

Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 8 of 2023

Appellant :- Madan Pal Singh And 2 Others

Respondent :- M/S Ambika Installments Limited And Another

Counsel for Appellant :- Pankaj Dubey for Prem Sagar Dubey, Satyendra Kumar Jaiswal

Counsel for Respondent :- Abhishek Tripathi for Sunil Vashisth

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Vikas Budhwar,J.

1. This appeal is directed against order dated 14.11.2022, passed by Commercial Court, Meerut, whereby the application filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') against award dated 09.04.2014 has been dismissed as barred by limitation.
2. The award was passed by the Arbitrator on 09.04.2014, the proceedings under Section 34 were filed by the appellant on 26.08.2015. Along with the application under Section 34, another application under Section 34(3) was filed, *inter alia*, indicating that the award in question was passed *ex-parte*. The appellant had no information about the passing of the award. When in pending Execution Case No. 2 of 2015, the file was inspected, appellants became aware of the passing of the award and efforts were made to obtain copy from the Arbitrator, the same was not made available, when he refused to give the copy, the application has been filed. It was prayed that the delay has occurred on account of non-receipt of the copy of the award and therefore, the same be condoned and the matter be decided on merits.
3. Objections were filed to the application, *inter alia*, with the submissions that the application was barred by limitation and beyond the period, which can be condoned. Submissions were made that the appellant was well aware of passing of the award and deliberately did not file the application within time and therefore, the same deserves to be dismissed.

4. The Commercial Court, after hearing the parties, after perusal of the original record of the arbitration, came to the conclusion that in the arbitration proceedings also, the appellant had remained *ex-parte*. The award was passed on 09.04.2014 and the same was sent by registered post to the parties. The Senior Post Master, Meerut City indicated that the article sent to Ratan Singh was delivered to him on 12.04.2014 and therefore, there was no reason not to assume that the same was not delivered to the appellant No. 1. The Commercial Court referred to the provisions of Section 34(3) and came to the conclusion that delay, to the extent of 30 days only, can be condoned, however, as the application has been filed after 1 year, 4 months and 16 days, the delay cannot be condoned and consequently, dismissed the application.

5. Feeling aggrieved, the present appeal has been filed.

6. Learned counsel for the appellants made submissions that in the record of the Arbitrator, Document-43 was available, which indicated that the article sent by registered post to the appellant No. 1 by the Arbitrator on 11.04.2014, was not delivered to him and therefore, once the material was available to indicate that the award was not received by the appellants in terms of the provisions of Section 34(3), it cannot be said that the application filed by the appellant was barred by limitation as the period of three months has to be counted from the date of receipt of the arbitral award by the party and therefore, the order impugned, passed by the Commercial Court, deserves to be set aside.

7. Submissions have also been made that the Commercial Court, besides not referring to a vital document, i.e., envelope returned back without delivery, has only come to the conclusion that the petitioner was aware of passing of the award and based on which, the application has been dismissed as barred by limitation whereas the requirement under Section 34(3), is receipt of the award and awareness, if any, is of no consequence and on that count also the order impugned deserves to be set

aside. Reliance was placed on **Shiv Narayan Goswami Vs. Jagdish Prasad Gupta and others : 2015 (3) ARC 171.**

8. Learned counsel for the respondent vehemently opposed the submissions. It was submitted that the application under Section 34 was grossly barred by limitation. Further, submissions have been made that even if, the envelope indicating the return of the award sent by the Arbitrator is taken into consideration, in view of provisions of Section 114 of the Evidence Act, 1872 and Section 27 of the General Clauses Act, 1897, in view of the fact that the postal endorsement indicated that despite repeatedly going to the address of the recipient, he was not available, the same would be deemed to have been served on the appellant and therefore, the limitation would be counted from the date when the award in the normal course would have been delivered to the appellant and therefore, the order, passed by the Commercial Court, does not call for any interference. Reliance has been placed on **Krishna Kumar Gupta Vs. Manoj Kumar Sahu : S.C.C. Revision No. 144 of 2018, decided on 06.08.2022, Smt. Vandana Gulati Vs. Gurmeet Singh Alias Mangal Singh : AIR 2013 Allahabad 69 and Ajeet Seeds Ltd. Vs. K Gopala Krishnaiah : (2014) 12 SCC 685.**

