. M. Mukherjee, a retired Chief Engineer of the Government of West Bengal, the arbitrator.

4. As per the direction of the arbitrator, the parties submitted their respective written statements. The appellant in its counter statement specifically took the plea that the claim of the respondent was barred by limitation. It appears from the minutes of the proceedings of the 7th hearing before the arbitrator that the arbitrator took the view that the Court''s order appointing him as arbitrator implied that the appellant''s plea that the respondent''s claim was barred by limitation was turned down. Accordingly, the arbitrator directed that the arbitration proceedings would continue in terms of the order of the Court. There is no dispute that the arbitrator did not entertain and decide the appellant''s plea that the claim of the respondent was barred by limitation.

5. On September 22, 1983, the arbitrator made an Award whereby he directed the appellant, the State of West Bengal, to pay to the respondent contractor a sum of Rs. 1,98,483/- with interest at the rate of 10% per annum with effect from March 12, 1982, the date of reference to arbitration, till the date of payment of the amount under the award or the date of the decree, whichever is earlier.

6. The award was filed in Court by the arbitrator on September 29, 1983. It appeals that the respondent by its letter dated September 29, 1983 informed the Executive Engineer, 24-Parganas, South in Division, Construction Board Directorate Government of West Bengal, of the lining of the award in this Court by the arbitrator on September 29, 1983. It is the case of the appellant that after receipt of the said letter of the respondent, the appellant had taken steps in regard to the filing of an application for setting aside the award. On October 28, 1983, the appellant, however, received a letter from its Advocate, Mr. R. C. Deb that an application for setting aside the award could be made within thirty days of the date of receipt of the notice u/s 14(2) of the Arbitration Act.

7. It is the specific case of the appellant that on October 27, 1983, the appellant had received the notice u/s 14(2) of the Arbitration Act issued by the Registrar, Original Side of this Court, it is alleged that the entry in the Receipt Register of the appellant showing that the said notice u/s 14(2) was received on October 12, 1983 and not on October 27, 1983, is wrong and has been so entered by the employee concerned in collusion with the respondent contractor. Be that as if. may, the application for selling aside the award was filed on November 21, 1983. It may be stated that this Court closed for the long Pujah Vacation on October 12, 1983 and reopened on

November 8, 1983.

8. The respondent opposed the application and its contention was that the application was barred by limitation. The learned Judge placed reliance upon her own judgment in the case of State of West Bengal vs. M/s. Mondal & Co. AIR 1981 Cal. 14 whore it was held that the starting point of limitation would be the date of receipt of the informal notice, that is, in the instant case, the letter dated September 29, 1983 of the respondent intimating the appellant that the award had been filed in Court by the arbitrator on the said date. Accordingly, the learned Judge held that the application should have been filed on November 8, 1983 when this Court reopened alter the long Pujah vacation. The learned Judge also did not accept the explanation of the appellant in regard to the delay, if any, in filing the application on November 21, 1983. Accordingly, by the impugned judgment and order the learned Judge dismissed the application on the ground that the application was barred by limitation. Hence this appeal.

9. The first question that falls for our consideration is whether the said letter dated September 29, 1983 of the respondent can be treated as a notice referred to in Article 119 of the Limitation Act, 1983. u/s 14(2), after the arbitrator files the award in Court, "the Court shall thereupon give notice to the parties of the filing of the award". For setting aside an award, Article 119 of the Limitation Act, 1963 corresponding to Article 156 of the Old Limitation Act prescribes a period of thirty days to be computed from the date of service of the notice of the filing of the award. Article 119 does not give any indication as to the authority or person who will issue the notice, but if is clear from section 14(2) of the Arbitration Act that such notice shall be given by the Court. There can be no doubt that the notice referred to in Article 119 of the Limitation Act is a notice u/s 14(2) of the Arbitration Act to be given by the Court.

