

PETITIONER:
SECRETARY TO GOVT. OF KARNATAKA& ANR.

Vs.

RESPONDENT:
V. HARISHBABU

DATE OF JUDGMENT: 09/07/1996

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
MAJMUDAR S.B. (J)

CITATION:
JT 1996 (6) 489 1996 SCALE (5)345

ACT:

HEADNOTE:

JUDGMENT:
THE 9TH DAY OF JULY, 1996

Present:

Hon'ble Dr. Justice A.S. Anand
Hon'ble Mr. Justice S.B. Majmudar

Altaf Ahmed, Additional Solicitor General, and K.R.Nagaraja,
Adv. With him for the appellants
S.Ravindra Bhat, G.Subba Rao, N.R. Nath and Mrs. Kiran
Bhardwaj, Adv. with him for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:
Secretary to Govt. of Karnataka & Anr.
Vs.

V. Harishbabu

J U D G M E N T

DR. ANAND, J.
Leave granted.

When does the period of limitation commence for filing objections seeking setting aside of an arbitration award is the only question which requires our consideration in this appeal.

The question arises in the following circumstances :

The respondent was entrusted with contract work by the appellant for construction of a canal and cross drainage work from channel 0.8 km of Ravathanalla- Irrigation Project in Kanakpura Taluk. The cost of the project was Rs. 4.22 lakhs and the work was required to be completed within a period of nine months commencing from 4.5.87, the date on which the work order was issued. During execution of the contract, certain, disputes arose between the parties which were referred to an arbitrator in terms of an arbitration agreement entered into between the parties. Sh. K.N. Venkatesh, Superintending Engineer PWD was appointed as the arbitrator who entered upon the reference and made an award on 22.4.93. The respondent filed a petition under Section 14 read with Section 17 of the Indian Arbitration Act (hereinafter the Act) before Civil Judge, Ramanagram on

23.4.93 praying for making the Award a rule of the court. According to the respondent a signed copy of the award which had been given to him by the arbitrator was also filed along with petition. Notice of that petition was issued by the Court to the appellant and other respondents on 24.4.93 and was made returnable by 22.6.1993 the service of notice was directed to 'await' till 13.7.93. On 24.6.93, the learned Arbitrator himself filed the original award in the court of learned Civil Judge, Ramanagram along with certain connected documents. Before filing the award in the court, the arbitrator had procured an endorsement from the Government Pleader to the effect "Seen, subject to objections". The Court directed the award and the documents filed by the arbitrator to be taken on record. On 13.7.1993 a memo was filed on behalf of the respondent for final disposal of his petition filed under section 14/17 of the Act on the ground that the appellant had not filed any objections to the award within the prescribed period and therefore the award be made a rule of the court. Notice of the said memo was issued to the appellant and the case was adjourned till 31.7.93 for objections, if any. The A.G.P. representing the appellant was present in the court of the learned Civil Judge on 13.7.93. The appellant, however, did not file any objections to the memo till 31.7.93. On 31.7.93, the trial court accepted the plea raised on behalf of the respondent in his memo that since the appellant State had not filed any objections to the award within a period of 30 days as prescribed under the Act read with the relevant provisions of the Limitation Act read with the relevant provisions of the court. A decree in terms of the award was directed to follow. The appellant, thereupon, filed a Misc. First Appeal was not maintainable but permitted the appellant, to convert the said appeal into a Civil Revision Petition which was accordingly done. By an order dated 12th July 1995, the High Court, after hearing submissions on behalf of the parties, dismissed the Civil Revision Petition observing that the Additional Government Pleader representing respondent 1 and 2 before the court below had taken notice of the filing of the award by the Arbitrator on 24.6.1993. In the light of these facts it cannot be stated the Government had no knowledge of filing of the award into court prior to 13.7.1993. Notice under Sec. 14(2) contemplates either notice to the parties or to the counsel of such filing of the copy of the award by any one of the parties or by the Arbitrator himself" and dismissed the revision petition filed this appellant. Aggrieved, the appellant has filed this appeal by special leave against the order of the High Court dated 12.7.1995.