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

10. A perusal of the order passed by the Commercial Court would reveal that it based its finding on the postal receipt, whereby the articles were sent by the Arbitrator to the parties and the fact that the Post Master, Meerut had, by his communication, indicated regarding delivery of the article to Ratan Singh, one of the parties. The Court assumed that the article sent by the Arbitrator has been received by the appellant No. 1 on 12.04.2014 and therefore, the plea raised regarding non-receipt of award, was without any basis. The said finding recorded by the Commercial Court does not take into consideration the fact that another Document No.

43 was available on the record of the Arbitrator pertaining to the return of the article sent to the appellant.

11. A perusal of the said document, copy whereof has been produced by counsel for the appellant, by way of supplementary affidavit, reveals that the article, which was sent on 11.04.2014, bears the endorsement pertaining to visits of the postman on 15/4, 16/4, 17/4, 19/4, 21/4, 22/4 and thereafter, the endorsement “प्राप्तकर्ता बार बार जाने पर नहीं मिलाता” on 23.04.2024.

12. The provisions of Section 34(3), *inter alia*, read as under :

“34(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

13. A perusal of the above provision would reveal that the limitation for filing the application for setting aside arbitral award is three months from the date of receipt of the arbitral award and further the same can be filed within a further period of 30 days on showing sufficient cause, but not thereafter.

14. Hon’ble Supreme Court, in the context of provisions of Section 34(3) of the Act, with reference to Section 31(5) of the Act, which requires that after the arbitral award is made, a signed copy shall be delivered to each party, emphasized the essence of such delivery to the party in **Union of India Vs. Tecco Trichy Engineers and Contractors : (2005) 4 SCC 239** as under:

“8. The delivery of an arbitral award under sub-Section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to

be "received" by the party. This delivery by the arbitral tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings."

15. The above aspect was reiterated in **State of Maharashtra and others Vs. ARK Builders Pvt. Ltd. : (2011) 4 SCC 616** as under :

"The expression "party making that application had received the arbitral award" (emphasis supplied) can not be read in isolation and it must be understood in light of what is said earlier in Section 31(5) that requires a signed copy of the award to be delivered to each party. Reading the two provisions together it is quite clear that the limitation prescribed under Section 34(3) would commence only from the date a signed copy of the award is delivered to the party making the application for setting it aside."

Whereafter in the above judgment referring to the decision in the case of **Tecco Trichy Engineers and Contractors (supra)**, observed as under:

"15. The highlighted portion of the judgment extracted above, leaves no room for doubt that the period of limitation prescribed under Section 34(3) of the Act would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside under Section 34(1) of the Act. The legal position on the issue may be stated thus. If the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law."

16. The above view, in the case of **Tecco Trichy Engineers and Contractors (supra)** and **ARK Builders Pvt. Ltd. (supra)**, was reiterated in **Dakshin Haryana Bijli Vitran Nigam Limited Vs. Navigant Technologies Pvt. Ltd. : (2021) 7 SCC 657**.

17. From the above, it is well established that the limitation prescribed under Section 34(3) of the Act would commence only from the date a signed copy of the award is delivered to the party making the application for setting it aside.

18. The importance of delivery of arbitral award to the party itself was re-emphasized by Hon'ble Supreme Court in **Benarsi Krishna Committee and Others Vs. Karmyogi Shelters Pvt. Ltd. : (2012) 9 SCC 496**, wherein delivery of arbitral award on agent or advocate of party was held to not amounting to service of award on party itself under Sections 31(5) and 34(3) of the Act and it was held that limitation of three months under Section 34(3) is to be reckoned from the date on which the party itself received the award and not its advocate or agent.

