filed by defendant-respondent No. 1. Para No. 15 of the grounds of appeal filed by defendant-respondent No. 1 reads as under :—

> "That the courts below have erroneously decided issue No. 2 and have wrongly concluded that all the parties have only 1/7th share in the property in dispute. The courts below have failed to consider that according to the averments of the plaintiff-respondents, the plaintiff and defendants No. 1 and 2, have 1/3 share each in the property in dispute and that the same has not been controverted or contested by defendants No. 3—6."

(20) A perusal of the above mentioned ground clearly shows that the ground taken by defendant-respondent No. 1 is deemed to have been rejected as the regular second appeal was dismissed on 4th November 1999,—vide order Annexure P.4. Therefore, in such a situation, the provisions of order XX rule 6 of the Code would not come to the rescue of defendant-respondent No. 1.

(21) For the reasons recorded above, the revision petition is allowed. The order dated 12th May, 2000 passed by the Additional District Judge, Faridabad is set aside and the decree is allowed to stand as it was drawn originally by the trial Court on 30th August, 1997.

R.N.R.

Before M.M. Kumar, J.

STATE OF HARYANA AND ANOTHER,—*Petitioners*

versus

KRISHAN CHAND,—*Respondent*

C.R. No. 3772 of 2001

28th January, 2002

Arbitration Act, 1940—Ss. 3, 38, 1st Schedule Cl. 3—Delay of one month in announcing the award—Parties taking willing part in the proceedings without any protest—Civil Court making the award as rule of the Court—1st Appellate Court though not extending time yet dismissing the appeal—Whether the High Court has jurisdiction to extend the time—Held, yes.

Held, that the parties have been taking willing part in the proceedings before the arbitrator and there was never any protest made by them. There is nothing on record to show that any objection was raised by either of the parties to the announcement of the award. Therefore, even if the appellate Court has not exercised the power to extend time it would be a fit case for extension of time. The delay appears to be only of one month. The arbitrator entered on the reference of 29th September, 1993 and award could have been announced on 28th January, 1994. However, the award was anounced on 28th February, 1994. No useful purpose would be served to send back the case to the appellate Court as the award was announced about eight years back. Therefore, the time of one month is extended.

(Para 8)

N.K. Joshi, AAG Haryana, *for the petitioners.*

JUDGMENT

M.M. KUMAR, J.

(1) This is a revision petition directed against the judgment, dated 30th November, 2000, passed by the Additional District Judge, Rohtak, dismissing the appeal of the petitioners in which the judgment and decree, dated 3rd May, 1999, passed by the Additional Civil Judge (Senior Division), Rohtak, was challenged. The Additional Civil Judge *vide* his judgment and decree, dated 3rd May, 1999, had dismissed the objections of the petitioners and made the award, dated 28th February, 1994, passed by the arbitrator as rule of the Court. The Additional District Judge dismissed the appeal by recording the following order:—

> "No doubt that the award was given by the arbitrator beyond the prescribed period of four months. But the respondents have been taking part in such hearings and proceedings without any objection. Long participation and acquiescence in the proceedings preclude such a party from contending that the proceedings were without jurisdiction. **In Prasun Roy** *versus* **the Calcutta Metropolitan Development Authority and Another AIR 1988 Supreme Court,**

page 205(DB) it was held that where a party is aware that by reason of some disability the matter is legally incapable of being submitted to arbitration participates in the arbitration proceedings without protest and fully avails of the entire arbitration proceedings cannot be permitted to challenge such arbitration proceedings at a subsequent stage on finding that the award has gone against him. Long participation and acquiescence in the proceedings preclude such a party from contending that the proceedings were without jurisdiction.

To the similar effect it was held in **N. Chellppan** *versus* **Secretary, Kerala State Electricity Board, AIR 1975 Supreme Court 230.** Thus, I relying upon the case law referred to above, hold that the award does not become invalid simply because it was given beyond the prescribed period as the respondents remained participating in the proceedings and hearing without any objection."

