

M/S. Consolidated Engineering ... vs The Principal Secretary (Irrigation ... on 3 April, 2008

Author: R V Raveendran

Bench: R V Raveendran

CASE NO.:

Appeal (civil) 2461 of 2008

PETITIONER:

M/s. Consolidated Engineering Enterprises

RESPONDENT:

The Principal Secretary (Irrigation Department) & Ors

DATE OF JUDGMENT: 03/04/2008

BENCH:

R V Raveendran

JUDGMENT:

J U D G M E N T Civil Appeal No.2461 OF 2008 (Arising out of SLP (Civil) No.10311 of 2005)
RAVEENDRAN, J.

WITH Civil Appeal No.2462 OF 2008 (Arising out of SLP (Civil) No.15619 of 2005) Hatti Gold Mines Company Ltd. . Appellant (s) Vs. Vinay Heavy Equipments .. Respondent (s) I respectfully agree with the judgment proposed by learned Brother Panchal, J. Having regard to the importance of the issue, I am adding a few of my own reasons.

2. Two questions of law arise for our consideration :

(i) Whether Limitation Act, 1963 is inapplicable to a proceeding in a court, under the Arbitration and Conciliation Act, 1996 ?

(ii) Even if Limitation Act, 1963 is applicable, whether applicability of section 14 of the said Act is excluded to proceedings under section 34(1) of the Arbitration and Conciliation Act, 1996 ?

Re : Question No.(i) :

3. Learned counsel for the appellant contended that the Arbitration and Conciliation Act, 1996 (AC Act for short) is a self-contained Code relating to arbitration and all matters incidental thereto including limitation. He submitted that section 34(3) of AC Act prescribes the period of limitation

for an application for setting aside the arbitral award, when such period can be extended and the limit to which it could be extended. Section 43 of the AC Act makes the provisions of the Limitation Act, 1963 ('Limitation Act' for short) applicable only to proceedings in arbitration and not to proceedings in court. Therefore, the provisions of Limitation Act are inapplicable to proceedings in a court under the AC Act.

4. To decide this question, reference to the relevant provisions of the AC Act and Limitation Act is necessary.

4.1) Part I of AC Act relates to arbitration. It contemplates a party approaching a court in three circumstances :

- (a) for grant of interim measures under section 9;
- (b) for setting aside an arbitral award, under section 34(1); and
- (c) for filing appeals under section 37.

As section 9 deals with applications for interim measures, the question of limitation does not arise. In regard to applications for setting aside an award under sub-section (1) of section 34, sub-section (3) thereof prescribes a limitation of three months, different from the period of one month prescribed in the Schedule to the Limitation Act. Section 37 does not prescribe any period of Limitation for filing appeals. If Limitation Act is inapplicable to court proceedings under AC Act, there will be no limitation for filing appeals under section 37. If Limitation Act is applicable, the period of Limitation for appeals filed under section 37 of AC Act will be governed by Article 116 of the Schedule to the Limitation Act.

4.2) Section 43 of the AC Act, relates to limitation and it is extracted below :

"43. Limitation. - (1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in Court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted."

Section 2(1)(e) of the Act defines 'Court' as follows :

"2(1)(e). 'Court' means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes."

4.3) Let me next refer to the relevant provisions of Limitation Act. Section 3 of the Limitation Act provides for the bar of limitation. It provides that subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. 'Prescribed period' means that period of limitation computed in accordance with the provisions of the Limitation Act. 'Period of limitation' means the period of limitation prescribed for any suit, appeal or application by the Schedule to the Limitation Act (vide section 2(j) of the said Act). Section 29 of Limitation Act relates to savings. Sub-section (2) thereof which is relevant is extracted below :

"29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purposes of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

4.4) Article 116 of the Schedule prescribes the period of limitation for appeals to High Court (90 days) and appeals to any other court (30 days) under the Code of Civil Procedure, 1908. It is now well settled that the words 'appeals under the Code of Civil Procedure, 1908' occurring in Article 116 refer not only to appeals preferred under Code of Civil Procedure, 1908, but also to appeals, where the procedure for filing of such appeals and powers of the court for dealing with such appeals are governed by Code of Civil Procedure (See decision of the Constitution Bench in Vidyacharan Shukla v. Khubchand Baghel - AIR 1964 SC 1099). Article 119 (b) of the Schedule prescribes the period of limitation for filing an application (under Arbitration Act, 1940), for setting aside an award, as thirty days from the date of service of notice of filing of the award.

