

CASE NO.:
Appeal (civil) 4683 of 2004

PETITIONER:
M/s. Bharat Engineering Service Technocrats & Co

RESPONDENT:
Executive Engineer and Ors

DATE OF JUDGMENT: 26/02/2008

BENCH:
TARUN CHATTERJEE & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO.4683 OF 2004
WITH
CIVIL APPEAL Nos. 4684/2004, 4685/2004,
4713/2004, 4714/2004 AND 4715/2004

TARUN CHATTERJEE, J.

1. These appeals are directed against the common final judgment and order dated 12th of September, 2003 passed by the High Court of Karnataka at Bangalore in M.F.A. Nos. 1466-1468 of 1998.

2. The common reasoned award passed by the learned Arbitrator on 23rd of May, 1996 under the Arbitration Act, 1940 (in short 'the Act') and made a rule of the court by the Civil Court on 20th of December, 1997 was set aside in its entirety by the High Court only on the ground that the arbitrator had erroneously decided the issue whether the claims preferred by the appellant were barred by limitation. It is on record that the entire matter was remitted by the High Court, despite the lapse of over 10 years since the reference was made, to a different arbitrator for a fresh decision on merits.

3. In our view, the judgment of the High Court is not sustainable in law and the objections filed by the respondent-State against the award ought to have been entertained by the Civil Court despite there being a considerable delay in filing the same and in spite of the fact that there was, in the first instance, no application for condonation of delay. For this purpose, we have looked into the explanations given in the application for condonation of delay in filing the objection under Section 5 of the Limitation Act. We are of the view that the explanations offered do constitute sufficient cause in filing the objection under Section 33 of the Act. In this view of the matter, we set aside the judgment of the High Court as well as of the trial court and the matter may be remitted back to the trial court for decision on the objection filed under Section 33 of the Act. The objection under section 33 of the Act shall be decided by the trial Court positively within six months from the date of supply of a copy of this order to it after giving hearing to the parties and after passing a reasoned order in accordance with law.

4. For the reasons aforesaid, the appeals are allowed to the extent indicated above. There will be no order as to costs.