

CASE NO.:
Appeal (civil) 4516 of 2006

PETITIONER:
Union of India

RESPONDENT:
M/s. Shring Construction Company Private Limited

DATE OF JUDGMENT: 17/10/2006

BENCH:
G.P.MATHUR & A.K. MATHUR

JUDGMENT:
JUDGMENT
O R D E R
[ARISING OUT OF S.L.P.(C) NO.26627 OF 2005]

A.K.MATHUR, J.

Leave granted.

The short question involved in this appeal is whether Section 14 of the Limitation is applicable to the Arbitration and Conciliation Act, 1996 (hereinafter to be referred to as the "Act ") or not ?

This appeal is directed against the judgment and order passed by the Division Bench of High Court of Uttaranchal at Nainital in First Appeal No.67 of 2005 on 17.8.2005 whereby the Division Bench has affirmed the order dated 6.8.2005 passed by the District Judge, Dehradun in Arbitration Case No.170 of 2005 dismissing the application filed by the appellant under Section 34 of the Act for setting aside the arbitral award on account of being barred by time.

Brief facts which are necessary for disposal of the present appeal are that the appellant \026 Union of India entered into a contract i.e. No. CEB/DDN/14 of 1993-94 (for a value of Rs.82,34,789/-) with the respondent herein through the Chief Engineer, Bareilly Zone for construction of residential accommodation for Officers and staff of Defence Accounts Department at Lansdowne. The work was to be completed by the respondent in three phases by the dates specified in the contract. However, the respondent failed to complete the contract work within the stipulated period despite grant of extension of time by the appellant- Union of India. However, the final bill of the respondent was duly settled. Subsequently, the respondent raised a dispute and filed an application before the High Court of Uttaranchal at Nainital for appointment of an arbitrator. The High Court by its order dated 21.7.2003, appointed Justice K.D.Shahi (former Judge of Allahabad High Court) as the arbitrator. The award was published on 30.11.2004 and a copy thereof was received by the appellant on 3.12.2004. As per the award, a sum of Rs.28,94,720/- was awarded in favour of the respondent to be paid by the appellant- Union of India with interest at the rate of 18% per annum. The appellant being aggrieved with the aforesaid award filed a writ petition i.e. Writ Peition No.283 of 2005 challenging the award before the High Court of Uttaranchal, at Nainital under a bona fide belief that since the arbitrator had been appointed by the High Court, the award could be challenged in the High Court

by filing writ petition. However, the writ petition was dismissed on 4.4.2005 in limine being not maintainable on the ground that the award ought to have been challenged under Section 34 of the Act by filing objections in the court of District Judge, Dehradun. Hence, an objection under Section 34 of the Act was filed before the District Judge, Dehradun along with an application for condonation of delay and the same came to be registered as Arbitration Case No.170 of 2005. According to sub-section (3) of Section 34 of the Act for setting aside an arbitral award, an application may be made within three months from the date on which the party making 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. There is further proviso to sub-section (3) of Section 34 that the period for filing the application can be extended if the applicant could show that he was prevented by sufficient cause from making the application within the said period of three months by further 30 days but not thereafter. In the present case, admittedly the application was filed beyond even the extended period of 30 days. Hence, the District Judge dismissed the application for condonation of delay as well application for setting aside the award being barred by time. The first appeal preferred against that order before the High Court by the appellant was also dismissed. Aggrieved against that order, the present appeal has been filed.

Mr.B.Dutta, learned Additional Solicitor General for the appellant submitted that it is true that Section 5 of the Limitation Act will have no application in these proceedings because period of limitation has already been prescribed under section 34(3) of the Act but Section 14 of the Limitation Act has not been excluded from its ambit. It is pointed out that the impugned award was challenged by filing a writ petition before the High Court but later on it was found that the writ petition was not maintainable and accordingly, after dismissal of the writ petition the present application was filed under section 34 of the Act along with application under section 5 of the Limitation Act. It appears that the question with regard to applicability of Section 14 of the Limitation Act was not examined by the High Court as well as the District Judge. In fact, it was bona fide error on the part of the Union of India to have approached the High Court. It was a misplaced impression that since the High Court has appointed the arbitrator, therefore, its award can be challenged before the High Court only. This Court recently in the case of State of Goa v. Western Builders reported in (2006) 6 SCC 239 has taken a view that applicability of Section 14 of the Limitation Act is not excluded from the Act of 1996. This Court in Western Builders (supra) has observed as follows :

" By virtue of Section 43 of the Act of 1996, the Limitation Act applies to the proceedings under the Act of 1996 and the provisions of the Limitation Act can only stand excluded to the extent wherever different period has been prescribed under the Act of 1996. Since there is no prohibition provided under Section 34, there is no reason why Section 14 of the Limitation Act should not be read in the Act of 1996, which will advance the cause of justice."

Therefore, Mr.Dutta, learned ASG submitted that the application filed by the appellant for condonation of delay contending that the appellant was prosecuting remedy before the High Court by filing writ petition should have been considered and delay should have been condoned. This question seems not to have been examined by the trial court as well as by the High Court. In view of the decision in the Western Builders (supra) we think it just and proper to remit this matter back to the trial court to decide whether the application for setting aside the award under section 34 of the Act filed by the appellant could be considered to be within the period of limitation i.e. after deducting the period spent by the appellant in prosecuting the remedy before the High Court.

As a result of our above discussion, we allow this appeal and set aside the impugned order of the High Court and that of the District Judge and remit the matter before the District Judge. The learned District Judge is directed to examine the matter in the light of the decision in Western Builders (supra) and dispose of the application filed by the appellant as expeditiously as possible on its merit, without prejudice to any observation made in this order. There would be no order as to costs.