

M/S ENGINEER BUILDER & ASSOCIATES

v.

UNION OF INDIA & ORS.

(Civil Appeal Nos. 1932-1934 of 2014)

FEBRUARY 10, 2014

[A.K. PATNAIK AND JAGDISH SINGH KHEHAR, JJ.]

JAMMU AND KASHMIR ARBITRATION ACT, 1945: s.49(2); Fourth schedule - Application for setting aside award - Limitation and condonation of delay - Held: s.49(2) prescribes a limitation of 30 days for filing an application for setting aside the award - Under s.5 of the Jammu and Kashmir Limitation Act, period of limitation can be extended by the Court in respect of any application if the Court is satisfied that the applicant had sufficient cause for not making the application within the period of limitation - However, s.5 of the Jammu and Kashmir Limitation Act do not apply to any application under any special or local law - The Act of 1945 does not provide anywhere that s.5 of the Jammu and Kashmir Limitation Act will apply to an application for setting aside an award u/ss.30 and 33 of the Act of 1945 - Thus, the Court has no powers to condone the delay in filing an application for setting aside an award u/ss.30 and 33 of the Act of 1945 - Jammu and Kashmir Limitation Act - s.5.

INTERPRETATION OF STATUTES: Conflict between the provisions of the Act and provisions of the Schedule of the Act - Held: The provisions of the Act will prevail over the provisions of the Schedule.

Dispute arose between the parties and matter was referred to arbitration. The arbitrator passed an award on 4.9.2007 in favour of the appellant. In December, 2007, the appellant filed an execution petition. The respondent then filed an arbitration application under Section 34 of the

A Jammu and Kashmir Arbitration and Conciliation Act, 1997 before the High Court for setting aside the award. The single judge of the High Court dismissed the application on the ground that application ought to have been filed under the Jammu and Kashmir Arbitration Act

B of 1945. On appeal, the Division Bench of the High Court while upholding the decision of the single judge observed that it would be open to the respondent to take steps as required under Section 30 and 33 of Act of 1945 in relation to the award and if so advised to file an

C application for condonation of delay. The grievance of the appellant in the instant appeals was the observation of the High Court regarding filing of application under Section 30 and 33 of Act of 1945 along with application for condonation of delay.

D Allowing the appeals, the Court

HELD: 1. Sections 30 and 33 of the Jammu and Kashmir Arbitration Act of 1945, which provide for setting aside an award on certain grounds, do not prescribe any

E period of limitation for filing an application for setting aside an award, but Section 49(2) read with Fourth Schedule of the Act of 1945 prescribes a limitation of thirty days from the date of service of the notice of filing of the award for filing the application for setting aside an

F award or to get an award remitted for reconsideration. Section 49(2) of the Act of 1945 makes an amendment to the First Schedule of the Jammu and Kashmir Limitation Act and provides in Article 153 of the First Schedule of the said Limitation Act that the period of limitation for filing an application for setting aside the award will be 30 days.

G The principle laid down by this Court in *M/s. Aphali Pharmaceuticals Ltd. vs. State of Maharashtra & Ors.* is that in case there is conflict between the provisions of the Act and provisions of the Schedule of the Act, the provisions of the Act will prevail over the provisions of

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the Schedule. As Sections 30 and 33 do not prescribe a different period of limitation, there is no conflict between Sections 30 and 33 of the Act of 1945 and the Fourth Schedule of the Act of 1945. Rather, Sections 30 and 33 of the Act of 1945, which do not prescribe any period of limitation for filing an application for setting aside an award will have to be read along with Section 49(2) and Fourth Schedule of the said Act and so read, the period of limitation prescribed for filing an application for setting aside an award is 30 days from the service of notice of filing of the award. [Para 7] [983-B-C; 984-B-E]

2. It is only under Section 5 of the Jammu and Kashmir Limitation Act that any time beyond the period of limitation can be extended by the Court in respect of any application if the Court is satisfied that the applicant had sufficient cause for not making the application within the period of limitation. It will, however, be clear from clauses (a) and (b) of Section 29(2) of the Jammu and Kashmir Limitation Act extracted above that the provisions of Section 5 of the Jammu and Kashmir Limitation Act do not apply to any application under any special or local law. Section 5 also states that any other application to which Section 5 may be made applicable by or under any enactment for the time being in force may be admitted if the applicant satisfies the Court that he had sufficient cause for not making the application within the period of limitation. The Act of 1945 does not provide anywhere that the provisions of Section 5 of the Jammu and Kashmir Limitation Act will apply to an application for setting aside an award under Sections 30 and 33 of the Act of 1945. Thus, the Court has no powers to condone the delay in filing an application for setting aside an award under Sections 30 and 33 of the Act of 1945. The Division Bench of the High Court was not right in giving liberty to the respondents to file an application for condonation of delay in filing the application for setting

A aside the award under Sections 30 and 33 of the Act of 1945. [Paras 9, 10] [986-A-E]

M/s. Aphali Pharmaceuticals Ltd. vs. State of Maharashtra & Ors. (1989) 4 SCC 378: 1989 (1) Suppl. SCR 129 - relied on.