5. AC Act is no doubt, a special law, consolidating and amending the law relating to arbitration and matters connected therewith or incidental thereto. AC Act does not prescribe the period of

limitation, for various proceedings under that Act, except where it intends to prescribe a period different from what is prescribed in the Limitation Act. On the other hand, Section 43 makes the provisions of Limitation Act, 1963 applicable to proceedings - both in court and in arbitration - under the AC Act. There is also no express exclusion of application of any provision of the Limitation Act to proceedings under AC Act, but there are some specific departures from the general provisions of Limitation Act, as for example, the proviso to section 34(3) and sub-sections (2) to (4) of section 43 of the AC Act.

6. Where the Schedule to the Limitation Act prescribes a period of limitation for appeals or applications to any court, and the special or local law provides for filing of appeals and applications to the court, but does not prescribe any period of limitation in regard to such appeals or applications, the period of limitation prescribed in the Schedule to the Limitation Act will apply to such appeals or applications and consequently the provisions of sections 4 to 24 will also apply. Where the special or local law prescribes for any appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, then the provisions of section 29(2) will be attracted. In that event, the provisions of section 3 of Limitation Act will apply, as if the period of limitation prescribed under the special law was the period prescribed by the Schedule to Limitation Act, and for the purpose of determining any period of limitation prescribed for the appeal or application by the special law, the provisions contained in sections 4 to 24 will apply to the extent to which they are not expressly excluded by such special law. The object of section 29(2) is to ensure that the principles contained in sections 4 to 24 of Limitation Act apply to suits, appeals and applications filed in a court under special or local laws also, even if it prescribes a period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application of any or all of those provisions.

7. It may be noticed at this juncture that the Schedule to the Limitation Act prescribes the period of limitation only to proceedings in courts and not to any proceeding before a Tribunal or quasi-judicial authority. Consequently section 3 and section 29(2) of Limitation Act will not apply to proceedings before Tribunal. This means that the Limitation Act will not apply to appeals or applications before Tribunals, unless expressly provided.

8. Learned counsel for the appellant contended that section 43 of the AC Act makes applicable the provisions of Limitation Act only to arbitrations, thereby expressing an intent to exclude the application to any proceedings relating to arbitration in a court. The contention of appellant ignores and overlooks section 29(2) of the Limitation Act and section 43(1) of the AC Act. Sub-section (1) of section 43 of the Act provides that the Limitation Act shall apply to Arbitrations as it applies to proceedings in court. The purpose of section 43 of AC Act is not to make Limitation Act inapplicable to proceedings before court, but on the other hand, make Limitation Act applicable to arbitrations. As already noticed, the Limitation Act applies only to proceedings in court, and but for the express provision in section 43, the Limitation Act would not have applied to arbitration, as Arbitrators are Private Tribunals and not courts. Section 43 of the AC Act, apart from making the provisions of Limitation Act, 1963 applicable to arbitrations, reiterates that Limitation Act applies to proceedings in court. Therefore, the provisions of Limitation Act, 1963 apply to all proceedings under the AC Act, both in court and in arbitration, except to the extent expressly excluded by the provisions of the AC

Act.

Re : Question No.(ii) :

9. The learned counsel for the appellant next contended that even if Limitation Act applied, section 14 is excluded by reason of the proviso to section 34(3) and at best, prosecution before a wrong forum can be considered as a sufficient cause for explaining the delay, in which event condonation cannot be for a period in excess of 30 days. He submitted that sub-section (3) of section 34 prescribes the period of limitation for an application to set aside an award as three months, and the proviso thereto provides for extension of such period of limitation, by a period not exceeding one month. He pointed out that the object of the AC Act is to expedite arbitration proceedings with minimal judicial intervention as is evident from Section 5 of that Act. He further submitted that the legislature, while incorporating a provision for extension of time for an application under section 34(1) of AC Act, on sufficient cause being shown, did not choose to incorporate any provision for excluding the time spent before a wrong court, and therefore, section 14 of the Limitation Act, 1963 is inapplicable; and even if the principle underlying section 14(2) of Limitation Act is held to be applicable, as a sufficient cause for extension of the period of limitation, the extension on that ground can be only for a period not exceeding thirty days as provided in the proviso to sub-section (3) of section 34 of the AC Act. In support of the aforesaid contentions, reliance is placed on the decisions of this Court in *Commissioner of Sales Tax, U.P. v. Parson Tools and Plants, Kanpur* [1975 (3) SCR 743], *Union of India vs. Popular Construction Co.* [2001 (8) SCC 470] and *Fairgrowth Investments Ltd vs. Custodian* [2004 (11) SCC 472]. The appellant also contended that the decision rendered by two Judges Bench of this Court in *State of Goa vs. Western Builders* [2006 (6) SCC 239] holding that section 14 of Limitation Act applied to applications under section 34 of the AC Act was not good law as it failed to notice the earlier decision of a larger Bench in *Parson Tools* and failed to follow *Popular Construction*.

