

IN THE HIGH COURT OF DELHI; AT NEW DELHI

FAO(OS) No.551 of 2001

Date of Decision:- January 03, 2003

Union of India and others through Mr.Dalip Singh with Mr.Raman
Oberoi, Advocate.

Versus

M/s.Deepak Electric Trading Co. through Mr.S.K.Mittal, Advocate.

Coram:-

The Hon'ble Mr.Justice Devinder Gupta, ACJ
The Hon'ble Mr.Justice B.N.Chaturvedi

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not? *yes.*
3. Whether the judgment should be reported in the Digest?

DEVINDER GUPTA, ACJ.

1. This appeal is against the order passed on 28.9.1991 by learned Single Judge of this Court dismissing the appellant's objections to the award of arbitrator as time barred.
2. Facts in brief are that on 17.6.1996 the arbitrator made and published his award. An application under Sections 14 and 17 of the Arbitration Act, 1940 was filed by the respondents 8.7.1996 praying that the arbitrator be directed to file his award along with complete record and after award is received the same be made rule of the court and decree be passed thereupon in terms of the award.

3. Notice of this application was directed to be issued to the arbitrator for 14.10.1996 calling upon him to file award and the proceedings. On 14.10.1996 it was noticed that the award has since been filed. Notice of filing of the award was directed to be issued to the parties without process fee for 13.1.1997. It appears that notice for 13.1.1997 was issued to the Executive Engineer but same could not be served. The report was that he was out of station. Notice was also not served on the respondent. Fresh notices were directed to be issued for 1.4.1997. Notice was served upon Union of India but service of the notice on the Executive Engineer was still awaited. Fresh notice was accordingly directed to be issued to the Executive Engineer for 17.7.1997. In the meanwhile, an application (IA.3459/97) was filed on behalf of the respondent on 15.4.1997 stating that the Union of India had not correctly been arrayed and it should be arrayed as follows:-

“Union of India
The Secretary,
Ministry of Urban Affairs and Employment,
C-Wing, Nirman Bhawan,
New Delhi-110001”

4. The application came up on 21.4.1997 and it was allowed. Before the said date on 21.3.1997 a letter was addressed by the Executive Engineer to the Registrar of this Court pointing out that the arbitrator must have filed the award but more than five years had passed and no formal notice had been received from

9

the High Court by him. He, therefore, requested that the status of the case be intimated so as to enable him to defend the case along with the Government counsel.

5. On 17.7.1997 on behalf of the respondent notice of filing of the award was accepted. Notice was directed to be issued to Union of India and Executive Engineer without process fee. Notice on Union of India was served on 29.7.1997. Notice could not be served on the Executive Engineer. It was still awaited. On 23.7.1997 objections were filed on behalf of Union of India by its counsel Ms. Neera Aggarwal, which were registered as IA.9423 of 1997. A preliminary objection was raised that the objections were not within the period of limitation.
6. Another fact, which deserves to be noticed besides the facts aforementioned is that on 20.5.1997 Ms. Neera Aggarwal, counsel for Union of India, applied to the Registry for being allowed to inspect the record of the case on 21.5.1997. One Mr. Yadav was authorised to carry out the inspection and as per the endorsement on the said application, the inspection was carried out on 21.5.1997.
7. In the aforementioned background, we heard learned counsel for the parties in this appeal.
8. The reasons assigned by learned Single Judge in coming to the conclusion that the objections were not within period of limitation were that on 1.4.1997 notice of filing of the award had been duly served on Union of India. It was observed that the Union of India had also been served in November, 1996,

10
therefore, the objections filed on 23.7.1997 were not within the period of limitation. It was contended on behalf of the appellant that the Executive Engineer, who had been arrayed as respondent No.2 had not been served, who alone had to file objections. Learned Single Judge turned down this argument on the ground that under Section 79 of the Code of Civil Procedure when a suit is filed against the Central Government it is Union of India, who is arrayed as a party. The Executive Engineer by no stretch of imagination can be taken to be a party to such proceedings and as such the Court was only considering the objection of Union of India, who had been served in November, 1996. Learned Single Judge even declined to take a lenient view in the matter and also declined to condone the delay for which prayer was made orally.

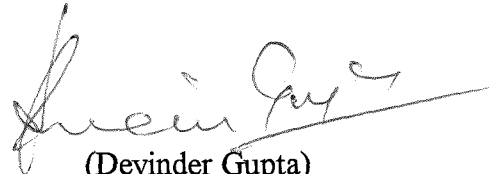
9. There is no doubt that Union of India had duly been served, but in view of the decision of this Court in Union of India v. Surinder Kumar 61(1996) DLT 42 (D.B.) it was necessary to have served the Executive Engineer since it was the Executive Engineer who on behalf of Union of India was looking after the proceedings before the arbitrator. Therefore, the question in this case would be that on which date Union of India was served with the notice of filing of the award or on which date Union of India through Executive Engineer got knowledge of the filing of the award.
10. It is apparent that inspection was carried out on 21.5.1997 and it is also borne on record that on 21.3.1997 letter had been sent

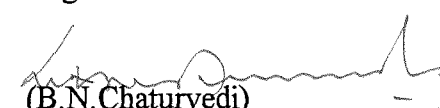
by the Executive Engineer to the Registrar of this Court stating that he was aware of the fact that the arbitrator had filed his award in this Court but was not aware of the date of hearing since no notice had been received by him. It is also a fact that the same counsel, who inspected the file on 21.5.1997 filed objections on behalf of the Executive Engineer, without disclosing in the objections the fact that inspection had been carried out on 21.5.1997. It is but natural and it must be inferred in the facts and circumstances that as Executive Engineer, who was so keen to get any intimation from the Registrar of the date of hearing, obviously instructions must have been passed on to counsel to carry out inspection of the record and in fact inspection was carried out on 21.5.1997. Therefore, if not earlier, on 21.5.1997 the Executive Engineer will be deemed to have acquired knowledge of the next date of hearing. Executive Engineer prior to the said date had also knowledge of the fact that award had been filed in this Court. Though the reasoning of learned Single Judge that it was not necessary to have served the Executive Engineer, which view is contrary to what has been laid down in the decision of this Court in Surnder Kumar's case (supra) on other ground, the objections were liable to be dismissed as time barred. The ratio of the decision of Supreme Court in P.K.Ramachandran v. State of Kerala AIR 1998 S.C,2276 cannot be applied to the facts of this case by condoning delay on equitable grounds irrespective of the fact that the Executive Engineer was not

served with the actual notice of filing of the award but he on his own showing had the requisite information of the filing of the award. He did address letter to the Registrar. File was also got inspected through lawyer. No reason is assigned in the objections about the delay. No separate application was moved seeking condonation, which it was incumbent on the Executive Engineer or the Union of India to have done so explaining the reason as to why within 30 days at least from 21.5.1997 objections were not filed. The objections as such were rightly held to be not within period of limitation.

11. Thus we find no substance in the appeal, which is hereby dismissed.

January 03, 2003
As


(Devinder Gupta)
Acting Chief Justice


(B.N. Chaturvedi)
Judge