10. In a case before the Supreme Court in Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, , there was a reference to arbitration in a pending suit for partition. The arbitrator filed the award in Court on February 18, 1948. On February 21, 1948, the Civil Judge adjourned the matter "for parties'' say to the arbitrator''s report" to March 22, 1948 in the presence of the pleaders of the parties. On November 9, 1948, an application was filed on behalf of the defendant no. 12 praying that the award might be declared null and void. In holding that the application was barred by limitation, the Supreme Court held that the intimation to the pleaders of the parties on February 21, 1948 amounted to service of the notice on the parties about the filing of the award. Further, it was observed by the Supreme Court as follows :

Sub-section (1) of S. 14 of the Arbitration Act, 1940 (Act A of 1940) requires the arbitrators or umpire to give notice in writing to the parties of the making and signing of the award. "Sub section (2) of that section requires the Court, after the filing of the award, to give notice to the parties of the filing of the award. The

difference in the provisions of the two sub-sections with respect to the giving of notice is significant and indicates clearly that the notice which the Court is to give to the parties of the filing of the award need not be a notice in writing. The notice 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 that an award has been filed is sufficient compliance with the requirements of sub-sec (2) of S. 14 with respect to giving of the notice to the parties concerned about the filing of the award. * * * * We are of the opinion that the expression ''give notice'' in Sub-s.(2) of S. 14, simply means giving intimation of the filing of the award, which certainly was given to the parties through their pleaders on February 21, 1948.

* * * * *

We see no ground to construe the expression ''date of notice'' in Col. 3 of Art. 158 of the Limitation Act to mean only a notice in writing served in a formal manner. When the Legislature used the word ''notice'' it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly, it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice. If its intention were to exclude ''the later sense of thy words ''notice'' and ''Service'' it would have said explicitly. It has not done so here. Moreover, to construe the expression as meaning only a written notice served formally on the party to be affected, will leave the door open to that party, even though with full knowledge of the filing of the award he has taken part in the subsequent proceedings, to challenged the decree based upon the award at any time upon the ground that for want of a proper notice his right to object to the filing of the award had not even accrued. Such a result would stultify the whole object which underlies the process of arbitration - the speedy decision of a dispute by a tribunal chosen by the parties.

11. It is manifestly clear from the above observations that upon an interpretation of the provisions of sub-sections (1) and (2) of section 14 of the Arbitration Act, the Supreme Court held that the notice of the filing of the award to be given by the Court under sub-section (2) of section 14 need not be a formal notice in writing. It may be an oral notice as was given by the learned Civil Judge in the case before the Supreme Court to the pleaders of the parties.

12. In State of West Bengal Vs. Mondal and Co., , it has been observed by the learned Judge that while propounding the theory of informal or constructive notice in Nitkantha vs. Kashinatha (supra), the Supreme court was not said that the same should from court, and that the said session of the supreme Court will apply force when the petitioner had knowledge 0r the filing of the award in normally or constructively from any other source as well, in other words, according to the learned Judge, if the notice of filing of the award, be it formal or manual, is given not by the Court but by any private individual having no connection with the Court, me

limitation for setting aside the award would, begin to run from the date of giving of such notice. We are afraid, we are unable to agree with the learned Judge. We have quoted in extense the observations of the Supreme Court in Nilkantha vs. Kashinatha (Supra) and, in our opinion, the Supreme Court never meant to say that the notice of the filing of the award need not emanate from Court and could be given by anybody. If the decision of the Supreme Court is interpreted in the manner as has been interpreted by the learned Judge, it would be doing violance to section 14(2) of the Arbitration. Act which clearly provides for the giving of the notice by the Court. In the case of Ms. Mondal & Co. if has been pointed out by the learned Judge that Article 119 of the Limitation Act does not say that the notice has to be given by the Court and accordingly, the learned Judge has expressed the view that knowledge of the petitioner of the filing of the award from any source would be tantamount to notice under Article 119 of the Limitation Act. We regard, we are unable to accept this view of the learned Judge. It is true that Article 119 does not provide that the notice has to be given by the Court, but that does not mean that the notice of the filing of the award need not emanate from Court but from any other source. If the proposition had been so simple because of the fact that Article 119 (corresponding to Article 158 of the old Act) does not mention Court, the Supreme Court would not have devoted itself to the interpretation of section 14 of the Arbitration Act. In our opinion, the learned Judge has misinterpreted the said decision of the Supreme Court. What the Supreme Court has said is that the notice referred to in Section 14(2) need not be a formal notice in writing and it may be an informal or constructive notice. "Notice" referred to in Article 119 of the Limitation Act must be a notice u/s 14(2) of the Arbitration Act. Such a notice may be formal, informal or constructive, but it must emanate from Court for the purpose of limitation for setting aside the award.