10. The respondents, on the other hand, contended that having regard to section 29(2) of the Limitation Act, provisions of sections 4 to 24 of that Act would apply for determining the period of limitation prescribed for an application under any special law, unless expressly excluded by such special law. The AC Act, which is a special law, prescribes a period of limitation for an application to set aside an award, different from what was prescribed under the Limitation Act. It also excludes application of section 5 of the Limitation Act to an application under section 34(1), by making an express provision in the proviso to section 34(3), for extension of period of limitation. Sections 4 and 6 to 24 of the Limitation Act would however apply to an application under section 34(1) of the AC Act, as they are not excluded. Respondents also contended that the question is squarely covered by the decision of this Court in *State of Goa v. Western Builders* [2006 (6) SCC 239]. They submitted that the decisions in *Popular Construction* (supra) and *Fairgrowth* (supra) are inapplicable, as they deal with section 5 and not section 14 of the Limitation Act. They also contended that the decision in *Parson Tools* did not relate to a proceeding before a court, but a proceeding before a Tribunal.

11. Section 34 of AC Act relates to applications for setting aside an arbitral award. Sub-section (1) provides that recourse to a court against an arbitral award may be made only by an application for

setting aside such an award in accordance with sub-sections (2) and (3). Sub-section 2 contains the grounds on which an arbitral award can be set aside. Sub-section (3) which is relevant is extracted below :

"34(3). An application for setting aside 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."

11.1) Section 5 of Limitation Act, providing for extension of prescribed period in certain cases, reads thus:

"5.: Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

xxxxx 11.2) Section 14 of Limitation Act relates to exclusion of time of proceeding bona fide in court without jurisdiction. Sub-section (2) thereof relevant for our purpose is extracted below :

"14(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

12. Sub-section (3) of section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the court, discretion to extend the period of limitation by a further period not exceeding thirty days if the court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words "but not thereafter" in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. The purpose of proviso to section 34(3) of AC Act is similar to that of Section 5 of the Limitation Act which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. Section 5 of Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-section 3 of

section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to sub-section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding section 5 alone of the Limitation Act.

14. On the other hand, Section 14 contained in Part III of Limitation Act does not relate to extension of the period of limitation, but relates to exclusion of certain period while computing the period of limitation. Neither sub-section (3) of section 34 of the AC Act nor any other provision of the AC Act exclude the applicability of section 14 of the Limitation Act to applications under section 34(1) of the AC Act. Nor will the proviso to section 34(3) exclude the application of section 14, as section 14 is not a provision for extension of period of limitation, but for exclusion of certain period while computing the period of limitation. Having regard to section 29(2) of Limitation Act, section 14 of that Act will be applicable to an application under section 34(1) of the AC Act. Even when there is cause to apply section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under section 34(1) of the AC Act, the time during which the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence. Western Builders therefore lays down the correct legal position.

15. Reliance placed by the appellant on the decision of three Judges of this Court in Parson Tools (supra) is totally misplaced. That decision related to section 10(3B) of the U P Sales Tax Act, 1958 which provided a limitation period of one year for invoking the revisional jurisdiction and further provided that the revising authority may on sufficient cause being shown, entertain an application within a further period of six months. The appellant contended that section 10(3B) of the U.P.Sales Tax Act considered in Parsons Tools is similar to proviso to section 34(3) of the AC Act and therefore the following observations in Parson Tools, with reference to section 10(3B) of U.P.Sales Tax Act, making section 14(2) of the Limitation Act inapplicable to a revision under section 10(3B) of U.P.Sales Tax Act, would also make section 14(2) inapplicable, to an application under section 34(1) of the AC Act :

"Three features of the scheme of the above provision are noteworthy. The first is the no limitation has been prescribed for the suo motu exercise of its jurisdiction by the Revising Authority. The second is that the period of one year prescribed as limitation for filing an application for revision by the aggrieved party is unusually long. The third is that the Revising Authority has no discretion to extend this period beyond a further period of six months, even on sufficient cause shown. As rightly pointed out in the minority judgment of the High Court, pendency of proceedings of the nature contemplated by section 14(2) of the Limitation Act, may amount to a sufficient cause for condoning the delay and extending the limitation for filing a revision application, but s. 10 (3-B) of the Sales-tax Act, gives no jurisdiction to the Revising Authority to extend the limitation, even in such a case, for a further period of more than six months."

