¢£ REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2152 OF 2011
(Arising out of S.L.P. (Civil) No. 14308 of 2010)

The State of Maharashtra & Ors. ....Appellants

Versus

M/s. Ark Builders Pvt. Ltd. ....Respondent

JUDGMENT

AFTAB ALAM, J.

1. Leave granted.

2. Whether the period of limitation for making an application under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') for setting aside an arbitral award is to be reckoned from the date a copy of the award is received by the objector by any means and from any source, or it would start running from the date a signed copy of the award is delivered to him by the arbitrator? This is the short question that arises for consideration in this appeal.

3. The material facts of the case are brief and admitted by both sides. These may be stated thus. On March 20, 2003 the arbitrator gave a copy of the award, signed by him, to the claimant (the respondent) in whose favour the award was made. No copy of the award was, however, given to the appellant, the other party to the proceedings, apparently because the appellant had failed to pay the costs of arbitration. The respondent submitted a copy of the award in the office of the Executive Engineer (appellant no.4) on March 29, 2003, claiming payment in terms of the award. On April 16, 2003, the Executive Engineer submitted a proposal to challenge the award before the Chief Engineer, and the Financial Advisor and Joint Secretary. The respondent sent a reminder to the Chief Engineer on June 13, 2003, for payment of the money awarded to him by the arbitrator and a second

reminder to the Secretary and Special Commissioner on January 8, 2004. The Executive Engineer by his letter dated January 15, 2004, acknowledged all the three letters of the claimant and informed him that the government had decided to challenge the award before the appropriate forum.

4. According to the appellants, the decision to make an application for setting aside the award was taken on December 16, 2003, but no application could be made for want of a copy of the award from the arbitrator. Hence, on January 17, 2004, a messenger was sent to the arbitrator with a letter asking for a copy of the award. The arbitrator made an endorsement on the letter sent to him stating that on the request of the claimant the original award was given to him and the Xerox copy of the award (sent to him along with the letter), was being certified by him as true copy of the award. The endorsement from the arbitrator along with the Xerox/certified copy of the award was received from the arbitrator on January 19, 2004 and on January 28, 2004, the appellants filed the application under section 34 of the Act.

5. The respondent raised an objection regarding the maintainability of the petition contending that it was hopelessly barred by limitation. The Principal District Judge, Latur, by order dated February 15, 2007 passed in Civil Application No.84 of 2005 (previously Suit No.1 of 2004) upheld the respondent’s contention and dismissed the appellants’ application as barred by limitation.

6. Against the order of the Principal District Judge, the appellants preferred an appeal (Arbitration Appeal No.2 of 2008) before the Bombay High Court.

7. Before the High Court, the appellants contended that they were able to obtain a copy of the award duly signed by the arbitrator only on January 19, 2004 and the period of limitation prescribed under section 34 (3) of the Act would, therefore, commence from that date. The application for setting aside the award was filed on January 20, 2004 and hence, there was no question of the application being barred by limitation. In support of the contention, the appellants relied upon the last order passed in the arbitral proceedings on February 22, 2003 in which it was stated that the case was closed and the arbitrator would proceed with the framing of the award which would be declared and copies sent to both parties in due course. On behalf of the appellants it was stated that contrary to the order passed on February 22, 2003, the arbitrator did not send them a copy of the award even though a

Xerox copy of the award was sent to them by the claimant-respondent to whom the arbitrator had given a copy of the award duly signed by him. In support of the submission that the period of limitation prescribed under section 34(3) of the Act would start running from the date they received a copy of the award duly signed by the arbitrator, they also relied upon section 31(5) read with section 34(3) of the Act. They also relied upon a decision of this Court in Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239.

8. On behalf the claimant-respondent it was pointed out that a copy of the award was undeniably received in the office of the Executive Engineer on March 29, 2003 and as a matter of fact the receipt of the copy of the award on that date was expressly acknowledged in the letter of the Executive Engineer dated January 15, 2004 in which he told him that the appellants had decided to challenge the award. The respondent further pointed out that it was only on the basis of the copy of the award received from him that the office communications and deliberations were made and finally on December 16, 2003 the decision was taken to challenge the award when the matter had already become barred by limitation. It was submitted on behalf of the respondent that the appellants undertook the exercise of sending the Xerox copy of the award to the arbitrator for obtaining his signature on it (when the period for making an application to set it aside was long over) just to make out a case to overcome the bar of limitation prescribed by section 34 (3) of the Act. In the admitted facts of the case there should be no question of there being any other date for the computation of limitation than March 29, 2003, the date on which he supplied a copy of the award to the Executive Engineer.