19. In view of the law as laid down, it is settled that for limitation to start running under Section 34(3) of the Act the receipt of the award by the party is a *sine qua non*.

20. It is an established fact that the award was not received by the appellant No. 1 as the postal article sent by the Arbitrator was returned back to the Arbitrator as the recipient was not available at the given address despite the post man repeatedly visiting at the given address.

21. In view of the above fact situation, it needs to be examined, in the present case, as to whether it can be said that on account of return of the envelope by the postal authorities to the Arbitrator, which was addressed to the appellant, the same would amount to receipt of the award by the appellant so as to count the period of limitation from an assumed date.

22. As noticed hereinbefore, the provisions of Section 31(5) clearly provides for delivery of the award to each party and Section 34(3) requires receipt of the award by the party for limitation to start running against him in case he was to question the validity of the award under Section 34 of the Act. The respondent has placed reliance on the law as laid in relation to the provisions of Section 106 of the Transfer of Property

Act, 1982 and Section 138 of the Negotiable Instruments Act, 1981 with the aid of provisions of Section 114 of the Evidence Act, 1872 and Section 27 of the General Clauses Act, 1897, wherein in the case of **Ajeet Seeds Ltd. (supra)**, it was laid down that when the notice is sent by a registered post and is returned with a postal endorsement refused or not available in the house or house locked or shop closed or addressee not in station, due service has to be presumed and in the case of **Smt. Vandana Gulati (supra)**, a Single Judge of this Court, came to the conclusion that the endorsement not claimed/not met is sufficient to prove deemed service of the notice.

23. The said judgments have referred to the provisions of the General Clauses Act for reaching to the said conclusion. Section 27 of the General Clauses Act, 1897 deals with meaning of service by post and reads as under :

“27. Meaning of service by post – Where any [Central Act] or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression ‘serve’ or either of the expressions ‘give’ or ‘send’ or any other expression is used, then, unless a different intention appears the service shall be deemed to be effected by properly addressing, pre-paying an posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

24. A perusal of the above provision would reveal that the aid of Section 27 of the General Clauses Act can only be taken where any Act or regulation authorises or requires any document to be served by post whether the expression ‘serve’ or either of the expressions ‘give’ or ‘send’ or any other expression is used.

25. While Section 106(4) of the Transfer of Property Act requires sending of notice by post, proviso (b) of Section 138 requires giving a notice in writing to the drawer of the cheque, which situation would be covered by express provisions of Section 27 of the General Clauses Act, whereas the requirement under the Act in Section 31(5) of the Act is

‘delivery to the party’ and Section 34(3) is ‘receipt of award by the party’ and therefore, the law laid down, based on provisions of the General Clauses Act, would have no application for the purpose of dealing with the requirements under the Act.

26. From the above, it is apparent that the arbitral award was not received by appellant No. 1 and despite his approaching the Arbitrator for delivery of the award, the same was not delivered to him and therefore, it cannot be said that the application made by the appellant under Section 34 of the Act was barred by limitation as prescribed under Section 34(3) of the Act.

27. The determination made by the Commercial Court, based on assumption that as the award was received by the other parties, the same would also have been delivered to the appellant No. 1 is *ex-facie* contrary to the record and therefore, the order impugned cannot be sustained.

28. Consequently, the appeal is allowed. The order dated 14.11.2022, passed by Commercial Court, Meerut in Misc. Case No. 404 of 2022 (Misc. No. 520 of 2015) is set aside. The application filed by the appellant under Section 34(3) of the Act is allowed, the application is ordered to be treated as within limitation. The matter is remanded back to the Commercial Court, Meerut for hearing and deciding the application under Section 34 of the Act with utmost expedition.

Order Date :- 4.9.2024

Mukesh Pal/Rajesh

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