(2) Shri Naresh K. Joshi, learned State counsel appearing for the petitioners has argued that in view of provisions of section 3 read with section 28 and Clause 3 of the First Schedule of the Arbitration Act, 1940 (for brevity, the Act) the arbitrator has lost its jurisdiction to announce the award after the expiry of period of 4 months. According to the learned counsel, the Arbitrator was appointed on 26th July, 1993 and he entered on the reference on 29th September, 1993. It has been pointed out that the arguments were concluded before the arbitrator on 23rd December, 1993 and the next date fixed was 30th December, 1993 for announcement of the award. The case was further adjourned to 28th February, 1994 for announcing the award. The arbitrator announced the award on 28th February, 1994. The learned counsel submitted that time limit prescribed under section 3 read with section 28 and Clause 3 of the Schedule I of the Act the period of 4 months had exceeded and the award could not be announced by the Arbtirator and, therefore, the award is without jurisdiction. He has further argued that the parties have not expressly consented for extension of time limit. According to the learned counsel, there is no participation by the parties after the arguments were concluded on 23rd December, 1993 and, therefore, it cannot be concluded that the

parties have given consent impliedly. In support of his argument, the learned counsel has relied on a judgment of the Supreme Court in the case of ***State of Punjab*** versus ***Hardayal, (1).***

(3) In order to analyse the contention of the leanred counsel, it is appropriate to make a reference to the provisions of section 3, clause 3 of Scheduled I, and section 28 of the Act, which read as under

> "3. An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.
>
> Clause 3 of Schedule I. The arbitrators shall make their award whithin four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the court may allow.
>
> 28 (1). The court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.
>
> (2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect."

(4) These provisions came up for consideration in the case of ***H.K. Wattal*** versus ***V.N. Pandya (2),*** and there Lordships observed that the power to enlarge time beyond the period of 4 months is vested in the Court alone. The observations of Their Lordships read as under :—

> "There is no doubt that the arbitrator is expected to make his award within four months of his entering on the reference or on his being called upon to act or within

(1) AIR 1985 SC 920
(2) AIR 1973 SC 2479

such extended time as the Court may allow. Reading clause 3 of the Schedule along with section 28 one finds that the power to enlarge the time is vested in the court and not in the arbitrator. Clause 3 and section 28(1) exclude by necessary implication the power of the arbitrator to enlarge the time. This is emphasised by section 28(2) which provides that even when such a provision giving the arbitrator power to enlarge the time is contained in the agreement, the provision shall be void and of no effect. The head note of section 28 brings out the force of this position in law by providing that the power is of the court only to enlarge time for making the award.

Sub-section (2) of section 28, however, indicates one exception to the above rule that the arbitrator cannot enlarge the time, and that is when the parties agree to such an enlargement. The occasion for the arbitrator to enlarge the time occurs only after he is called upon to proceed with the arbitration or he enters upon the reference, hence, it is clear that if the parties agree to the enlargement of time after the arbitrator has entered on the reference, the arbitrator has the power to enlarge it in accordance with the mutual agreement or consent of the parties. That such a consent must be a post-reference consent, is also clear from section 28(2) which renders null and void a provision in the original agreement to that effect. In a sense where a provision is made in the original agreement that the abritrator may enlarge the time, such a provision always implies mutual consent for enlargement but such mutual consent initially expressed in the original agreement does not save the provision from being void. It is, therefore, clear that the arbitrator gets the jurisdiction to enlarge the time for making the award only in a case where after entering on, the arbitration the parties to the arbitration agreement consent to such enlargement of time."

(5) The judgment in the case of **H.K. Wattal's** case *(supra)* came up for consideration before the Supreme Court in **Hardyal's** case *(supra)*. The pointed question considered in **Hardayal's** case *(supra)* was as to what would be the effect if the parties to the arbitration took part in the proceedings before the arbitrator even after the expiry of 4 months, that is, the period prescribed for giving the award. The answer to the question has been recorded by their Lordships in the following words :

> "Once we hold that the law precludes parties from extending time after the matter has been referred to the arbitrator, it will be contradiction in terms to hold that the same result can be brought about by the conduct of the parties. The age long established principle is that there can be no estoppel against a statue. it is true that the time to be fixed for making the award was initially one of agreement between the parties but it does not follow that in the face of a clear prohibition by law that the time fixed under clause 3 of the Schedule can only be extended by the court and not by the parties at any stage, it still remains a matter of agreement and the rule of estoppel operates. It need be hardly emphasized that the Act has injuncted the arbitrator to give an award within the prescribed period of four months unless the same is extended by the court. The arbitrator has no jurisdiction to make an award after the fixed time. If the award made beyond the time is invalid the parties are not estopped by their conduct from challenging the award on the ground that it was made beyond time merely because of their having participated in the proceedings before the arbitrator after the expiry of the prescribed period.
>
> The policy of law seems to be that the arbitration proceedings should not be unduly prologed. The arbitrator, therefore, has to give the award within the time prescribed or such extended time as the court concerned may in its discretion extend and the court along has been given the power to extend time for giving the award. As observed earlier, <u>the court has got the power to extend</u>

time even after the award has been given or after the expiry of the period prescribed for the award. But the court has to exercise its discretion in a judicial manner. The High Court in our opinion was justified in taking the view that it did. This power, however, can be exercised even by the appellate court. The present appeal has remained pending in this Court since 1970. No useful purpose will be served in remanding the case to the trial court for deciding whether the time should be enlarged in the circumstances of this case. In view of the policy of law that the arbitration proceedings should not be unduly prolonged and in view of the fact that the parties have been taking willing part in the proceedings before the arbitrator without a demur, this will be a fit case, in our opinion, for the extension of time. We accordingly extend the time for giving the award and the award will be deemed to have been given in time." (emphasis mine)

