

**IN THE COURT OF SH. SHIV MOHAN GARG,
ADDITIONAL DISTRICT JUDGE,
PATIALA.(UID No. PB0164)**

CIS No.ARB/235/ 2019 CNR No.PBPT01-0013304/2019 Date of Institution: 2.9.2019 Date of Decision : 18.02.2021
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Naranjan Singh son of Bachan Singh since deceased through his L.Rs (1) Tej Kaur (widow) (2) Mohinder Kaur (widow) (3) Gurjeet Kaur (Daughter) (4) Jagjit Kaur (Daughter) (5) Hardeep Kaur (Daughter) Khewatdars of village Upli, Tehsil and District Sangrur.

...Objector/ appellant

Versus

1. Union of India, through Ministry of Road transport and Highways, new Delhi,
2. National Highways Authority through its project Director, Kothi No.17, Model Town, Ambala City.
3. Competent Authority, Collector, cum Sub Divisional Magistrate, Sangrur, District Sangrur.
4. Sub Divisional Engineer, Central Works Division, PWD, B&R, Branch Sangrur at Patiala.
5. Arbitrator Cum-Commissioner Division Patiala, Block-A, Mini Secretariat, Patiala.

.....Respondents.

Objections / Appeal/ Petition U/s 34 of Arbitration and Conciliation Act.

Interim Application No.1/ 2019

Application for condonation of delay in filing of the petition/ objections under Section 34 of Arbitration and Conciliation Act.

Present: Sh. Dinesh Batish Advocate counsel for the petitioner
Sh. Vishavdeep Gupta, Advocate counsel for respondents no.1
3 & 4
Sh. A.S. Billing, Advocate counsel for respondent no.2

ORDER

1. Heard on the application for condonation of delay in filing the petition under Section 34 of the Arbitration and Conciliation Act (hereinafter referred as 'The Act').

2. It is pleaded in the application that the award in the matter was passed by the Arbitrator-cum-Divisional Commissioner, Patiala on 7.2.2019. After getting the certified copy of the judgment, the petitioner met with the counsel at Sangrur. He suggested the petitioner that writ petition against the award will be filed in the Hon'ble High Court of Punjab and Haryana and the limitation for the same is six months. The petitioner handed over all the documents relating to his case to his counsel at Chandigarh, who assured him to file the writ petition and assured him about the proceedings but yesterday the petitioner when approached his counsel at Chandigarh, he disclosed that writ petition is not maintainable in the Hon'ble High Court. The objections can be filed before the learned District Judge, Patiala. So, the delay in filing the objection is neither intentional nor willful but due to the above mentioned reasons. The delay in filing the petition if not condoned, the petitioner will suffer an irreparable loss. Hence, prayer is made for condonation of delay in filing the objection under Section 34 of The Act.

3. The reply to this application is filed by respondents no.1,3 & 4 wherein preliminary objection is taken that this petition is hopelessly time barred. No cogent explanation has been given by the applicant for extension of time in filing the objection petition. Admittedly the award was passed on 7.2.2019 by the Arbitrator. The limitation period to file the objection petition is three months but it has been filed long after the said limitation period. The petitioner was not prevented by any sufficient cause from filing objection petition. The petitioner applied for the copy of order and received it in time. The petitioner was careless in filing the objection

petition in time. No cogent document has been placed on record to show his bonafide. So, prayer was made for dismissal of the petition.

4. No reply has been filed by respondent no.2. However, the learned counsel for respondent no.2 also prayed for dismissal of the application.

5. I have heard the learned counsel for the petitioner and the counsel for respondents no.1, 3 & 4.

6. The learned counsel for the objector argued that the certified copy of the award was not delivered to the petitioner as provided under Section 31 (5) of the Arbitration and Conciliation Act, which was necessary to be provided. Even if the counsel for the objector has taken the certified copy of the award that is not sufficient. Till today, no copy of the award signed by the Arbitrator is received by the applicant. Moreover, it is also argued that due to the wrong advice by the counsel for the petitioner, he should not suffer. So, prayer is made that the delay in filing the petition be condoned. In support of his contentions, learned counsel has relied upon the following case law:-

