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LIMITATION UNDER SECTION 34(3) OF ARBITRATION AND CONCILIATION ACT 1996 WILL PREVAIL OVER SECTION 17 OF THE LIMITATION ACT 1963: SUPREME COURT

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A division bench of the Hon'ble Supreme Court of India (the Court), consisting of Mr. Justice N V Ramana and Ms. Justice S Abdul Nazeer in the case of *P Radha Bai Vs P Ashok Kumar* (Civil Appeal no 7710-7713 of 2013), has reiterated the strict interpretation of limitation prescribed under Section 34(3) of the Arbitration and Conciliation Act 1996 (Arbitration Act). The Court while considering the judgment passed by the High Court of Andhra Pradesh, held that the language of Section 34(3) of the Arbitration Act tantamount to an "express exclusion" of Section 17 of the Limitation Act 1963 (Limitation Act).

Background

The parties to the arbitration proceedings received a final award on 21 February 2010 under which the appellants were required to transfer certain properties to the respondent. However, after pronouncement of the award, the parties entered into an MoU and the appellants agreed to transfer certain properties to the respondent, which were more than what was provided in the award. As per the terms of the MoU, the appellants were required to execute gift and release deeds. However, the appellants delayed the execution of the gift and release deeds as contemplated by the MoU. The respondents filed an application under Section 34 of the Arbitration Act to set aside the order with an application under Section 34(3) to condone the delay. This filing was 236 days after the receipt of the award by the respondents. Such application under Section 34 of the Arbitration Act was dismissed on the preliminary ground of limitation under Section 34(3).

The respondents filed Civil Revision Petition before the High Court of Andhra Pradesh which remanded the matter to the trial court to decide the question of fraud under Section 17 of the Limitation Act. The appellant filed a Special Leave Petition challenging such remand before the Court and same was later converted to Civil Appeal.

Arguments put forth by the parties

The appellants contended that:

- Limitation period provided under Section 34(3) of the Arbitration Act begins 'only' upon the receipt of the award by the parties and the same cannot be diluted;

- The period of limitation under Section 34(3) of the Arbitration Act is 'unbreakable' and is meant to run continuously;
- Definitive time limit is necessary to ensure expeditious and effective resolution of disputes between the parties;
- The law declared in the case of f Popular Construction and Consolidated Engineering with regard to 'fixed period' for conclusion of arbitration proceedings should be given effect to;
- The expression 'had received the arbitral award' found in Section 34(3) of the Arbitration Act expressly excludes applicability of Section 17 of the Limitation Act; and
- This Court should appreciate the difference between concealment of right to action being different from preventing a person from taking action.

The Respondents put forth the following contentions:

- The reasoning provided in the case of Popular Construction Case and Consolidated Engineering clearly indicates to the applicability of Section 17 of the Limitation Act, similar to the applicability of Section 14 of the Limitation Act; and
- For 'computation of the period of limitation' or arriving at the 'prescribed period' the provisions of Section 4 to 24 of the Limitation Act would automatically apply unless they are expressly excluded by the special law.

Supreme Court's Order

The Court while setting aside the judgment of the High Court of Andhra Pradesh, and allowing the appeal, held that

"47. In the context of Section 34, a party can challenge an award as soon as it receives the award. Once an award is received, a party has knowledge of the award and the limitation period commences. The objecting party is therefore precluded from invoking Section 17(1)(b) & (d) once it has knowledge of the Award. Section 17(1)(a) and (c) of Limitation Act may not even apply, if they are extended to Section 34, since they deal with a scenario where the application is "based upon" the fraud of the respondent or if the application is for "relief from the consequences of a mistake". Section 34 application is based on the award and not on the fraud of the respondent and does not seek the relief of consequence of a mistake.

48. The fraudulent conduct where Section 17 of the Limitation Act would have helped the objecting party is where there was a fraud in the delivery of the award. However, in such a scenario, resort to section 17 is not necessary. If there is any fraud in the delivery of Award, the requirement of receipt of Award under Section 34(3) itself is not satisfied. Any receipt of Award must be effective receipt..."

The Court examined the applicability of the provisions of Limitation Act and opined that Sections 4 to 24 of the Limitation Act will apply for determining the limitation period under the Arbitration Act only if they are not expressly excluded by the

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Arbitration Act. Its further held that the language of Section 34(3) of the Arbitration Act tantamount to an "express exclusion" of Section 17 of Limitation Act. The Court also examined the effect of application of Section 17 and the scheme of Arbitration Act and held that it application of the Limitation Act would affect the speedy dispute resolution process, and principle of finality which is the fundamental to the Arbitration Act.

Comment

This judgment has settled the issue on application of Sections 4 to 24 of the Limitation Act to an award passed under the Arbitration Act. Since the court has accepted the principle of finality as fundamental to the Arbitration Act, this judgment of the Supreme Court will help in ensuring finality and speedy disposal of cases under the Arbitration Act.

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