

ITEM NO.34

COURT NO.4

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 3586/2019

(Arising out of impugned final judgment and order dated 29-10-2018 in AUAA No. 28/2018 passed by the High Court Of Judicature At Bombay At Goa)

M/S BENAULIM CABLE TV NETWORK

Petitioner(s)

VERSUS

M/S BLITS GLOBAL TECHNOLOGIES PVT. LTD

Respondent(s)

Date : 14-02-2020 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Mr. Vikram Singh, AOR
Mr. H.S. Sandhu, Adv.
Ms. Smita Singh, Adv.

For Respondent(s) Mr. Ninad Laud, Adv.
Mr. Sahil Tagotra, AOR
Ms. Ananyaa Mazumdar, Adv.
Mr. Ivo MS D'Costa, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Having heard the learned counsel for the petitioner at some length, it is necessary to set out that both parties were before the TDSAT which passed an order dated 27.08.2013 after hearing them. However, the dispute between the parties was then referred to arbitration under the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'MSMED Act'). An Award was passed by the Goa Micro, Small Enterprises Facilitation Council set up under the Act dated 15.12.2014 by which the petitioner was ordered to pay a sum of Rs. 8.65 lakhs plus interest to the respondent. A review petition was then filed on 03.03.2015 which

was dismissed on 08.10.2015. This was discovered by an RTI reply of 06.11.2017 as a result of which a Section 34 petition under the Arbitration Act was then filed by the petitioner only on 21.02.2018. Since no review petition could have been filed under the MSMED Act read with the Arbitration Act, the petitioner claimed that Section 14 of the Limitation Act should be applied in his case as a result of which the petition filed under Section 34 to the District Court, South Goa at Margao would then be within the 120 days which was prescribed under the Arbitration Act. The District Court, by order dated 26.07.2018, dismissed the petition on the ground of limitation, stating that Section 14 of the Limitation Act would not apply. This was agreed to by the impugned judgment dated 29.10.2018, which dismissed the Section 37 appeal from this order.

Learned counsel appearing on behalf of the petitioner has argued that TDSAT has exclusive jurisdiction in these matters and since it has exclusive jurisdiction in these matters the non obstante clause of the TRAI Act would prevail over the non obstante clause of MSMED Act. This being the case, this is something which the High Court ought to have been gone into and then declared that as the Facilitation Council under the MSMED Act is bereft of jurisdiction, the award should have been set aside. This was argued based upon the judgment in Life Insurance Corporation of India vs. D.J. Bahadur and Others, (1981) 1 SCC 315 and KSL and Industries Limited vs. Arihant Threads Limited and Others, (2015) 1 SCC 166.

First and foremost the judgment of the High Court is not right in stating that Section 14 will not apply to a proceeding under

Section 34. This has, in fact, been settled by a judgment of this Court in Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and Others, (2008) 7 SCC 169. However, on facts even if Section 14 is to be applied, there is no doubt that the petition is beyond limitation by 3 days which limitation cannot be relaxed beyond a period of 120 days as Section 5 of the Limitation Act will not apply to proceedings under Section 34 of the Arbitration Act.

It is settled law that an order passed without jurisdiction can be challenged even collaterally - Kiran Singh and Others vs. Chaman Paswan and Others, [1955] (1) SCR 117 at 121. However, in the present case, the petitioner did not avail of the doctrine laid down in Kiran Singh and Others (supra) by filing a petition for judicial review of the arbitration award, but instead elected to choose a remedy under the Arbitration Act itself. That remedy having been chosen, the drill of Section 34(3) is then necessarily to be followed. As we have pointed out herein above, even applying Section 14 to the facts of the present case, the petition under Section 34 is out of time. This being so, the Special Leave Petition is dismissed.

(R. NATARAJAN)
AR CUM PS

(NISHA TRIPATHI)
BRANCH OFFICER