



Arbitration Case No.106 of 2020
CNR Number :MHLA010023472020

ORDER BELOW EXH.NO.15

(National Highway Authority of India -Vs-Hemlata and other 1)

1] This application is filed by the Respondent No.1 for framing Preliminary Issue on the point of limitation and dismiss the application of the applicant for want of limitation.

2] The applicant by filing say vide Exh.19 has strongly objected this application and relied upon the observations of Hon'ble Supreme Court passed in case of State of Maharashtra & Ors V/s. M/s. Ark Builders Pvt. Ltd., in Civil Appeal No.2152 of 2011(arising out of S.L.P (Civil) No.14308 of 2010) decided on 28th February, 2011.

3] Heard both the sides. Perused the record and proceeding and the document filed by applicant vide list Exh.4.

4] The applicant made oral submission and also filed Written Argument at Exh.30 contending that, in view of the above judgment (cited supra), it is clear that the limitation starts from the moment the Arbitration Award in original form duly signed by the Arbitrator is received by the party. In this case, the Arbitrator never supplied the Award suo moto and lastly, the applicant/NHAI applied for certified copy and obtained the same. Therefore, the present Arbitration case is well within the period of limitation.

5] It is submitted by respondent No.1 that :-

(a) The proceeding filed under section 34 of the Arbitration and Conciliation Act, 1996 (“the Arbitration Act” for the sake of brevity)is not within limitation.

(b) The order of Arbitrator i.e. the Additional Collector, Latur came to be passed on 23.08.2019. The said order was issued by the Arbitrator to the applicant through mail immediately within 8 days.

(c) Upon perusal of Exh.1, it appears that the applicant had received the copy of Award on 21.01.2021, upon the application for certified copies dated 17.01.2021.

(d) The applicant has not applied for certified copies within time limit.

(e) The applicant has filed this proceeding without delay condonation application nor he has explained the day to day delay in this application Exh.1.

(f) Hence, in the interest of natural justice, it is essential to frame preliminary Issue on the point of limitation.

(g) As the application of the applicant is not within limitation nor it has filed separate application for delay condonation, the proceeding be dismissed.

6] As against this, it is submitted by the applicant/N.H.A.I. that :-

(a) The learned Arbitrator passed the award on 23.08.2019.

(b) The said Arbitrator / Additional Collector, Latur never communicated a duly signed copy of Arbitration Award to the applicant as required by Section 31(5) of the Arbitration Act, 1996.

(c) Therefore, the applicant/NHAI itself applied for certified copy of the Arbitration Award which was received on 31.01.2020.

(d) Thereafter, the matter was filed on 22.12.2020.

(e) From 31.01.2020, the applicant was supposed to file the proceeding under Section 34 of the Arbitration Act within 90 days i.e. upto 31.03.2020.

(f) However, the Government of India declared the Lock-down from 16.03.2020, and therefore, the applicant could not file the said application before 31.03.2020.

(g) The Hon'ble Supreme Court of India by taking suo motu cognizance of the said situation has pleased to extend the period of limitation available under all the Act prevailing in India in Sua Moto Writ Petition (C) No.3 of 2020.

(h) In view of the aforesaid circumstances, there is no delay at all caused in filing the main proceeding. Hence, there was no need to explain the said delay by filing any separate application.

(i) The proceeding under Section 34 of the Arbitration Act is well within limitation and there is no need to frame Preliminary Issue on the point of limitation. Hence, the

application Exh.15 be rejected.

7] After hearing these rival submissions, following points arise for my determination and I have recorded my findings against them, for the reasons given below:-

<u>Sr.No.</u>	<u>POINT</u>	<u>FINDINGS</u>
1.	Whether the application under Section 34 of the Arbitration and Conciliation Act, 1996 is within the period of limitation ?	Affirmative
2.	Whether there is need to frame Preliminary Issue on the point of limitation ?	Negative
3.	What order ?	Application is hereby rejected.

REASONS

POINT NOS.1 & 2

8] As per Section 34(3) of the Arbitration Act, the limitation to file application under Section 34(1) of the Arbitration Act, starts to run from the date of receipt of signed copy of the Arbitration Award. As per Section 31(5) of the Arbitration Act, the copy of the award duly signed should be delivered to each party.

9] In the present case, it is case of the Respondent No.1 that the Arbitrator had issued order to the applicant through mail immediately within 8 days. However, no record to that effect is find on record.

10] Further, it is say of the Respondent No.1 that the applicant applied for certified copy on 17.01.2021 which was received by him on 21.01.2021. The applicant had not applied for certified copy within time limit.

11] In this regard, it is to be noted that, it is duty of the Arbitrator, as per Section 31(5) of the Arbitration Act, a signed copy of the award shall be delivered to each party. Thus, it is required that the copy of the Arbitral Award be handed over to the proper parties.

12] It is observed in case of **State of Maharashtra & Ors V/s. M/s. Ark Builders Pvt. Ltd., in Civil Appeal No.2152 of 2011(arising out of S.L.P (Civil) No.14308 of 2010) decided on 28th February, 2011**, that expression, “party making that application had received the Arbitral Award”, can not be read in isolation and it must be understood in the light of what is said earlier in Section 31(5) of the Arbitration Act requires a signed copy of the Award to be delivered to each party. Reading the two provisions together, it is quite clear that the limitation prescribed under Section 34(3) of the Arbitration Act would commence only from the date a signed copy of the Award is delivered to the party making the application for setting it aside.

13] In view of the said observations, in the case in hand, it appears that the copy of the Award is not delivered by the Arbitrator to the applicant. However, the applicant has received the same on 21.01.2021, by application for certified copy. From 21.01.2021, the limitation to file proceeding under section 34 of

the Arbitration Act was for 90 days as contemplated under Section 34 (3) of the Arbitration Act. Thus, the limitation to file the said proceeding was upto 21.04.2021.

14] It appears that the present proceeding is filed on 03.11.2020. However, it is to be noted that from 16.03.2020 there was lock-down declared by the Government of India due to spread of Corona-19 virus. Considering the calamity, the **Hon'ble Supreme Court of India in Suo Motu Writ Petition (C) No.3 of 2020** has pleased to extend the period of limitation up to 28.02.2022. Hence, the limitation in the present petition also came to be extended.

15] Hence, there is no delay caused by the applicant to file the present proceeding. As well, there is no need for the applicant to explain the said delay. As well, no need to file separate application for condonation of delay. Hence, there is no need to frame any Preliminary Issue on the point of limitation. **Hence, I answer Point No.1 in Affirmative and Point No.2 in Negative.**

POINT NO.3

16] In the result, I proceed to pass the following order :

ORDER

(i) The application vide Exh.15 is hereby rejected.

Date: 12.06.2023.

Sd/-
(Smt.S.S.Kosamkar)
Principal District Judge,
Latur.