

## REVISIONAL CIVIL

Before Gurdev Singh, J.

M/S WARYAM SINGH & SONS,—Petitioner.

versus

THE EXECUTIVE ENGINEER (C), AND ANOTHER,—Respondents.

Civil Revision No. 992 of 1969.

January 30, 1970.

*Arbitration Act (X of 1940)—Section 37(4)—Time for commencement of arbitration proceedings fixed by the arbitration agreement—Such time expiring—Prayer of extension thereof—Point to be considered by the Court—Stated—Party not showing sufficient cause for extension—Whether relevant.*

*Held*, that the language of section 37(4) of the Arbitration Act is clear and unambiguous. It provides that extension of time can be granted notwithstanding the fact that the time fixed for the commencement of the arbitration proceedings under the agreement has expired. In dealing with the prayer for extension of time what the Court is required to consider is whether in the circumstances of the case undue hardship would be caused if the time is not extended. The question whether there was sufficient cause for the party applying for extension of time for not moving the arbitrator within the prescribed period is not the criterion on which the order of extension is to be made. (Para 3)

*Petition under Section 44 of the Punjab Courts Act, 1919 and Section 115 of the Code of Civil Procedure for revision of the order of Shri S. N. Parkash, Senior Sub Judge, Hissar dated the 18th July, 1969 dismissing the application of the petitioner under section 37(4) of the Arbitration Act for extension of time.*

HARINDER SINGH, ADVOCATE, for the petitioner.

H. L. SONI, ADVOCATE, for the respondents.

## ORDER

GURDEV SINGH, J.—A dispute having arisen between the petitioner-firm, Messrs Waryam Singh and Sons and the Executive Engineer (C) of the Punjab Agricultural University, Hissar, with regard to a certain building contract, the petitioners referred the matter to Shri D. K. Sehgal, respondent No. 2 for arbitration according to the terms of the contract between the parties. The arbitrator, however, refused to entertain the reference by merely saying that it

was made beyond the period of 180 days laid down in clause 25 (a) of the agreement. Thereupon the petitioner applied to the Senior Subordinate Judge, Hissar, under section 37 (4) of the Indian Arbitration Act for extension of time. The learned Judge, however, refused to extend the time holding that no sufficient cause for extension of time prescribed under the agreement for arbitration had been made out. It is against this order that the petitioner-firm has come up in revision.

(2) The main contention put forward by the petitioner's counsel, Mr. Harinder Singh, is that the learned Senior Subordinate Judge has entirely ignored the provisions of sub-section (4) of section 37 and refused to extend the time on wholly erroneous ground that no sufficient cause for not moving the arbitrator within the prescribed time had been made out. In this connection, he points out that the question whether the petitioner's failure to approach the arbitrator was for a sufficient cause or not did not arise for consideration, and what the Court had to consider was whether undue hardship would be caused to the petitioner if the time is not extended. This contention appears to be well-founded and must prevail. Sub-section (4) of section 37 of the Arbitration Act provides:—

“Where the terms of an agreement to refer future differences to arbitration provide that any claim to which the agreement applies, shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a difference arises to which the agreement applies the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.”

(3) The language of this provision is clear and unambiguous. It clearly provides that extension of time can be granted notwithstanding the fact that the time fixed under the agreement had expired. In dealing with the prayer for extension of time what the court is required to consider is whether in the circumstances of the case undue hardship would be caused if the time is not extended. The question whether there was sufficient cause for the party applying for extension of time for not moving the arbitrator within the prescribed

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period is not the criterion on which the order of extension is to be made. The learned trial Judge in his order under revision has referred to the various authorities under sections 5 and 14 of the Indian Limitation Act and held that as the petitioners were not diligent there was no sufficient cause for extension of time. This approach is entirely wrong. As has been observed earlier, the question of sufficient cause does not arise for consideration under section 37(4) of the Act and what has to be considered is whether refusal to extend the time will cause undue hardship. Since the learned Judge has not considered whether undue hardship would result to the petitioner if the extension of time was refused, it is obvious that he has failed to exercise the jurisdiction, that vested in him, illegally and on wholly erroneous grounds. In this view of the matter, the order under revision cannot be sustained and the case must be remitted to the Senior Subordinate Judge to deal with the application in the light of the provisions of sub-section (4) of section 37 of the Arbitration Act and the observations recorded above. I order accordingly. There will be no order as to costs. The parties are directed to appear before the Senior Subordinate Judge, Hissar, on 16th February, 1970.

N.K.S.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

THE COMMISSIONER OF INCOME-TAX,—Petitioner.

versus

KARTAR SINGH, TRUCK OWNER, MOGA,—Respondent.

Income Tax Case No. 3 of 1965.

February 2, 1970.

*Indian Income Tax Act (XI of 1922)—Sections 10(2) (vii) and 66(2) —Books of the assessee as mentioned in section 10(2) (vii)—Whether to be of a particular type of accounts—Such books being defective—Whether affects the allowance to be granted under the section—Constitution of India (1950)—Article 226—Writ of mandamus for reference of questions of law in Income-tax matters—Whether not to be issued.*