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Case Law Reference:

1989 (1) Suppl. SCR 129 relied on **Paras 6, 7**

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1932-1934 of 2014.

From the Judgment and order dated 30.03.2010 of the High Court of Jammu & Kashmir at Jammu in CIMA No. 91 of 2010 with Caveat No. 1259 of 2009 and CMP No. 125 of 2010.

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S.B. Upadhyay, Sharmila Upadhyay, Pawan Upadhyay, S.S. Shastri, Rishi Manchanda, Param Mishra for the Appellant.

Mohan Jain, ASG, D.K. Thakur, Anil Katiyar for the Respondents.

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The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. Leave granted.

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2. These are appeals by way of Special Leave under Article 136 of the Constitution against the order dated 30.03.2010 of the High Court of Jammu and Kashmir in CIMA No.91 of 2010 with CMP No.125 of 2010 with Caveat No.1259 of 2009.

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3. The facts very briefly are that the appellant was awarded a contract by the respondent for constructing accommodation for married JCOs/Hav/Ors. at Srinagar in Kashmir. Clause 70 of the agreement between the appellant and the respondents provided that all disputes between the parties to the contract shall be referred to the sole arbitration of an Engineer Officer

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to be appointed by the Authority mentioned in the tender-documents. The disputes raised by the appellant were referred to an arbitrator and the arbitrator made an award dated 04.09.2007 to the effect that the appellant would be entitled to recover Rs.65,78,450/- together with litigation expenses and Arbitrator's fee fixed at Rs.1,00,000/-. The arbitrator further directed in the award that the respondents shall make the payment within three months from the date they receive the copy of the award, failing which the entire awarded amount shall be recoverable with interest at the rate of 18% per annum from the date of the award. In December 2007, the appellant filed an Execution Petition in the Court of District Judge, Jammu, for execution of the award.

4. The respondents then filed an Arbitration Application No.8 of 2008 under Section 34 of the Jammu and Kashmir Arbitration and Conciliation Act, 1997 (for short 'the Act of 1997') before the High Court of Jammu and Kashmir for setting aside the award. The learned Single Judge of the High Court dismissed the application by order dated 07.12.2009 saying that the application for setting aside the award ought to have been filed under the Jammu and Kashmir Arbitration Act of the year 1945 (for short 'the Act of 1945'). The respondents carried an appeal before the Division Bench of the High Court which was registered as CIMA No.91 of 2010 and by the impugned order dated 30.03.2010 passed in the said appeal, the Division Bench of the High Court held that the learned Single Judge was right in coming to the conclusion that the Act of 1945 was applicable to the facts of the present case in view of the provisions of Section 68 of the Act of 1997. The Division Bench of the High Court, therefore, refused to interfere with the order passed by the learned Single Judge, but observed that it shall be open to the respondents to take such steps as are required to be taken under Sections 30 and 33 of the Act of 1945 in relation to the award, and if so advised, to file an application for condonation of delay. The appellant is aggrieved by this observation of the High Court that it will be open to the

A respondents to file an application under Sections 30 and 33 of the Act of 1945 along with an application for condonation of delay and has, therefore, filed this appeal.

B 5. Mr. S.B. Upadhyay, learned senior counsel appearing for the appellant, submitted that the Fourth Schedule to the Act of 1945 has incorporated an amendment in Article 153 of the First Schedule to the Jammu and Kashmir Limitation Act, which would make it clear that for setting aside an award or to get an award remitted for reconsideration, the period of limitation is thirty days from the date of the service of the notice of filing of the award. He submitted that the Jammu and Kashmir Limitation Act provides in Section 29(2)(a) that the provisions contained in Sections 4, 9 to 18 and 22 shall apply to any application under any local or special law and further clarifies in Section 29(2)(b) that the remaining provisions of the Jammu and Kashmir Limitation Act shall not apply. He submitted that, therefore, the provisions of Section 5 of the Jammu and Kashmir Limitation Act, which empower the court to condone the delay in filing an application, will not apply. He submitted that the Division Bench of the High Court is, therefore, not correct in giving liberty to the respondents to apply for setting aside the award under Sections 30 and 33 of the Act of 1945 along with an application for condonation of delay.

F 6. Mr. Mohan Jain, learned Additional Solicitor General, on the other hand, submitted that Section 30 of the Act of 1945 does not prescribe a period of limitation for an application for setting aside an award. He cited the decision of this Court in *M/s. Aphali Pharmaceuticals Ltd. vs. State of Maharashtra & Ors.* [(1989) 4 SCC 378] to contend that the Fourth Schedule of the Act of 1945 cannot override the main provisions of the Act. He submitted that since there is no period of limitation prescribed, the award could be challenged within the time extended by the Court under Section 5 of the Jammu and Kashmir Limitation Act and, therefore, the liberty granted by the Division Bench of the High Court in the impugned order to the

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respondents to apply for setting aside the award under Section 30 of the Act of 1945 along with an application for condonation of delay cannot be faulted.