According to Shri Altaf Ahmed, the learned Addl. Solicitor General, a notice was required to be issued by the Court under Section 14(2) of the Act to the appellant, after the filing of the original award by the arbitrator in the court and since the court had not issued any such notice, both the trial court as well as the High Court fell in error in assuming that the appellant had been "served" with the "notice" and that period of limitation had commenced with effect from 24.6.93 when the learned arbitrator filed the original award together with documents in the court. According to Shri Altaf Ahmed, the appellant could, at the best, be said to have become "aware" of the filing of the Award on 13.7.93, when the Addl. Government Pleader was present on behalf of the appellants in the court and was directed to file his objections to the memo filed by the respondent seeking final disposal of his petition filed under Section 14/17 of the Act for making the award a rule

of the court and therefore the award could not have been made a rule of the court on 31.7.93, before the expiry of the period of 30 days from 13.7.1993 and no decree in terms of the award could be made. The Learned Addl. Solicitor General invited us to examine the merits of the award to see the great 'injustice' done to the appellant but we have declined the invitation in view of the limited issue before us and have refrained from going into the merits of the claims made by the parties or the correctness of the award.

Learned counsel for the respondent in reply submitted that since a signed copy of the award had been filed by the respondent along with the petition under Section 14/17 of the Act and notice of the said petition had been issued to the appellant by the Court on 24.4.1993, the State could not be heard to say, after the Addl. Government Pleader appeared in the court on 22.6.93, that it did not have any notice of the filing of the award. It was argued that there is no requirement in law for any second notice being given by the court after the original award is filed in the Court by the arbitrator himself. Learned counsel urged that since the appellants had "knowledge" of the filing of the copy of the award by the respondent as well as of the filing of the original award by the Arbitrator on 24.6.93, in view of the endorsement made by the Additional Government Pleader, the appellants were obliged to file objections, if any, within 30 days from the said date and on account of their failure to file the objections within the prescribed period, the trial court was justified in making the award a rule of the Court and passing a decree in terms of the award and as such the impugned order of the High Court suffered from no infirmity requiring any interference by this court.

Before we answer the question posed in the earlier part of this judgment and examine the arguments raised at the bar, we consider it appropriate to refer to some of the relevant statutory provisions.

Section 14 (1) of the Act provides:

"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."

Section 14(2) of the Act reads :

"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 Court, and the Court shall thereupon give notice to the parties of the filing of the award."

Section 17 provides :

"Judgment in terms of award - Where the Court sees no cause to remit

the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with the award."

Article 119 of the Limitation Act 1963 provides the period of limitation :

"(b) for setting aside an award or getting an award remitted for reconsideration thirty days from the date of service of the notice of the filing of the award."

An analysis of Sub-section (2) of Section 14 shows that it mandates the Court, after the filing of the award duly signed by the arbitrator or the umpire as the case may be, to give notice to the parties of the filing of the award. Sub-section (1) of Section 14, requires the arbitrator or umpire to give a notice in writing to the parties of the making and signing of the award. The two provisions operate under different set of circumstances. The issuance of a notice under section 14(2) of the Act by the Court is a mandatory requirement though the section does not prescribe any formal mode for the service of the notice. What is essential under the said provision is that there must be service of notice or intimation or communication of the filing of the award by the Court to the parties, the mode of service of such a notice being immaterial. It is the substance and not the form of the notice which is relevant and once it is established that a notice or communication or information of the filing of the award has been issued by the court and served on the party concerned, the statutory requirements of section 14(2) of the Act would stand satisfied. Keeping in view the difference in the phraseology of Section 14(1) and 14(2) of the Act, it follows that the notice from the Court under Section 14(2) of the Act need not be in writing. It can be oral also but what is necessary is that a notice, communication or information to the effect that an award has been filed in the Court must be given by the Court to the parties concerned. Notice to the pleaders of the parties, who are representing the parties before the court, would be course be sufficient compliance with the requirements of sub-section (2) of section 14 of the Act. A notice by the arbitrator under Sub-section (1) of the Act is not a substitute for the notice which the court is enjoined upon to issue under Sub-section (2) of Section 14 of the Act. Where the arbitrator himself files an award in the court, the court is bound to give notice to the parties that the award has been filed and the court cannot pass a decree in terms of the award, unless such notice has been served on the party concerned and till after the expiry of a period of 30 days from the date of service of such a notice as contemplated by Article 119 (b) of the Limitation Act, 1963. In a case where a party has knowledge aliunde of the filing of the award and seeks time to file objections to the award, absence of a formal notice from the court would be rendered

