

**Chief Justice's Court**

**Case :-** APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 382 of 2024

**Appellant :-** Ram Babu Vishkarma

**Respondent :-** M/S Shriram Finance Ltd And Another

**Counsel for Appellant :-** Yash Tandon

**Counsel for Respondent :-** M.K. Maurya for Nishant Mehrotra

**Hon'ble Arun Bhansali,Chief Justice**

**Hon'ble Vikas Budhwar,J.**

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ('the Act') is directed against order dated 29.06.2024 passed by the Commercial Court, Kanpur Nagar, whereby the application filed by the appellant under Section 34 of the Act has been dismissed as not maintainable.

2. The application under Section 34 of the Act was filed aggrieved of award dated 20.10.2023. In the Statement of Truth filed along with the application under Section 34 of the Act, it was, *inter alia*, indicated as under :

*"9. A copy of signed copy of ex-parte Arbitral Award dated 20.10.2023 has been received to the deponent via post and the same copy along with postal envelop has been filed by the respondent because the address of the Arbitrator was not found operational when the deponent tried to obtain the certified copy of the aforesaid Arbitral Award by visiting the address mentioned on the said Award."*

3. The office of the Commercial Court raised objection regarding not filing of the signed copy of the award. When the matter came up before the Commercial Court, submissions were made that as the appellant had only received a copy of the signed award from the Arbitrator, the same has been filed as efforts to obtain certified copy, as the address of the Arbitrator was found not operational, failed. However, Commercial Court came to the conclusion that in terms of the provisions of Section 31(5) of the Act, it is necessary for an Arbitrator to serve a copy of the signed award to the party and in absence thereof, filing of the application under Section 34 of the Act was not maintainable. The plea raised pertaining to having received the copy of the signed award and that the office of the Arbitrator was not

operational, was not believed and consequently, the application under Section 34 of the Act was dismissed.

4. Learned counsel for the appellant made submissions that along with the application under Section 34 of the Act, specific assertion was made regarding the receipt of copy of the signed award and that efforts made to obtain the certified copy failed as the office of the Arbitrator was not operational and therefore, there was no reason for the Commercial Court to have rejected the plea raised in this regard by not believing it. Submissions have been made that in fact, none had appeared for the respondents before the Commercial Court and in absence of any dispute about authenticity of the award annexed to the application under Section 34 of the Act, the Commercial Court could not have dismissed the application in absence of the signed copy of the award.

5. Learned counsel appearing for the respondents made submissions that as the Commercial Court had not even issued notices, there was no occasion for the respondents to have appeared before him and raised objection, if any, to the maintainability and/or the nature of copy, which was filed along with the application under Section 34 of the Act.

6. We have considered the submissions made by counsel for the parties and have perused the material available on record.

7. It is not in dispute that along with the application under Section 34 of the Act, only a copy of the signed award was annexed by the appellant. Being aware of the requirement to file a signed award, a specific assertion was made in the Statement of Truth as noticed hereinbefore. Once the said statement was made by the appellant along with application under Section 34 of the Act, in absence of any counter affidavit or some obvious discrepancy in the submissions made, the Commercial Court apparently was not justified in disbelieving the affidavit filed in this regard.

8. Though it is true that as under Section 31(5) of the Act, the Arbitrator is required to supply a signed award to the parties, in an application under Section 34 of the Act, the said signed copy must be annexed. However, for any reason the

same cannot be filed, filing of the copy of the award along with an explanation, would be an appropriate exercise and in case, the Commercial Court comes to otherwise conclusion, consequences may follow. However, for the said purpose a finding based on material available on record is required to be recorded and only assertion that the statement made in this regard cannot be believed, is not sufficient.

9. In view of the above discussion, the appeal filed by the appellant is allowed. The order dated 29.06.2024 passed by the Commercial Court, Kanpur Nagar is set aside. Matter is remanded back to the said Court to hear and decide the matter after issuing notices to the respondents.

**Order Date :-** 30.9.2024  
Mukesh Pal/Manish Kr

(Vikas Budhwar, J) (Arun Bhansali, CJ)