

DEO NARAIN CHOUDHURY
v.
SHREE NARAIN CHOUDHURY

OCTOBER 31, 2000

[V.N. KHARE AND S.N. VARIAVA, JJ.]

Arbitration Act, 1940/Limitation Act, 1963—Section 14/Article 119—Arbitrator issuing notices to parties regarding filing of award before Court—Respondent filing Caveat for hearing before making Rule of Court—Notice of Court to parties intimating the filing of Award—Period of limitation of 30 days for filing objections—Held, period of limitation starts from the date of issue of notice by Court and not from the date of filing of Caveat.

Appellant and respondent are brothers having a dispute relating to possession of a property. The dispute was referred to arbitration. Arbitrator declared an Award on 21st January, 1996. On 14th May, 1996, the arbitrator issued notices to both of them that the Award had been made and filed in the Court of Sub-Judge. On 11th June, 1996, the respondent filed a Caveat before the Court praying that before any order is passed on the Award, notice be issued for hearing. On 16th July, 1996, the Court issued notices to the parties about the filing of the Award. The notice was received by the respondent on 25th July, 1996; he filed his objections on 21st August, 1996. The appellant contended before the Court that the objections had been filed beyond the period of limitation and that the objections should be dismissed and a decree in terms of the Award be passed. The Court of Sub-Judge rejected the contention of the appellant, which was confirmed by High Court.

In appeal before the Court, the appellant contended that 'notice' under Section 14(2) of the Arbitration Act, 1940 means any communication from the Court intimating the parties about the filing of the Award; that there is no prescribed mode for issuing notice; and that the notice can be oral also; that the period of limitation starts from the day when the Caveat was filed before the Court, i.e. on 11th June, 1996.

Dismissing the appeal, the Court

HELD : 1. The proposition of law is that notice need not be only in

- A** writing but can be oral also. However, the notice must be some act of the Court. Mere filing of a Caveat did not start the period of limitation. By the Caveat, the respondent was merely asking the Court to give it notice. The Caveat did not absolve the Court from its statutory duty to give notice under Section 14(2) of the Arbitration Act, 1940. The Order sheet of the Court
- B** discloses that till 11th July, 1996 the Court was only dealing with the matter administratively. Thereafter on 16th July, 1996 the Court directs giving of notice to the parties. The notice was received by the respondent only on 25th July, 1996. As the notice was received on 25th July, 1996, the period of limitation started running from that date. The Objections filed on 21st August, 1996 are within the period of 30 days as provided by Article 119 of the
- C** Limitation Act, 1963. [312-C-F]

Ch. Ramalinga Reddy v. Superintending Engineer, [1999] 9 SCC 610, relied on.

- D** *Nilkantha Shidramappa Ningashetti v. Kashinath Somanna Ningashetti*, [1962], 2 SCR 551; *Food Corporation of India v. E. Kuttappan*, [1993] 3 SCC 445 and *Government of Karnataka v. Harishbabu*, [1996] 5 SCC 400, referred to.

- E** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6104 of 2000.

From the Judgment and Order dated 19.3.99 of the Patna High Court in C.R. No. 2173 of 1998.

- F** P.S. Misra, A. Sharan, Madhu Sharan, Chandra Shekhar, Vishnu Sharma and Upendra Mishra for the Appellant.

Rakesh Dwivedi, Manish Mohan and Ugra Shankar Prasad for the Respondent.

- G** The Judgment of the Court was delivered by
S.N. VARIAVA, J. Leave granted.

This Appeal is against an Order dated 19th March, 1999 by which the Civil Revision filed by the Appellant herein has been dismissed.

- H** The facts necessary for the purpose of this Appeal are as follows:

Appellant and Respondent are brothers. According to the Appellant their disputes, in respect of a property at Patna, were referred to Arbitration. The Arbitrator/Umpire declared an Award dated 21st January, 1996. On 14th May, 1996 the Arbitrator/Umpire gave a registered Notice, to both the parties, that the Award had been made and that the same was filed in the Court. On 14th May, 1996 the Arbitrator/Umpire filed the Award in the Court of Sub Judge I Patna. A B

On 11th June, 1996 the Respondent filed a Caveat in the Court of the Sub Judge. It is mentioned in the Caveat that the Respondent has received a Notice dated 14th May, 1996 that an Award has been declared on 21st January, 1996 and that the Award has been registered on 20th April, 1996 and that it has been filed in the Court. In the Caveat it is prayed that before any Order is passed, on the alleged Award, notice be issued to the Caveator and he be heard. C

On 16th July, 1996 the Court sent a Notice to the parties about the filing of the Award. This Notice was admittedly received by the Respondent on 25th July, 1996. D

On 1st August, 1996 both the parties applied for inspection of the Award. Parties were permitted to and took inspection. The Respondent filed his objections to the Award on 21st August, 1996. E

The Appellant contended that the objections had been filed beyond the period of limitation. It was contended that the objections should thus be dismissed and a decree in terms of the Award be passed. This contention was tried as a preliminary issue. On 11th September, 1998 the trial Court rejected the preliminary contention. It was held that the objection had been filed within the period of limitation. The Appellant filed Civil Revision No. 2173 of 1998. F This has also been dismissed by the impugned Order. Hence, this Appeal.

The question for consideration in this Appeal is when does the period of limitation for filing objections to an Award commence. Under Article 119, Limitation Act, 1963 the limitation for filing a petition for setting aside an Award is 30 days from the date of service of the notice of the filing of the Award. G

Section 14 of the Arbitration Act, 1940 reads as follows:

“14. *Award to be signed and filed.*—(1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice H

A in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

B (2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

C (3) Where the arbitrators or umpire state a special case under clause (b) of Section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award."

