

CASE NO.:
Appeal (civil) 10104 of 2003

PETITIONER:
M/s.Gurbax Singh

RESPONDENT:
Punjab Mandi Board

DATE OF JUDGMENT: 18/12/2003

BENCH:
N.Santosh Hegde & B.P.Singh

JUDGMENT:
J U D G M E N T

1 7442 2003
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SANTOSH HEGDE, J.

Leave granted.

A dispute which arose between the parties to these appeals came to be referred to arbitration as per the contract clause contained in the agreement between the parties. Before the arbitrator there was a claim and counter-claim by the parties. The arbitrator after considering the said claims by his award dated 26.10.1991 awarded a sum of Rs.58,74,691.12 towards the claim of the appellant herein. He also awarded Rs.8,82,923.60 towards the claim of the respondent herein. Deducting the said amounts awarded to the respondent from the amount awarded to the appellant the arbitrator directed the respondent to pay the balance amount of Rs.49,91,767.52 within 30 days of the signing of the said award failing which he directed an interest @ 12% per annum. It is admitted from either side that as per the terms of the arbitration clause the same did not require the arbitrator to make a reasoned award.

A copy of the signed award was despatched to both the parties on 28.10.1991 by the arbitrator with a direction to file the same before an appropriate court to make the same rule of the court. The appellant herein on 29.10.1991 filed the award in the Court of the Additional Senior Sub-Judge, Sultanpur Lodhi, which court issued a notice of the filing of the said award on 30.10.1991 to the respondent herein. Though the said notice mentioned the next date of hearing as 24.12.1991, as per Article 119 of the Limitation Act the respondent had to file its objections if any, within 30 days from the service of notice. As per the postal endorsement received by the court the said notice of the court was sought to be served on the respondent on 6.11.1991 but the same was refused to be accepted hence a deemed service came to be effected. Consequently, the respondent became liable in law to file its objections on or before 6.12.1991 i.e. within 30 days from the date of deemed service. On 30.10.1991 along with a fresh notice by substituted service to the respondent herein, a notice was also issued to the arbitrator who was impleaded as second respondent to the application filed by the appellant to make the award a rule of the court.

On 24.12.1991 when the matter was listed for further orders, the court was pleased to pass the following order :

"24.12.91

Present : Counsel for the Petitioner

Respondent No. 2 Shri M.S. Sikand has been served. But none is present on his behalf. He is proceeded against exparte. Respondent No.1 has refused process. He be served through substituted service by way of publication in the news paper Nawan Jamana, Jullunder. To come up on 30.1.92."

As per the said order it is seen that since nobody represented the arbitrator, he was set ex parte. The court also noticed the fact that the respondent herein had refused process therefore a direction was given to serve it through substituted service by way of publication in the newspaper. The matter was then listed to be brought up before the court on 30.1.1992.

It seems that after passing the above order, the arbitrator appeared in the court in person on 24.12.1991 itself and moved an application for setting aside the ex parte proceedings against him. That application was accepted and the court recorded another order on the same day which reads thus :

"24.12.91

Present : (At this stage) counsel for petitioner.

Respondent No.2 appeared in person. S.G.S. Suchdeva Adv. filed PA for Respondent No. 1. Application for set aside order of Respondent No.2 accepted. Exparte order set aside. Arbitration file (Award & proceedings) produced. Be placed on file. Now to come up for filing objections if any on or before 30.1.92 dated already fixed."

As per this subsequent order of 24.12.1991 it records that the arbitrator appeared in person on that day and requested for setting aside the ex parte order while the respondent herein was represented by his Power of Attorney. The court accepted the arbitrator's application to set aside the ex parte order against him. It also directed the arbitrator by that order to produce the file pertaining to the award and proceedings. It gave 1.1.1992 which was the date already fixed by the previous order as the next date of hearing. On 18.1.1992 the respondent herein filed an objection purporting to be one under sections 16, 30/33 of the Act. The trial court as per its order dated 6.6.1992 rejected the said objections filed by the respondent herein on the ground of limitation. Consequently, it made the award a rule of the court.

Against the said order of the trial court respondent herein preferred an appeal before the High Court of Punjab & Haryana at Chandigarh raising various grounds; one of which was challenging the finding of the trial court on the question of bar of limitation invoked by the trial court as against the objections filed by it. It was also argued before the High Court, inter alia, that the filing of the award by itself without the connected papers would not amount to a proper filing as contemplated under the Act therefore the trial court ought to have rejected the said application filed by the appellant under section 14/17 of the Act. The High Court by the impugned order firstly came to the conclusion that mere filing of the award would not satisfy the requirement of law hence notice of such filing would not start the period of limitation running because such filing is not as contemplated under section 14(2) of the Act attracting Article 119(b) of the Limitation Act. It further observed that since all the connected papers were filed only on 24.12.1991 the period of limitation would run only from that day hence the objection filed by the respondents on 18.1.1992 would be within the period of

limitation. Primarily, on this basis the High Court set aside the award of the trial court on the ground that the objections of the respondents were erroneously rejected without going into the merits of the same. The High Court also went into certain other issues raised by the respondents herein and gave its finding on those issues also. In our opinion in this appeal it is not necessary for us to go into those questions if the finding of the trial court in regard to the applicability of the bar of limitation is a just view. In other words, if the trial court is right in its view of applicability of limitation, then other issues will not arise for consideration because the court will have to proceed with original application as if there was no objection to the award. Therefore, we will consider the question of limitation first.

