

**SC RULES: WHEN THERE IS NO FRAUD SPECIFIC TO THE DELIVERY OF THE AWARD, SECTION 17 OF THE LIMITATION ACT, 1963 CANNOT BE INVOKED TO CURE THE DELAY IN FILING AN APPLICATION TO SET ASIDE AN ARBITRAL AWARD UNDER SECTION 34 (3) OF THE ARBITRATION ACT, 1996**

**P.Radha Bai and Ors. v. P. Ashok Kumar and Anr. 1 (September 26, 2018)**

**INTRODUCTION**

1. In the present case, the issue which arose for consideration before the Supreme Court was whether section 17 of the Limitation Act, 1963 (**Limitation Act**), which provides that the period of limitation shall begin to run when fraud played on the award debtor is discovered or could have been discovered with reasonable diligence, can cure the delay in filing an application to set aside an award under section 34(3) of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**).
2. The Supreme Court examined the objective of the Arbitration Act and judicial precedents to conclude that section 17 of the Limitation Act would not come to the rescue of a party seeking to challenge an award under section 34 of the Arbitration Act, when there was no fraud specific to the delivery of the award and where receipt of the award is admitted.

**FACTUAL BACKGROUND**

3. The disputes between eight heirs of Mr. P. Kishan Lal i.e. Appellant Nos. 1 to 6 (**Appellant**) and Respondent No.1 and 2 (**Respondent**) in relation to the division of properties and businesses were referred to arbitration. The arbitral tribunal made an Award dated February 18, 2010 (**Award**) which was received on February 21, 2010.
4. It was the Respondent's case that subsequent to the Award, the Appellant entered into a Memorandum of Understanding (**MoU**) with the Respondent, whereunder the Appellant agreed to give properties in addition to those set out in the Award to Respondent No.1. In terms of the MoU, while the Appellant was required to execute a 'gift deed' and a 'release deed' in favor of the Respondent, the Respondent alleged that the Appellant intentionally delayed the execution of the said deeds. In the meanwhile, the limitation period for the Respondent to file an application to set aside the Award under section 34(3) of the Arbitration Act expired.
5. The Appellant proceeded to file an execution petition for the execution of the Award. While the trial court held that the execution petition was not maintainable, on appeal, the High Court set aside the order of the trial court and directed the trial court to determine the petition on merits.
6. Considering the conduct of the Appellant and the delay in the execution of the gift deed envisaged under the MoU, the Respondent alleged fraud. Subsequently, the Respondent filed an application under section 34(3) of the Arbitration Act to set aside the Award, along with an application seeking condonation of the delay of 236 days, before the City Civil Court, Hyderabad (**Trial Court**). By an order dated February 21, 2012 (**Trial Court Order**), the Trial Court dismissed the application *inter alia* stating that the court is devoid of power to condone the delay beyond the maximum period prescribed in section 34 of the Arbitration Act i.e. three months and 30 days.
7. Aggrieved by the Trial Court Order, the Respondent filed four civil revision petitions before the High Court of Andhra Pradesh (**High Court**) under Article 227 of the Constitution of India. By an order dated June 18, 2012 (**High Court Order**), the High Court remanded the matter back to the Trial Court on the sole point, i.e. to determine whether section 17 of the Limitation

<sup>1</sup> CIVIL APPEAL NO(s) .7710 to 7713 OF 2013

Act would be applicable to condoning delay in the filing of an application under section 34 of the Arbitration Act. Aggrieved by this High Court Order, the Appellant preferred the present appeals before the Supreme Court.

### OBSERVATIONS & FINDINGS OF THE COURT

8. The Supreme Court found it pertinent to examine section 29(2) of the Limitation Act, which *inter alia* provides that “...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.”
9. Referring to *Vidyacharan Shukla*<sup>2</sup>, the Supreme Court concurred that the Arbitration Act is a ‘special law’ which provides a specific limitation period under section 34(3) of the Arbitration Act and there is no provision under the Limitation Act which deals with challenging an award passed under the Arbitration Act.
10. The Supreme Court further observed that sections 4 to 24 of the Limitation Act would apply for determining the limitation period under the Arbitration Act only if they are not expressly excluded by the Arbitration Act. While the Respondent submitted that there is no ‘express exclusion’ of section 17 of the Limitation Act in the Arbitration Act, the Supreme Court relied upon *Vidyacharan Shukla*<sup>3</sup> and *Hukumdev Narain*<sup>4</sup> to conclude that “express exclusion can be inferred either from the language of the special law or it can be necessary implied from the scheme and object of the special law”
11. Upon conjointly reading section 17 of the Limitation Act with section 34 (3) of the Arbitration Act, the Supreme Court concluded that the contradiction in the language of section 17 of the Limitation Act and section 34 (3) of the Arbitration Act establishes the “express exclusion”. The Apex Court *inter alia* observed that:
  - a. Section 17 of the Limitation Act does not extend or break the limitation period. Section 17 only postpones or defers the commencement of the limitation period till the applicant has discovered the fraud or mistake. Further, section 34(3) of the Arbitration Act has an in-built limitation provision. Section 34(3) provides the commencement of the limitation period i.e. the time from which a party making an application “had received the arbitral award” or from the disposal of a request under section 33 of the Arbitration Act for correction and interpretation of the Award. Therefore, if section 17 of the Limitation Act were to apply (i.e. the limitation period would run from the date of discovery of the fraud or mistake), the same would conflict with the starting period of limitation provided under section 34 (3) of the Arbitration Act; and
  - b. Section 34(3) contains a proviso which provides for condonation of delay i.e. “if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within a further period of thirty days, but not thereafter”. If section 17 of the Limitation Act were to apply, the total time limit of 120 days would be exceeded and the words in the proviso to section 34(3) would be rendered otiose.
12. The Supreme Court nurtured the objective of the Arbitration Act i.e. to expedite resolution of disputes and its ruling in *Popular Constructions*<sup>5</sup>, to highlight the importance of timelines under the Arbitration Act. The Supreme Court observed that extending section 17 of the Limitation Act would be contrary to the principle of ‘unbreakability’ which is enshrined in section 34(3) of the Arbitration Act.

<sup>2</sup> *Vidyacharan Shukla v. Khubchand Baghel*, [1964] 6 SCR 129

<sup>3</sup> *Vidyacharan Shukla v. Khubchand Baghel*, [1964] 6 SCR 129

<sup>4</sup> *Hukumdev Narain Yadav v. Lalit Narain Mishra*, (1974) 2 SCC 133

<sup>5</sup> *Union of India v. Popular Construction Co.*, (2001) 8 SCC 470

13. However, the Supreme Court observed that in any event to qualify under section 17 of the Limitation Act it would be necessary for the fraud to pertain to the delivery of the award. The Supreme Court went on to assess the nexus between delivery of the award and the limitation period by stating that fraud in delivery of the award would prevent the requirement of “receipt of the award” under section 34(3) of the Arbitration Act from being satisfied.
14. Testing the judicial principles in light of the present circumstances, the Supreme Court observed that once the Respondent had received the Award and the fraud was not with respect to the delivery of the Award, the limitation period under section 34(3) of the Arbitration Act would commence from receipt of the Award, and section 17 of the Limitation Act would not come to the rescue of the Respondent.

### ELP ANALYSIS

15. It is important to note that the Supreme Court has not ruled out the applicability of section 17 of the Limitation Act to the Arbitration Act. The Supreme Court simply refused to apply the said provision, stating that once the award was received without delivery thereof being tainted by fraud, one has to respect that finality is a fundamental principle enshrined under the Arbitration Act and that a definitive time limit for challenging an award is necessary for ensuring finality.

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