(6) A perusal of the above paras in Hardayal's case (supra) itself shows that even the appellate Court could exercise the power to extend time. The policy of law as noticed by Their Lordships is that arbitration proceedings should not be unduly prolonged. In ***M/s G.S.D. Construction*** versus ***State of Bihar and others (3)*** the Supreme Court held that the time could be extended even by the Supreme Court at the hearing of a civil appeal or a Special Leave Petition. While relying on Hardayal's case (supra) Their Lordships observed as under :

"It is contended on behalf of the appellant that if there was no deemed extension as sought to be pleaded then both the Subordinate Judge as well as the High Court were empowered to enlarge time even when the award had been made and on their failure to do so, it is pleaded that this Court may intervene to do the needful. Reliance has been placed on a decision of this Court in State of Punjab *versus* Hardyal, (1985) 2 SCC 629: (AIR 1985 SC 920) wherein it has been held that when remanding the case to the High Court for deciding other issues,

(3) AIR 1999 SC 1576

this Court can enlarge the time for making the award. On behalf of the Respondents, it has not been seriously disputed that such power is there and there is no reason spelled out in the pleading of the parties and the judgments of the Courts below as to why such time be not enlarged by this Court. Rather, it has been impressed that in the event of the matter being remitted back for further consideration as to whether the award need be made the Rule of the Court time may be enlarged.

Agreeing with the submissions made by both counsel, we enlarge the time till the date the award was actually made by the Arbitrator and modify the impugned order of the High Court to this extent remitting the matter back to the Court of a Subordinate Judge, Bhabua for proceeding further towards making the Rule of the Court after deciding such other issues as have arisen."

(7) It is pertinent to mention that this Court in the case of ***State of Punjab and others*** versus ***M/s Parmar Construction Co. and others (4)*** has even extended the time on the oral request of one of the party.

(8) If the principles enunciated in the above noticed judgments are applied to the present case, then it would be obvious that the time can be extended. In the present case, the parties have been taking willing part in the proceedings before the arbitrator and there was never any protest made by them. The argument of Shri Joshi that there was no participation in the proceedings held by the arbitrator after the arguments were concluded on 23rd December, 1993 cannot be accepted because even thereafter the parties have appeared on the dates when the award was announced. There is nothing on record to show that any objection was raised by either of the parties to the announcement of the award. Therefore, even if the appellate Court has not exercised the power to extend time it would be a fit case for extension of time. The delay in this case appears to be only of one month. The arbitrator entered on the reference of 29th September, 1993 and award could have been announced by 28th January, 1994.

(4) 1997 (1) Arbitration Law Reporter 597

However, the award was announced on 28th February, 1994. In may opinion, no useful purpose would be served to send back the case to the appellate Court as the award was announced about eight years back. Therefore, the time of one month is extended.

(9) Before parting, it is necessary to point out that the approach adopted by the appellate Court was not in accordance with law and the time should have been extended rather than placing reliance on judgment delivered under Section 20 of the Act in the case of *Prasun Roy* (supra). This case deals with entirely different proposition. Therefore, the approach adopted by the appellate Court cannot be countenanced. The reasoning adopted by the appellate Court has to be substituted by the reasoning given in paras above. However, it would not make any difference to the results which has been reached, namely, that the revision petition is devoid of any merit.

(10) For the reasons recorded above, this revision petition fails and the same is dismissed.

R.N.R.

Before G.S. Singhvi, A.C.J. & M.M. Kumar, J

DILBAGH SINGH,—*Appellant*

versus

THE COLLECTOR, LAND ACQUISITION, INDUSTRIES, DEPARTMENT, PUNJAB AND OTHERS.—*Respondents*

L.P.A. No.1113 OF 2001

15th March, 2002

Limitation Act, 1963—S.5—Delay of almost 2 years 5 months in filing the appeal against the award of District Judge—Application for condonation of delay filed pleading ignorance and illiteracy—Whether sufficient ground to condone the delay—Held, yes—While considering the plea for condonation of delay raised by a rural litigant, the Court has to adopt an extremely liberal approach—Pendency of similar appeals arising out of the award relating to the same acquisition also a valid ground for condonation of delay—Appeal allowed, order