Mr. P.P. Rao, learned senior counsel appearing for the appellants submitted that the finding of the High Court that the filing of mere signed award by itself would not amount to a proper filing in the eye of law under Section 14(2) of the Act is contrary to the judgment of this Court in *East India Hotels Ltd. v. Agra Development Authority* [2001 4 SCC 175]. Learned counsel submitted there is no legal obligation to file all the papers pertaining to the arbitration proceedings while seeking the court's intervention for making the award a rule of the court. In *East India Hotels'* case (supra) this Court while dealing with a similar argument, held thus :

"We may now consider the submission of Mr Dwivedi, learned Senior Counsel for the respondent. Learned Senior Counsel has contended that the stage of issuance of notice would come only after filing of the records by the Arbitrator/Umpire and as no records were filed on 13.11.1998, the order passed by the court on that date could not be treated as notice to the parties. We cannot accept this contention. From a plain reading of sub-section (2) of Section 14 it would appear that under this sub-section the stage at which notice is required to be given by the court is after "filing of the award" and the notice pertains to the fact of "filing of the award" in court. It is the duty of the Arbitrator/Umpire to file depositions, documents, etc. along with the award. If only award is filed and other documents are not filed, the court may issue notice under this sub-section after the award is filed. It need not postpone issuing of notice till all the documents are filed. In our view a notice issued after filing of the award but before filing of other documents is a valid notice under sub-section (2) of Section 14 of the Act and no fresh notice need be issued after filing of other documents by the Arbitrator/Umpire."

From the above enunciation of law by this Court, it is clear that for the purpose of entertaining an application for making the award a rule of the court and for issuing notice thereon it is not necessary that the application should contain all or any other papers apart from the signed award. In the instant case it is an admitted fact that the signed award was filed in the court and based on that a notice was issued to the respondent herein and the arbitrator. Mr. Har Dev Singh, learned senior counsel appearing for the respondents, per contra submitted that the law laid down by this Court in the case of *East India Hotels* (supra) may not be a correct proposition of law in view of the two judgments of this Court; one of which is of a larger Bench. They are : *Ch. Ramalinga Reddy v. Superintending Engineer & Anr.* [1999 (9) SCC 610] \026 a judgment

of 3-Judge Bench; and Deo Narain Choudhury v. Shree Narain Choudhury [2000 (8) SCC 626]. Learned counsel for the respondents in support of his above contention relied on paragraphs 8, 11 and 16 of Ramalinga Reddy's case (supra). We have gone through the judgment of this Court in Ramalinga Reddy's case (supra) with special reference to the abovementioned paragraphs but we do not find any proposition of law contrary to one laid down by this Court in East India Hotels' case (supra). In our opinion the issue as it arises in the case in hand and as decided by this Court in East India Hotels' case (supra) did not arise in the case of Ramalinga Reddy (supra). The larger Bench judgment in Ramalings Reddy's case (supra) merely states that the notice which the court issues to the parties for filing an award need not be in writing but the notice under section 14(2) must be served by the court. Therefore we do not think the judgment of the larger Bench in Ramalinga Reddy's case (supra) is of any assistance to the appellant in supporting its argument that there is a requirement of the entire arbitration papers being filed along with the application before issuing notice of the said application under section 14(2) of the Act.

We are also of the opinion that the decision of this Court in Deo Narain Choudhury (supra) does not assist the respondents which while following the earlier judgment in Ramalinga Reddy's case (supra) only held that the notice should be issued by the court and not by an arbitrator as was the fact in Choudhury's case (supra). In the instant case there is no dispute in regard to the fact that the notice was actually issued by the court.

Learned counsel then contended that the notice dated 13.10.1991 issued by the court was recalled by it on 24.12.1991 and a fresh notice was issued on that day which would give the respondent 30 days' time from that date which will be upto 23.1.1992 and the respondent having filed its objections on 18.1.1992 the same was within time hence the trial court was legally bound to have considered the said objections. We do not think that we can agree with this argument of the learned counsel also. We have already extracted the two orders of 24.12.1991 hereinabove and if we peruse the same once again we notice that the court on 24.12.1991 has not recalled its notice issued on 30.10.1991 by either of the two orders made on 24.12.1991. By the first order of that day, it placed the second respondent arbitrator ex parte. It also noticed the fact that respondent No.1 who is also respondent herein but had refused process hence it had ordered a substituted service by way of publication. That issuance of a fresh notice by substituted service would not take away the effect of a deemed service which was effected on the respondent on 6.11.1991. For the purpose of Article 119 of the Limitation Act, 1963 the date of service will have to be taken as the first service effected. In the instant case it cannot be legally disputed that the service effected on 6.11.1991 was not an effective service. If that be so the limitation of 30 days would start from that day namely 6.11.1991. Even the second order of 24.12.1991 does not make the issuance of notice by the court on 30.11.1991 ineffective. Therefore, this argument of learned counsel would also fail.

If the appellant succeeds on the question of bar of limitation in filing the objections, in the eye of law there being no objection to the award other questions do not arise for our consideration. For the reasons stated above, these appeals succeed. The impugned order of the High Court is set aside and that of the trial court restored. The appeal is allowed with costs.

SLP) No. 15844/2003

We find no merit in this petition. The special leave petition is dismissed.