13. The learned Judge has placed reliance on a Bench decision of this Court in The State of West Bengal vs. L. M. Das, AIR 1971 Cal. 406. In that case, the Registrar, Original Side of this Court had written a letter informing the parties of the filing of the award. It was contended that the said letter could not be treated as a notice u/s 14(2) of the Arbitration Act for the purpose of limitation for setting aside the award as it was not in accordance with the form prescribed by this Court under the Arbitration Act. This Court overruled the contention holding, infer alia, that in view of the decision of the Supreme Court in Nilkantha vs. Kashinath (supra) there is no distinction between a formal and informal notice. It was held that as the application for setting aside the award was filed beyond thirty days from the date of the receipt of the said letter of the Registrar, it was barred by limitation. The above Bench decision does not at all support the view expressed by the learned Judge in the case of M/s. Mondal & Co. (supra); on the contrary, it is quite consistent with the view taken by us.

14. In Bahadur Singh Vs. Fuleshwar Singh and Others, which has also been relied upon by the learned Judge, there is nothing to show from whom the defendant no. 1

who filed the application for setting aside the award, came to know of the filing of the award in Court on June 12, 1963. It appears that the defendant no. 1 appeared in Court on June 15, 1962, and the award was actually filed in Court on May 11, 1963. So the facts of that case are not very clear. He that as it may, if in Bahadur Singh''s case the Patna High Court sought to lay down the proposition that for the purpose of limitation of an application for setting aside an award, the notice of the filing of the award need not have any connection with the Court, we regret, we are unable to accept the same.

15. In our opinion, 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 emonate from the Court. The view which we take finds support from an unreported Bench decision of this Court in Union of India vs. Harcharan Sinqh. Appeal from Original Order No. 105 of 1977, disposed of on May 27, 1982. In that case, it has been observed that the notice u/s 14(2) of the Arbitration Act need not be in writing and it may be oral or constructive or even informal, but the notice must be such that it should emanate from or through the instrumentality of the Court. There must be some action taken, by the Court or something done by the Court which resulted in the party being put up with notice or imparting knowledge to the party that the award has been filed in Court. Most respectfully, we endorse the view expressed in the above unreported Bench decision.

16. The learned Judge was not right in holding that the period of limitation should be computed from September 29, 1983, that is, the date on which the appellant received the letter from the respondent informing the appellant of the filing of the award in Court.

In our opinion, the period of limitation should be computed from the date of receipt by the appellant of the notice dated October 4, 1983 u/s 14(2) of the Arbitration Act issued by the Registrar, Original Side of this Court. Now the question is as to the date on which the appellant received the notice. According to the respondent, the notice was received by the appellant on October 12, 1983 and the application for setting aside the award having been filed on November 21, 1983, it was barred by limitation. On the other hand. if is the case of the appellant that the said notice was served on the appellant on October 27, 1983, but it was entered in the Receipt Register under October 12, 1983 which was the last working day before the Pujah Vacation. It is alleged that such entry has been caused to have been made by the respondent in collusion with a dishonest departmental employees.

