

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4881/2005

(From the judgement and order dated 04/10/2004 in FAO No.112/2004
of the HIGH COURT OF DELHI AT NEW DELHI)

M/S. MAHAVIR PAPERS

Petitioner(s)

VERSUS

HARISH PAPER HOUSE & ANR.

Respondent(s)

(With office report)(FOR FINAL DISPOSAL)

Date: 29/08/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s)

Mr. Vijay K. Jain,Adv.

For Respondent(s)

Mr. Dharmendra Kumar Sinha,Adv.

UPON hearing counsel the Court made the following
ORDER

The Special Leave Petition is dismissed, in terms of the signed
order. There will be no order as to costs.

(Ganga Thakur)
P.S. to Registrar

(Juginder Kaur)
Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. 4881 OF 2005

M/S MAHAVIR PAPERS

...APPELLANT(S)

Versus

HARISH PAPER HOUSE & ANR.

..RESPONDENT (S)

ORDER

This Special Leave Petition is directed against the order
dated 4th October, 2004, passed by the Delhi High Court in First
Appeal against Order (FAO No. 112/04) dismissing the appeal on

the ground that the Additional District Judge, Delhi, in Suit 20A/03, had declined to extend the period of limitation under Section 34 of the Arbitration and Conciliation Act, 1996, having regard to the decision of this Court in Union of India Vs. Popular Construction Co. (2001 (8) SCC 470). Learned counsel appearing in support of the Special Leave Petition, submitted that the High Court erred in dismissing the appeal, inasmuch as, the Award, which has been passed by the Arbitrator, does not attain finality till such time as the appeal provided for under the Regulations of Paper

...2/-

-2-

Merchants Association, Delhi, is finally decided. The definite case made out by him was that the limitation with regard to the challenge to the Award of the learned Arbitrator would commence only after the appeal preferred under the said Regulations came to an end. It was also urged that, in any event, the petitioner was also entitled to the benefit under Section 14 of the Limitation Act as at best it could be said that he had been pursuing his remedy before a wrong forum, which period under Section 14 was liable to be excluded from the period of limitation as prescribed under Sub-section (3) of Section 34 of the Arbitration and Conciliation Act, 1996.

In support of his submission, learned counsel referred to and relied upon the decision of this Court in Centrotrade Minerala & Metal Inc. Vs. Hindustan Copper Ltd., 2006(1)SCC 245, which is a decision with regard to the question as to whether a two-tier Arbitration agreement would be permitted having regard to the provisions of the aforesaid Act. In the said decision, following the earlier decision of the Calcutta High Court in the case of Heeralal Agrawalla & Co. Vs. Joakim Nahapiet Co.Ltd., AIR 1927 Calcutta 647, this Court held

..3/-

-3-

that the second round of Arbitration would be permitted if agreed

to between the parties. We are unable to see how this judgment is of any help to the petitioner's case. Reference has also been made to the decision of this Court in Consolidated Engineering Enterprises vs. Principal Secretary Irrigation Department & Ors., 2008 (7) SCC 169, wherein this Court has held that Sec.14 of the Limitation Act will be applicable even in cases falling within the scope of the Sec-34(3) of the 1996 Act where a remedy is pursued in a Court without having jurisdiction to entertain the matter. In this regard it may be noted that the Award was passed by the learned Arbitrator on 30.7.2000 whereas the application under Sec.34 was filed on 22.8.2003. Another date which may be of some relevance is 26.4.2003, when the appeal preferred by the petitioner before the Paper Merchants Association, which is a non-statutory Association, was disposed of, having regard to the case made out on behalf of the petitioner that the period of limitation, even in terms of Sec.34, would commence from the date of the disposal of such appeal.

On behalf of the respondent, it has been urged that the law having been laid down clearly in the Popular Construction case (supra), the question of application of

...4/-

-4-

Sec.14 of the Limitation Act or Sec.5 would not arise since having regard to the said decision, the said benefit would not be available on account of the definite and unyielding language of Sec.34(3) of the Arbitration and Conciliation Act, 1996. Learned counsel submitted that the special leave petition was misconceived and was liable to be dismissed.

Having carefully considered the submissions made on behalf of the respective parties and the decisions cited, we are unable to agree with the submissions advanced on behalf of the petitioner. Though we have been shown the decision of this Court in the case of Consolidated Engineering Enterprises (supra), the same does not come to the aid of the petitioner in view of the language of Sec.14 of the Limitation Act which provides for

exclusion of time where a relief is pursued before a wrong Court not having jurisdiction to entertain the matter.

In the instant case, the petitioner was pursuing its relief before a non-statutory body having no legal authority over the Arbitration. We cannot, therefore, accept the proposition that the period of limitation

-5-

...5/-

under Sec.34 of the 1996 Act would commence only after the disposal of the appeal before the non-statutory body.

As far as the second limb of the submissions made on behalf of the petitioner is concerned, we are also unable to accept the submission made on behalf of the petitioner with regard to the applicability of the Limitation Act to the present case having regard to the clear findings on the issue in the Popular Construction Case (supra).

We are, therefore, unable to accept the submissions made on behalf of the petitioner and we are also of the view that since the proceedings were not being pursued before a Court, the provisions of Sec.14 of the Limitation Act would not be attracted in this case. In such a situation, we have no option but to dismiss the special leave petition.

There will be no order as to costs.

(ALTAMAS KABIR)

.....J.

.....J.

(MARKANDEY KATJU)

New Delhi,
August 29, 2008.