immaterial and in such a case the date when the party enters its appearance and either through an application in writing or orally seeks time to file objections to the award, shall be deemed to be the date of service of the notice within the meaning of sub-section (b) of section 119 of the Limitation Act read with Section 14(2) of the Act. However, where the order of the court merely records the presence of the parties or their counsel, after an award is filed by the arbitrator in the court, but does not indicate that the notice of the filing of the award has been given to the parties, no service of the can be presumed from that order. No formality in the act of filing of the award in the court is required but what is required is that the filing of the award must be by or on behalf of the arbitrator and after the same has been filed the notice of the filing of the award must be by or on behalf of the arbitrator and after the same has been filled the notice of the filing of the award must follow from the court under subsection (2) of section 14 of the Act. If an award is filled by one of the parties the authority of the arbitrator to the party concerned to file the award must be established and the onus is that party to establish that he had been so authorised by the arbitrator to file the award in the in court. A plea to that effect must be found in the application which accompanies the award. Such an authority has to be specifically alleged and positively proved otherwise the filing of the award in the Court cannot be said to be by or under the authority of the arbitrator or the umpire as the case may be.

Under Section 17 of the Act 17 of the Act where the court finds no cause or justification to remit the award or any of the matters referred to arbitrator for re-consideration or to set aside the award. The court shall after the time for making an application to set aside the award has expired or after rejecting the objections to the award it may proceed to pronounce a judgment in terms of the award and upon the judgment so pronounced. a decree shall follow.

Section 119(b) of the limitation Act corresponding to Article 158 of the Limitation Act, 1908 prescribes a period of 30 days for seeking the setting aside of an award from the date of service of the notice of the award issued by the Court under Section 14(2) of the Act.

In India Ravon Corporation Ltd. Vs. Raunag And Company Pvt. Ltd. (1988 4 SCC 31) while dealing with the question of limitation with regard to the filing of the objections seeking the setting aside of an arbitration award, this Court opined:

The fact that the parties have notice of the filing of the award, is not enough. The notice must be served by the Court. We reiterate again that there must be (a) filing of the award in the proper court: (b) service of the notice by the court or its office to the parties concerned: and (c) such notice need not necessarily be in writing. It is upon the date of service of such notice that the period of limitation begins and as at present under clause (b) of Article 119 of the Act. the limitation expires on the expiry of the 30 days of the service of the notice for an

application for setting aside of the award. The importance of the matter which need be emphasised, is the service of the notice by the court."

(Emphasis supplied)

A four Judges Bench of this court in Nilkantha Shidramappa Ningashetti vs. Kashinath Somanna Ningashetti And Others [1962 (2) SCR, 551], while considering the requirements of service of notice under Section 14 of the Act opined:

Sub-section (1) of Section 14 of the Arbitration Act, 1940 (x of 1940) requires the arbitrations 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-s. (2) of s. 14 with respect to the giving of the notice to the parties concerned about the filing of the award. 'Notice' does not necessarily mean 'communication in writing'."