D Thus, under Section 14(1) the Arbitrator has to give a notice to the parties. Then the Arbitrator or the Umpire has to file the Award in Court. Under Section 14(2) the Court "shall thereupon give notice to the parties of the filing of the Award". It is now settled law that the period of limitation under Article 119 of the Limitation Act, 1963 will start running from the date the notice has been given by the Court under Section 14(2) of the Arbitration Act, 1940.

E In this case, admittedly, notice has been given by the Court on 16th July, 1996. Admittedly it has been received by the Respondent on 25th July, 1996. The objections are filed on 21st August, 1996.

F It has been submitted by Mr. Misra that the term "notice" under Section 14(2) of the Arbitration Act has been interpreted by this Court in various decisions to mean any communication which give notice to the parties about the filing of the Award. He submitted that it has been held that notice does not necessarily mean communication in writing. He submitted that it has been held that the expression "give notice" simply means giving intimation of the filing of the Award and that such intimation could also be communicated orally. He submitted that if a party has been informed about the filing of the Award then that is sufficient because no particular mode of service has been prescribed.

H In support of his submission he relied upon the case of *Nilkantha*

Shidramappa Ningashetti v. Kashinath Somanna Ningashetti, reported in [1962] 2 S.C.R. 551. This case supports the proposition canvassed by Mr. Misra except that the authority makes it very clear that the intimation, whether oral or in writing, must be from the Court. A

Mr. Misra also relied upon the case of *Food Corporation of India v. E. Kuttappan*, reported in [1993] 3 S.C.C. 445, wherein again it is reiterated that the notice need not be in writing. In this case the Arbitrator had forwarded the Award along with the entire record to the Respondent's counsel. This was done at the request of the Respondent's counsel. The Respondent's counsel then filed the Award in the Court. The Court thereupon issued notice to the parties. The question was what was the date from which the period of limitation started running. This Court held that as the Respondent's counsel filed the Award in Court he did so as an agent of the Arbitrator. It was held that as the Respondent's counsel had filed the Award in the Court the Respondent had knowledge about the filing of the Award and the period of limitation started running from the date when the Award was filed in the Court by the Respondent's counsel. This Court held that the mere fact that subsequently Court had issued a notice to the parties did not extend the period of limitation. Thus, in this case the notice by Court was deemed to be the act of the Respondent's counsel in filing the Award in Court. B C D

Mr. Misra also relied upon the case of *Secretary to Govt. of Karnataka v. V. Harishbabu* reported in [1996] 5 S.C.C. 400. In this case it has been held that even though a notice under Section 14(2) is mandatory, such notice need not be in writing and may be oral. It has also been held that no formal mode for service has been prescribed and all that is essential is that notice or intimation or communication must be issued by the Court to the parties and served upon the parties. It is held that the notice to the pleader is sufficient compliance with Section 14(2) of the Arbitration Act. It is held that where a party has knowledge aliunde of the filing of the Award, appears before the Court and seeks time to file objections to the Award, it shall be deemed that he has notice of filing of the Award. E F

Mr. Misra then showed to Court the Order Sheets. He pointed out from the Order Sheets that the Award had been filed on 14th May, 1996. He submitted that admittedly the Respondent had received the notice from the Arbitrator/Umpire that the Award had been so filed. He submitted that the Respondent then filed Caveat on 11th June, 1996. He submitted that the Respondent having been put to notice should have appeared in the Court on G H

- A 19th June, 1996 when the matter was again placed before the Court. He submitted that after 19th June, 1996 the matter again appeared before the Court on 11th July, 1996 and 16th July, 1996. He submitted that as the Respondent had, aliunde, got knowledge of the filing of the Award the period of limitation had started to run. He submitted that the fact that the Respondent had not appeared in Court on 11th July, 1996 and 16th July, 1996 did not stop limitation. He submitted that the period of limitation having started to run the objections filed on 21st August, 1996 were beyond the period of limitation.
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There can be no dispute with the proposition of law that the notice need not be in writing and can be oral. However, all the authorities clearly lay down that the notice must be some act of the Court. The proposition that a notice must be by the Court is also confirmed by an authority of this Court in the case of *Ch. Ramalinga Reddy v. Superintending Engineer*, reported in (1999) 9 S.C.C. 610. In this case it has been held that mere intimation by an Arbitrator is not sufficient and it is the Court which has to give notice.

C

- D We are unable to accept the submissions of Mr. Misra. Mere filing of a Caveat did not start the period of limitation. By the Caveat the Respondent was merely asking the Court to give it notice. The Caveat did not absolve the Court from its statutory duty to give notice under Section 14(2) of the Arbitration Act, 1940. The Order Sheet discloses that till 11th July, 1996 the Court was only dealing with the matter administratively. The case is not taken on file till 11th July, 1996. Thereafter on 16th July, 1996 the Court directs giving of notice to the parties. Admittedly this Notice was received by the Respondent only on 25th July, 1996. As the notice was received on 25th July, 1996 the period of limitation started running from that date. The objections filed on 21st August, 1996 are within the period of 30 days as provided by Article 119 of the Limitation Act, 1963.
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In this view, we find no infirmity in the Judgments dated 11th September, 1998 and 19th March, 1999. Accordingly the Appeal stands dismissed. There will, however, be no order as to costs.

G B.S.

Appeal dismissed.