7. We have considered the submissions made by the learned counsel for the parties and we find that Sections 30 and 33 of the Act of 1945, which provide for setting aside an award on certain grounds, do not prescribe any period of limitation for filing an application for setting aside an award, but Section 49(2) read with Fourth Schedule of the Act of 1945 prescribes a limitation of thirty days from the date of service of the notice of filing of the award for filing the application for setting aside an award or to get an award remitted for reconsideration. This will be clear from Section 49(2) and the relevant portion of the Fourth Schedule of the Act of 1945 extracted hereinbelow:

"49(2). The enactments specified in the Fourth Schedule are amended to the extent and in the manner mentioned therein."

"THE FOURTH SCHEDULE

[See Section 49(2)]

ENACTMENTS AMENDED

Year	No.	Short title	Amendments
1995	IX	The Jammu and Kashmir Limitation Act, 1995	In the First Schedule - (i) for Article 153, the following shall be substituted, namely:-- "158. Under the Jammu and Kashmir Arbitration Act to set aside an award or to get an award remitted for re-consideration.

A				-Thirty days. The date of service of the notice of filing of the award."
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Thus, Section 49(2) of the Act of 1945 makes an amendment to the First Schedule of the Jammu and Kashmir Limitation Act and provides in Article 153 of the First Schedule of the said Limitation Act that the period of limitation for filing an application for setting aside the award will be 30 days. The principle laid down by this Court in *M/s. Aphali Pharmaceuticals Ltd. vs. State of Maharashtra & Ors.* (supra) is that in case there is conflict between the provisions of the Act and provisions of the Schedule of the Act, the provisions of the Act will prevail over the provisions of the Schedule. As Sections 30 and 33 do not prescribe a different period of limitation, there is no conflict between Sections 30 and 33 of the Act of 1945 and the Fourth Schedule of the Act of 1945. Rather, Sections 30 and 33 of the Act of 1945, which do not prescribe any period of limitation for filing an application for setting aside an award will have to be read along with Section 49(2) and Fourth Schedule of the said Act and so read, the period of limitation prescribed for filing an application for setting aside an award is 30 days from the service of notice of filing of the award.

8. The only other question which we have to decide is whether the Court is vested with any power to extend the time for filing the application for setting aside an award beyond the period of thirty days from the date of service of the notice of filing of the award as prescribed in Section 49(2) read with the Fourth Schedule of the Act of 1945. To answer this question, we have to refer to Sections 5 and 29 of the Jammu and Kashmir Limitation Act. These provisions of the Jammu and Kashmir Limitation Act are extracted hereinbelow:

"5. An appeal or an application for a review of a judgment or for leave to appeal or an application to set aside an

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order of dismissal of a suit for plaintiff's default or an application to set aside a decree passed ex-parte in an original suit or appeal or an application to bring the heirs of a deceased party on the record or an application to set aside an order of abatement of a suit or appeal or any other application to which this section may be made applicable by or under an enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. - The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning this section."

"29. (1) Nothing in this Act shall affect section 25 of the Contract Act (IX of 1997).

(2) Where any special or local law prescribes for any suit, appeal or application a period limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply as if such period were prescribed therefor in that schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law-

(a) the provisions contained in section 4, sections 9 to 18 and section 22 shall apply only insofar as and the extent to which they are not expressly excluded by such special or local law and;

(b) the remaining provisions of this Act shall not apply.

- A 9. It is only under Section 5 of the Jammu and Kashmir
Limitation Act that any time beyond the period of limitation can
be extended by the Court in respect of any application if the
Court is satisfied that the applicant had sufficient cause for not
making the application within the period of limitation. It will,
B however, be clear from clauses (a) and (b) of Section 29(2) of
the Jammu and Kashmir Limitation Act extracted above that
the provisions of Section 5 of the Jammu and Kashmir
Limitation Act do not apply to any application under any special
or local law. Section 5 also states that any other application to
C which Section 5 may be made applicable by or under any
enactment for the time being in force may be admitted if the
applicant satisfies the Court that he had sufficient cause for not
making the application within the period of limitation. The Act
of 1945 does not provide anywhere that the provisions of
D Section 5 of the Jammu and Kashmir Limitation Act will apply
to an application for setting aside an award under Sections 30
and 33 of the Act of 1945. Thus, the Court has no powers to
condone the delay in filing an application for setting aside an
award under Sections 30 and 33 of the Act of 1945.
- E 10. For the aforesaid reasons, we hold that the Division
Bench of the High Court was not right in giving liberty to the
respondents to file an application for condonation of delay in
filing the application for setting aside the award under Sections
30 and 33 of the Act of 1945. We accordingly set aside the
F observations to this effect in the impugned order and allow the
appeals, but order that the parties shall bear their own costs.

D.G.

Appeals allowed.