(Emphasis ours)

In view of the settled law and our discussion above, our answer to the question posed in the opening part of the judgment is that the period of limitation for filing objections seeking the setting aside of an arbitration award commences from the date of service of the notice issued by the Court upon the parties regarding the filing of the award under section 14(2) of the Act. Such a notice need not be in writing but what is essential is that the notice or intimation or communication of the filing of the award must be issued by the Court to the parties and served upon the parties concerned. Date of service of a notice issued by the arbitrator under of service of a notice issued by the arbitrator under Section 14(1) of the Act or the date of obtaining an endorsement on the award by the arbitrator from the party concerned is irrelevant for determining the question of Limitation for filing objections under Article 119 (b) of the Limitation Act, 1963.

It is in the light of the above answer that we shall now consider the facts of the present case.

The arbitrator made his award on 22.4.1993. The respondent on 23.4.1993 filed a petition under Section 14/17

of the Act with the following prayers:

(A) that this Hon'ble Court be pleased to direct the 3rd Respondent, Sole Arbitrator to file the original award together with all the documents obtained by him, during the Arbitration Proceedings into the court and thereafter pronounce judgment in terms of the award dated 22.04.1993 and make award a Rule of this Court and also issue decree in terms of the award.

(B) To grant interest at the rate of 18% (eighteen percent) per annum as awarded by the Arbitrator to be continued from the date of decree to the date of actual payment.

(C) For any consequential relief or reliefs including cost of this petition as this Hon'ble Court may deem fit to grant under the circumstances in the interest of justice and equity.

The respondent also filed alongwith the petition a copy of the award dated 22.4.1993 but there is no averment in the petition that the arbitrator had authorised the respondent to file the copy of the award in the Court. Notice of the petition filed by the respondent was issued by the Court to the appellant and other respondent on 24.4.1993 returnable by 22.6.1993. A perusal of the notice shows that let alone attaching a copy of the award there is not even an indication therein that a copy of the award had also been filed with the petition. No objections were invited by the Court in the said notice to the award as such. On 22.6.1993 the additional government pleader appeared for the appellant in response to the above notice. Since, respondent No. 3 the sole arbitrator, to the petition had not been served the case was adjourned to 13.7.1993 without any further proceedings after recording the presence of the parties present before the Court.

The arbitrator himself filed the original award along with various documents in the court on 24.6.93, after securing an endorsement from the Government Pleader to the effect "seen, subject to objections". It is not disputed that after the learned arbitrator filed the original award in the court on 24.6.93, no notice of the filing of that award was issued by the court for service upon the appellant or the other respondents.

As already noticed, on the matter coming up before the Court on 13.7.1993 the respondent filed a memo seeking final disposal of the petition filed under Section 14/17 of the Act and notice of the said memo was served on the additional government pleader, who was present in the Court on behalf of the State (appellant herein) and he was directed to file objections. If any, by 31st July, 1993. There is nothing on the record to show that on 22.6.1993 when the additional government pleader filed his memo of appearance on behalf of the appellant herein, the Court either orally or in writing informed or communicated to him that a signed copy of the award had been filed by the respondent alongwith his petition under section 14/17 of the Act. The record also shows that no such communication or information was at any other point of time except on 13.7.1993 given to the Additional Government Pleader by the Court regarding the filing of the award by the arbitrator.

From the aforesaid facts it unmistakably follows that no notice, whether in writing or orally, was ever issued by the court to the appellant regarding the filing of the award in the court so as to enable it to file objections, if any seeking the setting aside of the award. Notice of the petition filed by the respondent under Section 14/17 of the Act with the prayers as noticed above, cannot be construed as a notice of the filing of the award. We are unable to agree with the learned counsel for the respondent that the filing of the copy of the signed award alongwith the petition should be deemed to be by an implied authority of the arbitrator and notice of the petition be deemed to be a notice issued by the court under Section 14(2) of the Act. Neither there is a factual foundation for such an argument nor is it even otherwise tenable in law in the established facts of this case when the notice of the petition did not even indicate that a signed copy of the award had been filed in the court and in the petition also there is not a whisper that a copy of the award was being filed alongwith the petition let alone under the authority of the arbitrator. Keeping in view the nature of the prayers made in the petition (supra), it is futile to argue that the notice of the petition be deemed to be a notice from the court to the effect that the award had been filed in the court.

