

A

UNION OF INDIA & ANR.

v.

M/S DEEPAK ELECTRIC & TRADING COMPANY & ANR.
(Civil Appeal No. 1734 of 2006)

B

OCTOBER 20, 2011.

[P. SATHASIVAM AND A.K. PATNAIK, JJ.]

C

Limitation Act, 1963 – Article 119(b) of the Schedule – Period of limitation for filing applications under the Arbitration Act, 1940 for setting aside an arbitral award – Starting point of – Held: An application for setting aside an award has to be filed within 30 days from “the date of service of the notice of the filing of the award” – The starting point of limitation is the date of service of the notice of the filing of the award and not the date of knowledge of the filing of the award – Arbitration Act, 1940.

D

E

F

G

H

The appellants and respondent No.1 had entered into a contract for construction of a Complex. The contract contained an arbitration clause. As disputes arose between the parties, respondent No.1 invoked the arbitration clause and an arbitrator was appointed. The arbitrator published his award whereupon the respondents filed a petition in the High Court under Sections 14 and 17 of the Arbitration Act, 1940 for filing the award and for making the award a rule of the court and for passing a decree in terms of the award. After the award was filed, notice of the filing of the award was directed to be issued to the parties. Notice was served on the Union of India, but notice could not be served on the Executive Engineer, C.P.W.D. A letter was addressed by the Executive Engineer to the Registrar of the High Court saying that he had not received a formal notice from the court. Fresh notice was again directed to be issued to the Executive Engineer. While service of notice

UNION OF INDIA & ANR. v. DEEPAK ELECTRIC & 1199
TRADING COMPANY & ANR.

on the Executive Engineer was awaited, Union of India filed objections to the award of the arbitrator. A

Respondent No.1 contended that the objections filed by the Union of India to the award of the arbitrator were not within the period of limitation, i.e. 30 days from the date of service of the notice of filing of the award. The appellants, on the other hand, contended that the Executive Engineer had not been served with the notice of filing of award and, therefore, limitation had not been begun to run. B

The Single Judge of the High Court held that under Section 79 of CPC when suits are filed against the Central Government, only the Union of India has to be arrayed as a party and the Executive Engineer by no stretch of imagination can be taken to be a party in such proceedings; that the objections of Union of India to the award were time barred and accordingly made the award a rule of the court. C

Aggrieved, the appellants filed appeal before the Division Bench of the High Court. The Division Bench held that as the counsel on behalf of the Executive Engineer had inspected the record of the case in the court on 21.05.1997, the Executive Engineer will be deemed to have acquired knowledge of the filing of the award on 21.05.1997 and the period of 30 days counted from 21.05.1997 had expired by the time objections were filed by the Union of India and the objections to the award were time barred. Accordingly, the Division Bench of the High Court dismissed the appeal of the appellants. D

The question which arose for consideration in the present appeal was whether the Division Bench of the High Court took a correct view in the impugned order that the objections to the award were time barred. E

F

G

H

A Allowing the appeal, the Court

HELD:1.1. Article 119 of the Schedule to the Limitation Act, 1963, prescribes the period of limitation for filing applications under the Arbitration Act, 1940. It is clear from clause (b) of Article 119 of the Schedule to the Limitation Act, 1963 that an application for setting aside of an award has to be filed within 30 days from “the date of service of the notice of the filing of the award”. Thus, the starting point of limitation is the date of service of the notice of the filing of the award and not the date of knowledge of the filing of the award. [Para 6] [1203-F-G]

Deo Narain Choudhury vs. Shree Narain Choudhary [(2008) 8 SCC 626] – relied on.

D *Union of India vs. Surinder Kumar* [61 (1996) DLT 42 (D.B.)] – referred to.

E 1.2. The Division Bench of the High Court was not right in coming to the conclusion that as the Executive Engineer had knowledge of the filing of the award on 21.05.1997 and as the objections were filed beyond the period of 30 days counted from 21.05.1997, the objections to the award were barred by time. [Para 8] [1204-D-F]

F 1.3. The matter is remanded to the Single Judge of the High Court for fresh decision in accordance with law. [Para 9] [1204-G]

Case Law Reference:

G [61 (1996) DLT 42 (D.B.)] referred to Para 4
[(2008) 8 SCC 626] relied on Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1734 of 2006.

H From the Judgment & Order dated 3.1.2003 of the High

UNION OF INDIA & ANR. v. DEEPAK ELECTRIC & 1201
TRADING COMPANY & ANR.

Court of Delhi at New Delhi in F.A.O. (O.S.) No. 551 of 2001. A

A.S. Chandhiok, ASG, Sadhana Sandhu, Sumit Sharma,
Sarabjeet Sharma, Bhagat Singh, V.K. Verma for the
Appellants.

The Judgment of the Court was delivered B

A. K. PATNAIK, J. 1. This is an appeal against the order
dated 03.01.2003 of the Division Bench of the High Court of
Delhi in FAO(OS) No. 551 of 2001 (for short 'the impugned
order').