" we are of the opinion that the object, the scheme and language of s.10 of the Sales-Tax Act do not permit the invocation of s.14(2) of the Limitation Act, either, in terms, or, in principle, for excluding the time spent in prosecuting proceedings for setting aside the dismissal of appeals in default, from computation of the period of limitation prescribed for filing a revision under the Sales-tax. "

[Emphasis supplied] The said observations have to be read and understood with reference to the issue that was being considered in that case. In Parson Tools, this court did not hold that section 14(2) was excluded by reason of the wording of section 10(3B) of the Sales Tax Act. This Court was considering an appeal against the Full Bench decision of the Allahabad High Court. Two Judges of the High Court had held that the time spent in prosecuting the application for setting aside the order of dismissal of appeals in default, could be excluded when computing the period of limitation for filing a revision under section 10 of the said Act, by application of the principle underlying section 14(2) of the Limitation Act. The minority view of the third Judge was that the revisional authority under section 10 of the U P Sales Tax Act did not act as a court but only as a Revenue Tribunal and therefore the Limitation Act did not apply to the proceedings before such Tribunal, and consequently neither section 29(2) nor section 14(2) of Limitation Act applied. The decision of the Full Bench was challenged by the Commissioner of Sales Tax before this Court, contending that the Limitation Act did not apply to tribunals, and section 14(2) of Limitation Act was excluded in principle or by analogy. This Court upheld the view that Limitation Act did not apply to Tribunals, and that as the Revisional Authority under section 10 of UP Sales Tax Act was a Tribunal and not a court, Limitation Act was inapplicable. This Court further held that the period of pendency of proceedings before the wrong forum could not be excluded while computing the period of limitation by applying section 14(2) of Limitation Act. This Court however held that by applying the principle underlying section 14(2), the period of pendency before the wrong forum may be considered as a 'sufficient cause' for condoning the delay, but then having regard to section 10(3B), the extension on that ground could not extend beyond six months. The observation that pendency of proceedings of the nature contemplated by section 14(2) of the Limitation Act, may amount to a sufficient cause for condoning the delay and extending the limitation and such extension cannot be for a period in excess of the ceiling period prescribed, are in the light of its finding that section 14(2) of Limitation Act was inapplicable to revisions under section 10(3B) of U.P.Sales Tax Act. These observations cannot be interpreted as laying down a proposition that even where section 14(2) of Limitation Act in terms applied and the period spent before wrong forum could therefore be excluded while computing the period of limitation, the pendency before the wrong forum should be considered only as a sufficient cause for extension of period of limitation and therefore, subjected to the ceiling relating to the extension of the period of limitation. As we are concerned with a proceeding before a court to which section 14(2) of Limitation Act applies, the decision in Parson Tools which related to a proceeding before a tribunal to which section 14(2) of Limitation Act did not apply, has no application.

15. The decision in Popular Construction is also of no assistance. That decision makes it clear that AC Act, 1996 being a special law, and section 34 thereof prescribing a period of limitation different from that prescribed under the Limitation Act and providing a ceiling on the period by which the period of limitation could be extended, the corresponding provisions in the Limitation Act

prescribing the period of limitation for filing an application for setting aside an award [Article 119(b) of the Schedule to Limitation Act] and for extending the period of limitation for sufficient cause (section 5 of the Limitation Act), were inapplicable. It did not relate to applicability of section 14(2) of Limitation Act. Nor did this Court consider the applicability of section 14(2). Therefore, the decision in Popular Construction will not apply. Fairgrowth merely reiterates the principle in Popular Construction in regard to the exclusion of section 5 of Limitation Act, as is evident from the following observations :

" the general rule as far as special and local Acts are concerned is that the specified provisions including Section 5 of the Limitation Act will apply provided the special or local Act provides a period of limitation different from that prescribed under the Limitation Act. There is an additional requirement viz. that the special local Act does not expressly exclude the application of the Limitation Act."

Therefore it has to be held that section 14(2) of the Limitation Act, 1963 is applicable to proceedings under section 34(1) of the AC Act.

16. I agree that the appeal arising from SLP (C) No.10311/2005 is to be dismissed and appeal arising from SLP (C) No.15619/2005 is to be allowed.