1.	<i>2012 (4) R.C.R. (Civil) 584, Banarsi Krishna Committee and Ors. Vs. Karmyogi Shelters Pvt. Ltd.</i>
2.	<i>2011 (1) Arbi LR 512, State of Maharashtra Vs. M/s Ark Builders Pvt. Ltd. (SC),</i>
3.	<i>2014 (4) PLR 34, Kanwar Jaspreet Singh Vs. M/s Citi Financial Consumer Finance India Ltd., New Delhi,</i>
4.	<i>2015 (2) R.C.R. (Civil) 947, Swarup Singh Vs. Union of India (P&H).</i>

7. Whereas the learned counsel for the respondents have stated that as provided under Section 34(3) of The Act, the objection petition under Section 34 can be filed against an award within a period of 90 days or on showing sufficient cause, 30 days time can be extended but in the present case there is a long delay in filing the objection petition and no cogent explanation has been mentioned for such delay. There is no affidavit of the counsel for the objector who has advised him to approach the Hon'ble High Court for filing of the writ petition against the award. It is also argued that applicant was in possession of the certified copy of the order

as per his version. So, there is no question for delivery of the signed copy of the award by the Arbitrator to petitioners under Section 31(5) of The Act. So, it is prayed that the petition be dismissed being miserably time barred. It is argued that the case law cited supra is not applicable to the facts of the present case.

8. The section 34(3) of the Arbitration and Conciliation Act reads as under:-

“Section 34 (3) in THE ARBITRATION AND CONCILIATION ACT, 1996

(3) An application for setting aside award may not be made after three months have elapsed from the date on which the party making that 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; Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

9. In the present petition the challenge is to the award passed by the Arbitrator dated 7.2.2019. The certified copy of the same was applied by the counsel for the petitioner Sh.Nitin Mehta, Advocate on 27.03.2019 and it was delivered to him on the same day. As per the contents of the application, the petitioner was having possession of the certified copy of the judgment and had knowledge of the award dated 7.2.2019. He met a counsel at Sangrur with same who allegedly advised him to file the petition before the Hon’ble High Court. There is no affidavit of the said counsel who has allegedly advised the objector to approach the Hon’ble High Court. When the petitioner himself was having possession of certified copy of the judgment/ award dated 7.2.2019, even if he did not receive any copy of the award as provided under Section 31(5) of the Arbitration and Conciliation Act that is immaterial. Moreover, no details

have been given when petitioner delivered documents to a counsel at Chandigarh and when he received back.

10. In such circumstances, there is no question of condoning the delay in filing the objection petition. The case of the petitioner does not fall under the provisions of Section 34(3) and 31(5) of the Arbitration and Conciliation Act. The case law cited supra is not applicable to the facts of the present case. So, limitation starts running from that period when party was in possession of signed copy of award as in present case. In this regard reliance can be placed upon case law ***Simplex Infrastructure Ltd. Vs. Union of India, 2019 (1) R.C.R. (Civil) 205***, wherein it has been held as under:-

“..that a plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words “but not thereafter” in the proviso makes it clear that the extension cannot be beyond thirty days.”

11. So, there is no force in the arguments advanced by the learned counsel for the petitioner. Therefore, the application for condonation of delay in filing the petition/objections under Section 34 of the Arbitration and Conciliation Act stands **dismissed**.

12. As a necessary consequences to the dismissal of application, the petition under Section 34 of the Arbitration and Conciliation Act is also **dismissed** being barred by time. So, the file be consigned to the record room.

pronounced.

Date of order 18.02.2021

Braham Kumar- Stenographer-I

(Shiv Mohan Garg)
Addl. District Judge,
Patiala UID No.PB0164

NARANJAN SINGH since deceased through LRs VS UNION OF INDIA
THROUGH MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
etc.

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Present: Sh. Dinesh Batish Advocate counsel for the petitioner
Sh.Vishavdeep Gupta, Advocate counsel for respondents no.1
3 & 4
Sh.A.S. Billing, Advocate counsel for respondent no.2

Reply by respondents no.1, 3 & 4 filed. Arguments heard on the application for condoning the delay in filing the objections under Section 34 of the Arbitration and Conciliation Act. Vide my separate detailed order of even date, the application for condonation of delay as well as the petition under Section 34 of the Arbitration and Conciliation Act stands **dismissed**. File be consigned to the record room.

Date of order 18.02.2021

Braham Kumar- Stenographer-I

(Shiv Mohan Garg)
Addl. District Judge,
Patiala UID No.PB0164