

Present: Sh. Kamaljit Bansal, Advocate for the applicants.
Sh. Rajiv Gupta, Adv. for respondents no. 1 to 4.
Sh. Amandeep LAC Clerk on behalf of respondent no. 5.

ORDER:

1. Arguments on application of the petitioner for amendment of the objection petition, addressed today.

2. The facts in brief as alleged in the said application are that due to inadvertence, the petitioners/objectors could not add the following ground of objection in their objection petition and hence they want to amend the ground of objection petition by incorporating the following necessary amendment :-

“That as per provisions of Arbitration Act, 1996 (as amended upto date) Ld. Arbitrator had not supplied the signed copy of award to the Petitioners/Objectors. Therefore, the Objectors/Petitioners had to apply for the certified copy of award and received for challenging the award. The same is attached herewith. Thus the award is liable to be dismissed.”

It is further stated that said amendment may be allowed in the interest of justice.

3. In reply to this application filed on behalf of contesting respondents, the application for addition of ground of challenge by way of amendment is not within time. Award in question is dated 21.01.2019 as corrected on 23.01.2019. Maximum limitation period for filing objection petition under section 34 of the Arbitration and Conciliation Act, 1994 is three months and the Hon’ble Court has been given the power to condone further delay up to one month period only and that too in case of exceptional circumstances. Period considerably in excess than the permissive one had expired on the day when present application was moved, as such the above application for amendment cannot be allowed and hence the application may be dismissed.

4. I have heard Ld. Counsels for the parties and have perused the case file.

5. The law relating to amendment of objection petition under section 34 of Arbitration and Conciliation Act has been clarified by Hon'ble Supreme Court of India in "**Bijendra Nath Srivastava vs Mayank Srivastava 1994 AIR 2562**" and by Hon'ble Bombay High Court in "**Vastu Invest & Holdings Pvt. Ltd. vs Gujarat Lease Financing Ltd. 2001 (2) ARBLR 315 Bom**" wherein it laid that :

"When considering whether incorporation of an additional ground by way of an amendment to the application under Section 34 is tantamount to filing a fresh application in all situations and circumstances, the court observed that if that were to be treated as such, it would follow that no amendment in the application for setting aside the award would be possible, regardless of how material it may be for consideration of the court. In addition, it would not be possible to amend the existing grounds after the prescribed period of limitation had expired, although an application to set aside the arbitral award had been made in time. The court has held that this is not, and could not be, the intention of the legislature when enacting Section 34 of the act. Furthermore, Section 32(2)(b) enables the court to set aside the arbitral award if it finds that the subject matter of the dispute was not capable of settlement by arbitration under the law in force at the time being or the arbitral award conflicted with the public policy of India. The court further observed that the words "the Court finds that" enable the court to grant leave to amend the application under Section 34, where such application has been made within the prescribed time, if the peculiar circumstances of the case so warrant it and it is so required in the interest of justice. The court further held that its previous judgments had clearly held that courts would, as a rule, decline to allow the amendments if a fresh claim based on the proposed amendments would be barred by limitation on the date of application. The same would be a factor for consideration in exercise of its discretion as to whether the leave of amendment should be granted, but the same does not affect the power of the court to order it if so required in the interest of justice. The court held that there is no reason why the same rule should not be applied when considering an application for amendment of grounds in an application to set aside the arbitral award or an amendment to the grounds of appeal under Section 37 of the act".

It has also been laid by the Honble Apex Court in '**State of Chhattisgarh Vs. M/s Sal Udyog Private Limited 2021 AIR(SC) 5503**' that "though application for setting aside Arbitral Award under Section 34 of the 1996 Act is to be moved within the time prescribed in the statute, it cannot be held that incorporation of additional grounds by way of amendment in the petition under Section 34 would amount to filing fresh application".

6. Now in the present case, the amendment sought to be made in the objection petition is only for taking an additional ground that the concerned arbitrator did not supply the signed copy of award to the petitioner as required under the Act. Though the application has been moved after the period of limitation for filing the objection petition under the Act, but the said amendment is minor in nature and is not going to change the nature of the objection petition in any manner nor the same is going to unduly prejudice or embarrass the respondents, as they will have the opportunity to dispute the alleged fact, which is a matter of record only. Rather the amendment in question is only going to help the court in disposal of the matter in a just and effective manner. Accordingly, in the interest of justice, the application for amendment is admitted in the interest of justice.

7. Amended petition is already on record. Copy supplied. Now to come upon for filing of reply to the amended petition on 11.11.2024 as well as for arguments on the objection petition. Record of arbitrator has already been received.

Pronounced in Open Court :
07.09.2024
Rakhi

(Mahesh Grover)
Additional District Judge, Exercising the
Powers of Principal Civil Court Under The
Arbitration and Conciliation Act, 1996 at
Bathinda UID No. PB0243