2. The facts very briefly are that the appellants and the
respondent No.1 entered into a contract for construction of PMT
Complex for NSG at Manesar. The contract contained an
arbitration clause for resolving disputes between the parties.
As disputes arose between the parties, the respondent No.1
invoked the arbitration clause and an arbitrator was appointed.
The arbitrator published his award on 17.06.1996 and on
08.07.1996, the respondents filed a petition in the High Court
of Delhi under Sections 14 and 17 of the Arbitration Act, 1940
(for short 'the Act') for filing the award and for making the award
a rule of the court and for passing a decree in terms of the
award. The petition was registered as Suit No.1673-A/1996.
After the award was filed, notice of the filing of the award was
directed to be issued to the parties on 13.01.1997. Notice was
served on the Union of India, but notice could not be served on
the Executive Engineer, C.P.W.D. A letter dated 21.03.1997
was addressed by the Executive Engineer to the Registrar of
the Delhi High Court saying that he had not received a formal
notice from the court. On 17.07.1997, fresh notice was again
directed to be issued to the Executive Engineer. C
D
E
F

3. While service of notice on the Executive Engineer was
awaited, Union of India filed objections to the award of the
arbitrator numbered as IA 9423 of 1997. The respondent No.1
contended that the objections filed by the Union of India to the
award of the arbitrator were not within the period of limitation,
i.e. 30 days from the date of service of the notice of filing of
G
H

A the award. The appellants, on the other hand, contended that
 the Executive Engineer had not been served with the notice of
 filing of award and, therefore, limitation had not been begun to
 run. The learned Single Judge of the High Court held that under
 Section 79 of the Code of Civil Procedure (for short 'the CPC')

B when suits are filed against the Central Government, only the
 Union of India has to be arrayed as a party and the Executive
 Engineer by no stretch of imagination can be taken to be a party
 in such proceedings. The learned Single Judge further held that
 as the Union of India had filed objections, the Court was only

C considering the objections of the Union of India and the Union
 of India had been served with a notice of filing of the award in
 November, 1996. The learned Single Judge, therefore, held
 that the objections of the Union of India to the award were time
 barred and made the award a rule of the court.

D 4. Aggrieved, the appellants filed FAO(OS) No. 551 of
 2001 before the Division Bench of the High Court. After hearing
 learned counsel for the parties, the Division Bench held in the
 impugned order that in *Union of India vs. Surinder Kumar* [61
 (1996) DLT 42 (D.B.)], the Delhi High Court has already taken

E a view that it was necessary that a notice of filing of the award
 has to be served on the Executive Engineer as it was the
 Executive Engineer who on behalf of the Union of India was
 looking after the proceedings before the arbitrator. The Division
 Bench, however, held that as the learned counsel on behalf of

F the Executive Engineer had inspected the record of the case
 in the court on 21.05.1997, the Executive Engineer will be
 deemed to have acquired knowledge of the filing of the award
 on 21.05.1997 and the period of 30 days counted from
 21.05.1997 had expired by the time objections were filed by

G the Union of India and the objections to the award were time
 barred. Accordingly, the Division Bench of the High Court
 dismissed the appeal of the appellants by the impugned order.

H 5. We have heard Mr. A.S. Chandhiok, learned Additional
 Solicitor General for the appellants. No one has appeared for
 the respondents despite notice.

UNION OF INDIA & ANR. v. DEEPAK ELECTRIC & 1203
TRADING COMPANY & ANR. [A.K. PATNAIK, J.]

6. The only question, which we have to decide in this case, is whether the Division Bench of the High Court has taken a correct view in the impugned order that the objections to the award were time barred. Article 119 of the Schedule to the Limitation Act, 1963, which prescribes the period of limitation for filing applications under the Arbitration Act, 1940, is quoted hereinbelow:

	"Description of application	Period of of limitation	Time from which period begins to run
--	-----------------------------	-------------------------	--------------------------------------

119. Under the Arbitration Act, 1940 (10 of 1940)-

- | | | |
|---|-------------|--|
| (a) for the filing in court of an award. | Thirty days | The date of service of the notice of the making of the award. |
| (b) for setting aside an award or getting an award remitted for reconsideration | Thirty days | The date of service of the notice of the filing of the award." |

It will be clear from clause (b) of article 119 of the Schedule to the Limitation Act, 1963 that an application for setting aside of an award has to be filed within 30 days from "the date of service of the notice of the filing of the award". Thus, the starting point of limitation is the date of service of the notice of the filing of the award and not the date of knowledge of the filing of the award.

7. In support of this view that the starting point of limitation for filing objections to an award under the Act is the date of service of notice of the filing of the award, we may cite an authority. In *Deo Narain Choudhury vs. Shree Narain Choudhary* [(2008) 8 SCC 626], the facts were that on 16.07.1996 the Court sent a notice to the parties about filing

A of the award and the notice was received by the respondent on 25.07.1996 and the respondent filed his objections to the award on 21.08.1996. The appellant contended that the objections had been filed beyond the period of limitation as the respondent had received the notice from the arbitrator that the
 B award had been filed and the respondent had also filed a caveat on 11.06.1996. This Court held that mere filing of the caveat did not start the period of limitation and as the notice was received by the respondent on 25.07.1996, the period of limitation started running from that date and, therefore, the
 C objections filed on 21.08.1996 were within the period of 30 days as provided by article 119 of the Limitation Act, 1963.

8. The Division Bench of the High Court has taken a view in the impugned order that as the Executive Engineer was looking after the arbitration proceedings, he was the one who
 D could have filed the objections to the award on behalf of the Union of India and thus notice of the filing of the award on the Executive Engineer was mandatory and the starting point of limitation for filing the application for setting aside the award would be the date of service of notice on the Executive Engineer
 E as provided in article 119(b) of the Schedule to the Limitation Act, 1963. The High Court, therefore, was not right in coming to the conclusion that as the Executive Engineer had knowledge of the filing of the award on 21.05.1997 and as the objections were filed beyond the period of 30 days counted
 F from 21.05.1997, the objections to the award were barred by time.

9. We, accordingly, set aside the order of the learned Single Judge as well as the impugned order of the Division Bench of the High Court and remand the matter to the Single
 G Judge of the High Court for fresh decision in accordance with law. The appeal is allowed with no order as to costs.

B.B.B.

Appeal allowed.