17. Mr. Arun Prokash Chatterjee, learned Senior Standing Counsel has produced before us the said Receipt Register. It appears that in the Receipt Register, after the date October 12, 1983 is the date October 28, 1983. Between these two dates, there is no other date. Further, under October 12, 1983, there is only one entry and, thereafter, the date ''28.10.83'' has been written. A part of the disputed entry about

the said notice u/s 14(2) has been squeezed into the small space under October 12, 1983 and remaining part of the entry has been made against the date October 28, 1983. The manner in which the disputed entry has been made leaves no room for doubt that it has been made after October 28, 1983. The most significant fact is that on the notice itself which was served on the appellant the date of receipt has been written as October 27, 1983. The respondent has, however placed reliance upon the affidavit affirmed by the bailiff in which it has been alleged that the notice was served on October 12, 1983. In view of the fact? staled above, we are unable to accept that the notice u/s 14(2) of the Arbitration Act was served on the appellant on October 12, 1983, we hold that the said notice was served on the appellant on October 27, 1983 and the application for setting aside the award having been made on November 21, 1983 that is within thirty days from October 27, 1983, it was quite within time and not barred by limitation.

18. Assuming that the period of thirty days was computed from September 29, 1983 the date of the receipt by the appellant of the respondent''s letter, and that the appellant not having filed the application for setting aside the award on the reopening of this Court on November 8, 1983 after the long Pujah Vacation, it was barred by limitation, let us consider on such assumption whether the appellant has been able to satisfactorily explain the delay of thirteen days from November 8, 1983 to November 21, 1983.

19. It is the case of the appellant that its Advocate on record Mr. R. C. Deb advised the appellant that the application for setting aside the award could be made within thirty days of the receipt of the notice u/s 14(2), of the Arbitration Act, even though the appellant informed the learned Advocate of the receipt of the respondent''s letter dated September 29, 1983. The application was drafted by Mr. A.C. Moitra, Advocate and it was handed over to Mr. R. C. Dob on November 8, 1983. As Mr. Deb was of the opinion that the petition was not in form, Mr. P. Roy Chowdhury. Advocate was instructed to redraft the application. Mr. Roy Chowdhury also expressed the opinion that the application could be filed within thirty days from the date of receipt of the notice u/s 14(2) of the Arbitration Act. The appellant acted with a bonafide belief that the time to file the application would expire on November 27, 1983. Accordingly, the application was filed by the appellant on November 21, 1983. that is, within thirty days of the receipt of the said notice u/s 14(2) of the Arbitration Act. So even assuming that the application was filed thirteen days nut of time, in our opinion, the appellant his satisfactorily explained the delay.

20. For the reasons as aforesaid, the learned Judge was not right in dismissing The application on the ground that it was barred by limitation. The learned Judge should have disposed of the application on merits.

21. The question that now arises is whether the application should be sent back to the learned Judge for disposal on merits. It has been stated already that the arbitrator took the view that the Court''s order appointing him the arbitrator implied

that the appellant''s plea that the respondent''s claim was barred by limitation was turned down by the Court. Accordingly, the arbitrator without deciding the said plea of the appellant on merits made the award. In our opinion, this finding of the arbitrator is perverse. The question whether the respondent''s claim was barred by limitation or not was not decided by the learned Judge, and the arbitrator had no reason to assume that as the Court had made the reference, consequently, the said plea must have been overruled. The said plea of the appellant should be treated as one of the matters referred to arbitration. The arbitrator acted illegally in not deciding the said contention of the appellant that the respondent''s claim was barred by limitation. It may be pointed out once more that the plea was specifically taken by the appellant in the written statement. In the circumstances stated above, no useful purpose will be served by remanding the application to the learned Judge. Instead, it is a case where we should remit the award to the arbitrator for determination of the said contention of the appellant. For the reason aforesaid, the appeal is allowed and the judgment of the learned Judge is set aside. The award is remitted to the arbitrator with a direction to reconsider the award after deciding on merits the plea of the appellant that the claim of the respondent was barred by limitation. Such reconsideration shall be made by the arbitrator and the award that shall be made on such reconsideration shall be submitted to the learned trial Judge within four months from the date of receipt of the records from this Court. The respondent shall pay costs of this Court as also of the trial Court to the appellant.