UNION OF INDIA

v.

M/S. POPULAR CONSTRUCTION CO.

OCTOBER 5, 2001

[G.B. PATTANAIK AND RUMA PAL, JJ.]

Arbitration and Conciliation Act, 1996/Limitation Act, 1963—Section 34/Sections 5 and 29(2)—Application challenging award under 1996 Act—Applicability of Section 5 of Limitation Act there on—Held, Section 34 and the scheme of the 1996 Act bars the applicability—Arbitration Act, 1940.

Words and Phrases—'But not thereafter'—Meaning of in the context of Arbitration and Conciliation Act, 1996.

Award passed by Arbitrator was forwarded to appellant, to be filed in the High Court for passing decree, under the impression that Arbitration and Conciliation Act, 1940 applied. When the Award was filed in the High Court for decree to be passed under 1940 Act, appellant challenged the Award under Section 30 read with Section 16 of the 1940 Act. Subsequently application was amended by inserting "Arbitration and Conciliation Act, 1996" in place of "Arbitration Act, 1940". The application challenging the Award was dismissed by a Single Judge on the ground that it was barred by limitation under Section 34 of the 1996 Act. Division Bench upheld the findings of the Single Judge.

In appeal to this Court, it was contended by the appellant that since Section 29(2) of the Limitation Act, 1963 makes the provision of Section 5 of the Limitation Act applicable to special laws like the 1996 Act and since the 1996 Act itself did not expressly exclude applicability of the Limitation Act and as there was sufficient cause, for the delay in filing the application under Section 34, should have been condoned.

Respondent contended that the language of Section 34 plainly read, expressly excluded the operation of Section 5 of the Limitation Act, 1963 and that there was no scope for assessing the sufficiency of the cause for the delay beyond the period prescribed in the proviso to Section 34.

Dismissing the appeal, the Court

A **HELD : 1. The provisions of Section 5 of the Limitation Act, 1963 are not applicable to an application challenging an Award, under Section 34 of the Arbitration and Conciliation Act, 1996. [621-D]**

Union of India **v.** *M/s. Hanuman Prasad & Brothers*, **2000 AIR SCW 3934 (2), distinguished.**

B

2. It is not essential for the special or local law to, in terms, exclude the provisions of the Limitation Act. It is sufficient if on a consideration of the language of its provisions relating to limitation, the intention to exclude could be necessarily implied. [624-B; C]

C *Vidyacharan Shukla* **v.** *Khubchand Baghel*, **AIR (1964) SC 1099 and** *Hukum Narain Yadav* **v.** *Lalit Narain Mishra*, **[1974] 2 SCC 133, relied on.**

Mangu Ram **v.** *Municipal Corporation of Delhi*, **[1976] 1 SCC 393, referred to.**

D **3. The phrase 'but not thereafter' in Section 34 of 1996 Act would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render** E **the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result. [624-F]**

4. History and scheme of the 1996 Act support the conclusion that the time limit prescribed under Section 34 to challenge an Award is absolute and unextendable by Court under Section 5 of the Limitation Act. The F **Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of Courts in the arbitral process". This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms. The 'Part' referred to in Section 5 is Part I of the 1996** G **Act which deals with domestic arbitrations. Section 34 is contained in Part I and is therefore subject to the sweep of the prohibition contained in Section 5 of the 1996 Act. [625-B; D]**

5. The consequence of the time expiring under Section 34 of the 1996 Act is that the Award becomes immediately enforceable without any further H **Act of the Court. If there were any residual doubt on the interpretation of**

the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the Court's powers by the exclusion of the operation of Section 5 of the Limitation Act. [625-G; 626-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6997 of 2001.

From the Judgment and Order dated 13.6.2000 of the Mumbai High Court in A. No. 241 of 2001.

K.N. Rawal, Additional Solicitor General, P.S. Narasimha, P. Sridhar and B.V. Balaram Das, for the appellant.

D.A. Dave, Mrs. Nandini Gore, Kavin Gulati and Ms. Bhadra Dalal for the Respondent.

The Judgment of the Court was delivered by

RUMA PAL, J. Leave granted.

The question which arises for determination in this case is whether the provisions of Section 5 of the Limitation Act, 1963 are applicable to an application challenging an award, under Section 34 of the Arbitration and Conciliation Act, 1996 (referred to hereafter as the '1996 Act').

The award in this case was made by the Arbitrator on 29th August, 1998. Under the impression that the Arbitration Act, 1940 applied, the Arbitrator forwarded the original Award to the appellant with a request to file the Award in the High Court of Bombay so that a decree could be passed in terms of the Award under the provisions of the Arbitration Act, 1940. The Award was accordingly filed by the appellant in the Bombay High Court on 29th March, 1999. The appellant filed an application challenging the Award on 19th April, 1999 under Section 30 read with Section 16 of the Arbitration Act, 1940. Subsequently, the application was amended by inserting the words "Arbitration and Conciliation Act, 1996" in place of "Arbitration Act, 1940". The application was dismissed by the learned Single Judge on 26th October, 1999 on the ground that it was barred by limitation under Section 34 of the 1996 Act. The Division Bench rejected the appeal and upheld the findings of the learned Single Judge.

Before us, the appellant has not disputed the position that if the Limitation Act, 1963 and in particular Section 5, did not apply to Section 34 of the 1996 Act, then its objection to the Award was time barred and the appeal would have

A to be dismissed. The submission however is that Section 29(2) of the Limitation Act makes the provisions of Section 5 of the Limitation Act applicable to special laws like the 1996 Act since the 1996 Act itself did not expressly exclude its applicability and that there was sufficient cause for the delay in filing the application under Section 34. Counsel for the respondent, on the other B hand, has submitted that the language of Section 34 plainly read, expressly excluded the operation of Section 5 of the Limitation Act and that there was as such no scope for assessing the sufficiency of the cause for the delay beyond the period prescribed in the proviso to Section 34.