9. The High Court upheld the submissions made on behalf of the claimant-respondent, affirmed the view taken by the Principal District Judge and by judgment and order dated October 6, 2009 dismissed the appeal filed by the appellants. It took note of section 31(5) and section 34(3) of the Act and the decision of this Court in Tecco Trichy Engineers & Contractors but rejected the appellant’s contention highlighting that the word used in section 31(5) is ‘delivered’ and not ‘dispatched’. The High Court held and observed as follows:

> "17. It is to be noted that sub-section (5) of Section 31 prescribes that after arbitral award is made, a signed copy shall

be ‘delivered’ to each party. The word ‘delivered’ appearing in Section 31(5) cannot be equated with ‘dispatched’. A distinction has to be made between these two words. The ‘Shorter Oxford English Dictionary’ gives meaning of the word ‘delivered’ as, "to bring and handover a letter, a parcel to the proper recipient or address". "Deliver" means: (i) bring and handover (a letter or goods) to the proper recipient; formally hand over (someone); and (iii) provide (something promised or expected). Thus, what is important is that the copy of the award should be handed over to the proper recipient or addressee. In this view of the matter, sub-section (5) of Section 31 does not require that a copy of the arbitral award should be sent off by the Arbitrator to the concerned party, but it is required that copy of the arbitral award be handed over to the proper parties.

18. In the instant matter, admittedly the copy of award was received by the Executive Engineer in the month of April 2003. However, appellants did not act till January 2004 for about nine months. Thus, for their inaction, appellants have to blame only themselves. In the instant matter, it cannot be said that there is non compliance of sub-section (5) of Section 31 of the Act of 1996. There is sufficient compliance of the provisions of Section 31(5), as admittedly, appellants received copy of the award in the month of April, 2003. Appellants thereafter did not take steps in respect of raising challenge to the award and allowed the matter to remain in cold storage. The delay occasioned in presenting the application is essentially because of the lapses committed by the appellants only."

10. The appellants are now before this court by grant of special leave. The two provisions of the Arbitration and Conciliation Act, 1996, relevant to answer the question raised in the case are sections 31 and 34. Section 31 deals with ‘form and contents of arbitral award; and in so far as relevant for the present provides as follows:

"31. Form and contents of arbitral award.- (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) xxxxxxxxxxx

(3) xxxxxxxxxxx

(4) xxxxxxxxxxx

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6), (7), (8) xxxxxxxxxxx

(emphasis added)

Section 31(1) obliges the members of the arbitral tribunal/arbitrator to make the award in writing and to sign it and sub-section (5) then mandates that a signed copy of the award would be delivered to each party. A signed copy of the award would normally be delivered to the party by the arbitrator himself. The High Court clearly overlooked that what was required by law was the delivery of a copy of the award signed by the members of the arbitral tribunal/ arbitrator and not any copy of the award.

11. Section 34 of the Act then provides for filing an application for setting aside an arbitral award, and sub-section (3) of that section lays down the period of limitation for making the application in the following terms:

> "34. Application for setting aside arbitral award.-(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
>
> (2) xxxxxxx
>
> (3) 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 under section 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.
>
> (4) xxxxxxx"

The expression "..party making that application had received the arbitral award.." can not be read in isolation and it must be understood in light of what is said earlier in section 31(5) that requires a signed copy of the award to be delivered to each party. Reading the two provisions together it is quite clear that the limitation prescribed under section 34 (3) would commence only from the date a signed copy of the award is delivered to the party making the application for setting it aside.

12. We are supported in our view by the decision of this Court in Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239; in paragraph 8 of the decision it was held and observed as follows:

> "8. The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be "received" by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings."
>
> (emphasis added)

13. The highlighted portion of the judgment extracted above, leaves no room for doubt that the period of limitation prescribed under section 34(3) of the Act would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside under section 34(1) of the Act. The legal position on the issue may be stated thus. If the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law.