The maximum that can be said in favour of the respondent is that on 13.7.1993, after the original award had been filed by the arbitrator on 24.6.1993 in the Court and the additional government pleader who was present on behalf of the appellant was directed to file his objections to the memo filed by the respondent seeking the award to be made a rule of the court, that a notice of the filing of the award would be deemed to have been issued to him by the court on that date. Therefore, the date of communication of the information about the filing of the award from the court could only be 13.7.1993 and no earlier date. The appellant was directed, through the additional government pleader, to file his objections to the memo filed by the respondent by 31.7.1993 but the appellant did not file any objections by the due date. The omission of the appellant to file objections to the memo, however, could not justify the order of the trial court making the award a rule of the court and directing a decree to be drawn up in terms of the award, when admittedly the period of 30 days as envisaged by Article 119(b) of the Limitation Act, which had commenced on 13.7.1993 had not expired on 31.7.1993. We also do not find any merit in the submission of the learned counsel for the respondent that the endorsement made by the government pleader on 24.6.1993 on the award which was then filed by the arbitrator in the court would amount to a notice under Section 14(2) of the Act. The endorsement made by the additional government pleader on 24.6.1993 can at best be construed as a notice issued by the arbitrator under Section 14(1) of the Act and such a notice, as we have already observed, is not a substitute for a notice which is mandatorily required to be issued by the court and served upon the parties regarding the filing of the award under Section 14(2) of the Act. The trial court, therefore, fell in error in opining that "admittedly he has not filed any objections within 30 days from the date of the filing of award by the respondent No. 3 before this court and there are no other impediments as such to deny the relief sought for by the petitioner." The period of limitation, for filing objections to the award as we have already noticed, does not commence from the date of filing of the award by the arbitrator in the court and that period would only commence

from the date of service of the notice issued by the court under Section 14(2) of the Act. The High Court also fell in error in observing that the appellant could not be heard to say that he had no knowledge of the filing of the award in the Court prior to 13.7.1993 on the ground that "the additional government pleader representing respondents 1 and 2 before the court below had taken notice of the filing of the award by the arbitrator on 24.6.1993." There is nothing on the record to show that any such notice was issued by the Court regarding the filing of the award. The endorsement made by the additional government pleader on the award which was later on filed by the arbitrator in the court, did not relieve the court of its mandatory obligation to issue the notice, orally or in writing, to the appellant or its counsel to file the objections, if any, to the award. The endorsement made by the additional government pleader is of no consequence in so far as the issuance of notice by the Court under Section 14 (2) is concerned. Computing the period of 30 days with effect from 13.7.93, no award could be made a rule of the Court before the expiry of the period of 30 days from that date. Not filing of any objections to the memo by 31.7.93, could not take away the statutory right of the appellants to file objections to the award within a period of 30 days commencing from 13.7.1993. Under these circumstances, the order of the trial court as well as the impugned order dated 12.7.1995 of the learned Single Judge of the High Court cannot be sustained and the same are hereby set aside. This appeal consequently succeeds and is allowed. The case is remanded to the trial court for a fresh disposal in accordance with law after taking into consideration the objections to be filed by the appellant herein seeking the setting aside of the award. Since, the matter has been pending for a sufficient long time, we consider it appropriate to grant 30 days time to the appellant to file its objections to the award before the trial court and direct the trial court to dispose of the matter after granting an opportunity of hearing to both sides expeditiously and as far as possible within a period of six months from the date of communication of a copy of this order. The appellant shall file the objections to the award in the trial court within 30 days from today, without waiting for any formal notice from the trial court in that behalf.

The parties are left to bear their own costs.