The issue will have to be resolved with reference to the language used C in Sections 29(2) of the Limitation Act, 1963 and Section 34 of the 1996 Act. Section 29(2) provides that :

> "Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such D period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or E local law."

On an analysis of the section, it is clear that the provisions of Section 4 to 24 will appy when :

(i) there is a special or local law which prescribes a different period F of limitation for any suit, appeal or application; and

(ii) the special or local law does not expressly exclude those Sections.

There is no dispute that the 1996 Act is a 'Special law' and that Section 34 provides for a period of limitation different from the prescribed under the G Limitation Act. The question then is - is such exclusion expressed in Section 34 of the 1996 Act? The relevant extract of Section 34 reads :

> 34 "*Application for setting aside arbitral award* - (1) xxx xxx xxx xxx xxx
>
> (2) XXX XXX XXX XXX XXXX XXX

H

(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."

Had the proviso to Section 34 merely provided for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Section 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5".[1]

That was precisely why in construing Section 116-A of the Representation of People Act, 1951, the Constitution Bench in *Vidyacharan Shukla* v. *Khubchand Baghel* [2], rejected the argument that Section 5 of the Limitation Act had been excluded :

"It was then said that S.116-A of the Act provided an exhaustive and exclusive code of limitation for the purpose of appeals against orders of tribunals and reliance is placed on the proviso to sub-s.(3) of that section, which reads :

"Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the Tribunal under Section 98 or Section 99.

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period."

The contention is that sub-s.(3) of S.116-A of the Act not only provides a period of limitation for such an appeal, but also the circumstances under which the delay can be excused, indicating thereby that the

1. *Mangu Ram* v. *Municipal Corporation of Delhi*, [1976] 1 SCC 393 at p. 397.
2. AIR (1964) SC 1099.

A general provisions of the Limitation Act are excluded. There are two answers to this agrument. Firstly, S. 29(2)(a) of the Limitation Act speaks of express exclusion but there is no express exclusion of sub-s. (3) of S.116-A of the Act; Secondly, the proviso from which an implied exclusion is sought to be drawn does not lead to any such necessary implication".

B

This decision recognises that it is not essential for the special or local law to, in terms, exclude the provisions of the Limitation Act. It is sufficient if on a consideration of the language of its provisions relating to limitation, the intention to exclude can be necessarily implied. As has been said in *Hukum Narain Yadav* v. *Lalit Narain Mishra.*

C

> "If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act"[3].

D

Thus, where the legislature prescibed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded.[4]

E

As for as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result.

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G

Apart from the language, 'express exclusion' may follow from the scheme and object of the special or local law. "Even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express referencc, it would nonetheless be open to the Court to examine

3. [1974] 2 SCC 133.

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4. *Patel Naranbhai Marghabhai* v. *Deceased Dhulabhai Galbabhai*, [1992] 4 SCC 264.

whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation".[5]

Here the history and scheme of the 1996 Act support the conclusion that the time limit prescribed under Section 34 to challenge an Award is absolute and unextendable by Court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of courts in the arbitral process".[6] This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms :

> "5. Extent of judicial intervention. - Notwithstanding anything contained in any other law for the time being in force, in matter governed by this Part, no judicial authority shall intervene except where so provided in this Part."

The 'Part' referred to in Section 5 is Part I of the 1996 Act which deals with domestic arbitrations. Section 34 is contained in Part I and is therefore subject to the sweep of the prohibition contained in Section 5 of the 1996 Act.

Furthermore, section 34(1) itself provides that 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. Sub Section 2 relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub section (3) would not be an application "in accordance with" that sub section. Consequently by virtue of Section 34 (1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that "where the time for making an application to set aside the arbitral award under Section 34 has expired..... the award shall be enforced and the Code of Civil Procedure, 1908 in the same manner as if it were a decree of a court". This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow". Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the Court.

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5. *Hukum Narain Yadav* v. *Lalit Narain Mishra* (supra)
6. 4(v) of the Statement of Objects and Reasons of the Arbitration and Conciliation Act, 1996.

A If there were any residual doubt on the interpretaion of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the Court's powers by the exclusion of the operation of Section 5 of the Limitation Act.

The appellant then sought to rely on a decision of this Court in Civil
B Appeal No. 1953 of 2000 - *Union of India* v. *M/s Hanuman Prasad & Brothers*[7], (2000) AIR SCW 3934 (2) to which one of us (Ruma Pal, J.) was a party. It is contended that the decision is an authority for the proposition that Section 5 of the Limitation Act applied to objections to an award under the 1996 Act. It is true that in the body of that judgment, there is a reference to the 1996 Act.
C But that is an apparent error as the reasoning clearly indicates that the provisions of section 30 of the Arbitration Act, 1940 and not section 34 of the 1996 Act were under consideration. In order to clarify the position, we have scrutinised the original record of Civil Appeal No. 1953 of 2000 decided on 6th March 2000. We have found that that was indeed a case which dealt with an Award
D passed and challenged under the Arbitration Act, 1940. No question was raised with regard to the applicability of the Limitation Act to the 1940 Act. The only issue was whether the High Court should have refused to condone the delay of 2 months and 22 days in filing the objection to the Award. This Court found that sufficient cause had been shown to condone the delay and accordingly set aside the decision of the High Court. This decision is as such irrelevant.

E In the circumstances and for the reasons earlier stated we answer the question posed at the outset in the negative. The appeal is accordingly dismissed without any order as to costs.

K.K.T. Appeal dismissed.

7. (2000) AIR SCW 3934.