14. We may here refer to a decision of the Patna High Court in Dr. Sheo Shankar Sahay v. Commissioner, Patna Division and Ors., 1965 BLJR 78. Section 18(1) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1947 prescribed a period of limitation of 15 days for filing an appeal against an order of the House Controller and provided as follows:

> "any person aggrieved by an order passed by the Controller may, within fifteen days from the date of receipt of such order by him, prefer an appeal in writing to the appellate authority"

It was contended on behalf of the petitioner before the High Court that the order-sheet of the House Controller was shown to the lawyer of the respondent on June 10, 1959 and therefore, that would be the starting point of limitation under section 18(1) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1947. A division bench of the High Court consisting of Chief Justice V. Ramaswami (as his Lordship then was) and Justice N.L. Untwalia (as his Lordship then was) rejected the submission observing as follows:

> "2. ... But we shall assume that the petitioner is right in alleging that the order was shown to the lawyer on the 10th June, 1959. Even so, we are of opinion that the appeal preferred by respondent no.4 before the Collector of Shahabad was not barred by limitation. The reason is that Sec. 18(1) provides limitation of fifteen days "from the date of receipt of the order" and not from the date of communication of the order. It is significant that Sec. 14 of the Bihar House Rent Control Order, 1942, had provided that "any person aggrieved by an order of the Controller may, within fifteen days from the date on which the order is communicated to him, present an appeal in writing to the Commissioner of the division". Sec. 18(1) of Bihar Act III of 1949 is couched in different language. In our opinion,

> Sec. 18(1) implies that the Controller is bound, as a matter of law, to send a written copy of his order to the person aggrieved, and limitation for filing an appeal does not start unless and until the copy of the order is sent. In the present case it is not disputed that no copy of the order was sent to respondent no.4. It is true that the respondent himself applied for a copy of the order on the 11th December, 1959, and obtained a copy on the 14th December, 1959. In any event, therefore, limitation will not start running against respondent no.4 under Sec. 18(1) of the Act till the 14th December, 1959, and as the appeal was filed on the 26th December, 1959, there is no bar of limitation in this case...."
>
> (emphasis added)

15. We are in respectful agreement with the view taken by the Patna High Court in the case of Dr. Sheo Shankar Sahay.

16. In light of the discussions made above we find the impugned order of the Bombay High Court unsustainable. The High Court was clearly in error not correctly following the decision of this Court in Tecco Trichy Engineers & Contractors and in taking a contrary view. The High Court overlooked that what section 31(5) contemplates is not merely the delivery of any kind of a copy of the award but a copy of the award that is duly signed by the members of the arbitral tribunal.

17. In the facts of the case the appellants would appear to be deriving undue advantage due to the omission of the arbitrator to give them a signed copy of the award coupled with the supply of a copy of the award to them by the claimant-respondent but that would not change the legal position and it would be wrong to tailor the law according to the facts of a particular case.

18. In the light of the discussion made above this appeal must succeed. We, accordingly, set aside the judgments and orders passed by the Bombay High Court and the Principal District Judge, Latur. The application made by the appellants under section 34 of the Act is restored before the Principal District Judge, Latur, who shall now proceed to hear the parties on merits and pass an order on the application in accordance with law. Since the matter is quite old, it is hoped and expected that the Principal District Judge will dispose this matter preferably within 6 months from the date of receipt of this order.

.....J.
[AFTAB ALAM]

.....J.
[R.M. LODHA]

New Delhi,
February 28 , 2011.
ITEM NO.1A COURT NO.12 SECTION IX
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.14308/2010

(From the judgement and order dated 06/10/2009 in AA No. 2/2008 of The HIGH COURT OF BOMBAY AT AURANGABAD)

STATE OF MAHARASHTRA & ORS. Petitioner(s)

VERSUS

M/S. ARK BUILDERS PVT.LTD. Respondent(s)

Date: 28/02/2011 This Petition was called for judgment today.

For Petitioner(s) Mr. Sanjay Kharde, Adv.
Ms. Asha Gopalan Nair,Adv.

For Respondent(s) Mr. Aniruddha P. Mayee,Adv.

Hon'ble Mr. Justice Aftab Alam pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice R.M. Lodha.

Leave granted.

The appeal succeeds in terms of the signed reportable judgment.

The judgments and orders passed by the Bombay High Court and the Principal District Judge, Latur are set aside. The application made by the appellants under section 34 of the Act is restored before the Principal District Judge, Latur, who shall now proceed to hear the parties on merits and pass an order on the application in accordance with law. Since the matter is quite old, it is hoped and expected that the Principal District Judge will dispose this matter preferably within 6 months from the date of receipt of this order.

(Neetu Khajuria) (S.S.R. Krishna)
Sr. P.A. Court Master

(Signed reportable judgment is placed on the file.)