

\$~3 (2021)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 09.08.2021

+ **FAO (COMM) 72/2021 and CM No.9820/2021**

UNION OF INDIA

..... Appellant

Through : Mr. Ashish Verma and Mr. Arnav
Sanyal, Advocates.

versus

NARESH KUMAR GUPTA & CO PVT LTD.

.... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

(Court hearing convened via video-conferencing on account of COVID-19)

1. Pursuant to a direction issued by this Court, on 16.07.2021, the matter was listed before the Joint Registrar (Judicial) on 29.07.2021.

1.1. It appears that, on 29.07.2021, counsel for the respondent appeared along with one, Mr. Naresh K. Gupta.

1.2. Although, the order of the Joint Registrar (Judicial) dated 29.07.2021 does not record the appearance of the counsel for the respondent, as, apparently, he did not submit the appearance slip, Mr. Arnav Sanyal, who appeared for the appellant, on the aforesaid date i.e. 29.07.2021, submits that Mr. Shiv Kumar Gupta, Advocate had appeared for the respondent.

1.3. Evidently, Mr. Shiv Kumar Gupta has not filed his *vakalatnama*, as

yet, though, time was sought for that purpose on 29.07.2021. As noted above, on the said date, counsel for the respondent was present along with Mr. Naresh K. Gupta.

1.4. Mr. Ashish Verma, who appears for the appellant, submits that, Mr. Naresh K. Gupta is the person-in-charge of the respondent-company.

2. On 10.03.2021, when the matter had been listed before the court, we had, *inter alia*, observed as follows:

*“4. The instant appeal is directed against an order dated 05.12.2020 whereby the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short ‘the Act’) has been dismissed on the ground that it was filed beyond the period of limitation. The District Judge (Commercial Court), in this behalf, has relied upon the decision of the Supreme Court rendered in **Union of India vs. Popular Construction Company**, (2001) 8 SCC 470.*

5. Prima facie, to our minds, the decision, in that judgment, may not apply in the instant case on account of lockdown ordered in the country due to the spread of the Coronavirus pandemic. Because of the Pandemic, the functioning of the courts in the country remains disrupted since 15.03.2020.

5.1 It is in this background that the Supreme Court passed an order dated 23.03.2020, in a suo motu writ petition [i.e. SM WP(C) 03/2020], whereby, the period of limitation prescribed under various statutes was extended. The relevant portion of the order is set forth hereafter:

“This Court has taken suo motu cognisance of the situation arising out of the challenge faced by the country on account of Covid 19 Virus and resultant difficulties that may be faced by the litigants across the country in filing their petitions/ application / suits /

appeals / all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and / or State).

To obviate such difficulties and to ensure that lawyers / litigants do not have to come physically to file such proceedings in respective Courts / Tribunals / across the country including this Court, it is hereby ordered that the period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. March 2020 till further order/s to be passed by this court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts / Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all Subordinate Courts / Tribunals within their respective jurisdiction.

Issue notice to all the Registrar Generals of the High Courts, returnable in four weeks.”

5.2 This order was modified / clarified from time to time by the Supreme Court. Orders clarifying / modifying the order dated 23.03.2020 were passed on 06.05.2020, 10.07.2020 and 08.03.2021.

6. *Having regard to the aforesaid orders passed by the Supreme Court, according to us, as indicated above, prima facie, the view taken by the learned District Judge (Commercial Court) does not appear to be correct. The decision in **Popular Construction** was rendered by the Supreme Court at the time when there was no pandemic prevailing in the country. The orders passed by the Supreme Court in exercise of powers under Article 142 read with Article 141 will prevail in the present circumstances. The facts of this case, which are not in dispute, and something which is evident upon a bare perusal of the order, are the following:*

i) The award was passed on 30.05.2020, which was served on the appellant on 02.06.2020.

ii) The petition under Section 34 of the Act was filed on 25.11.2020. There was a delay of 56 days beyond the period prescribed in Section 34(3) of the Act.

7. *Accordingly, issue notice to the respondent via all permissible modes including e-mail.*

8. *Besides this, liberty is given to the appellant to serve the counsel for the respondent, who appeared for the respondent in the court below.*

9. *List the matter on 17.03.2021.”*

2.1. Since then, despite, the respondent-company, having been served and, as noticed above, represented on the previous date, for reasons best known to it, has chosen not to defend the case.

2.2. In view of what we have recorded in our order dated 10.03.2021, Mr. Verma says that, the impugned order, dated 05.12.2020, should be set aside.

2.3. As noticed on 10.03.2021, the order dated 05.12.2020 was passed in the appellant's petition under Section 34 of the Arbitration and Conciliation

Act, 1996 (in short 'the 1996 Act').

2.4. The appellant's petition under Section 34 of the 1996 Act, was dismissed on the ground that, it was filed beyond the period of limitation. The concerned court, i.e., District Judge (Commercial), in this behalf, has, inter alia, relied upon the decisions of the Supreme Court rendered in the case of *Union of India vs. Popular Construction Company*, (2001) 8 SCC 70 as also *Consolidated Engineering Enterprises vs. Principal Secretary (Irrigation Department)*, 2008 (5) SCR 1108

2.5. As is evident from our order dated 10.03.2021, the arbitral award was passed on 30.05.2020, which was served on the appellant on 02.06.2020. The petition under Section 34 of the 1996 Act was filed by the appellant on 25.11.2020.

2.6. As noticed on 10.03.2021, there was a delay of 56 days, beyond the period prescribed, under Section 34(3) of the 1996 Act.

2.7. As observed in our order dated 10.03.2021, statutory timelines were extended by the Supreme Court, *vide* order dated 23.03.2020, in a *suo motu* writ petition [i.e. SM W.P.(C.) 03/2020]. Orders clarifying the said order were passed on 06.05.2020, 10.07.2020 and 08.03.2021.

3. In our opinion, the concerned Court ought to have taken note of the orders passed by the Supreme Court extending limitation, generally, which also applied to limitation prescribed under special laws, such as, the 1996 Act. [See Order dated 06.05.2020, passed by the Supreme Court, in SM W.P.(C.) 03/2020]

3.1. Therefore, in our view, the impugned order, which dismissed the appellant's petition under Section 34 of the 1996 Act, solely on the ground that the same was beyond the period of limitation, cannot be sustained. The

order is, accordingly, set aside.

3.2. The concerned Court will decide the appellant's petition under Section 34 of the 1996 Act, on merits, after hearing both the sides.

3.3. To hasten the proceedings, authorized representatives of the parties will appear before the concerned Court on 07.09.2021.

4. The appeal and the pending application are disposed of in the aforesaid terms.

5. The Registry will dispatch a copy of the order passed today to the concerned court.

6. A copy of this order will also be dispatched by the Registry to the respondent, at the address, given in the appeal.

RAJIV SHAKDHER, J

TALWANT SINGH, J

AUGUST 9, 2021/dm

[Click here to check corrigendum, if any](#)