

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 28.7.2009
Date of Order: 3rd August, 2009

OMP No. 40/2007

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03.08.2009

Daniel Fuehre

... Petitioner

Through: Mr. Sandeep Sharma, Advocate

Versus

Direct Information Pvt. Ltd.

... Respondents

Through: Mr. Peeyoosh Kalra, Advocate with
Ms. V.Nalini & Mr. Manish Kalra, Advocates

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

This objection petition has been preferred under Section 34 of the Arbitration & Conciliation Act, 1996 against an award dated 20th May, 2006. The dispute between the petitioner and the respondent was in respect of a domain name "www.hotel.in" and a website "http://portal.in.direct/com". The dispute was referred to the arbitration and the learned Arbitrator gave its award on 20th May, 2006. The petitioner filed this objection petition under Section 34 initially on 19th December, 2006, there were some objections raised by the Registry on the petition. The objections were rectified and finally the rectified petition was filed on 23rd January

2007. The respondent after receiving notice of the petition took preliminary objection that this objection petition was barred by limitation as the petitioner had not filed objections within 90 days as provided under Section 34(3) of the Arbitration & Conciliation Act, 1996.

2. Learned Counsel for the petitioner contended that the petitioner received award on 19th October, 2006 and these objections were filed on 19th December, 2006 and thus were within time. The respondent on the other hand stated that the award was received by the petitioner on 27th June, 2006 and not on 19th October, 2006 as alleged thus, the objection petition was barred by limitation. The respondent has relied on the e-mail sent by the learned Arbitrator Mr. Uttam Prakash Agarwal to the Counsel for the petitioner on 27th June, 2006 which shows that the copy of the decision of the Arbitrator was sent by the Arbitrator to the Counsel for the petitioner on 27th June, 2006.

3. The e-mail dated 27th June 2006 was sent by the learned Arbitrator in response to an e-mail of the petitioner's counsel of the same date wherein petitioner's counsel told the Arbitrator that through this e-mail a formal request was being made for sending the copy of the decision since the petitioner's office had not received a copy of the decision. The formal request was sent in 'PDF' format. The learned Arbitrator on 27th June, 2006 at 5.28 p.m. sent the copy of his decision as an attachment to his e-mail in 'PDF' format to the petitioner's counsel. In view of this document filed by the respondent, the petitioner filed an unattested affidavit along with a copy of e-mail of his counsel. The copy of e-mail of his counsel shows that

this e-mail was sent by the Counsel to the petitioner on 19th October, 2006. The Counsel on 19th October, 2006 forwarded the decision of the Arbitrator in 'PDF' format to the petitioner.

4. It is contended by the counsel for the petitioner that the petitioner learnt about the award on 19th October, 2006 when his counsel forwarded the copy of award to him through e-mail and therefore the period of limitation will start from the date from his knowledge i.e. when he received the copy of the award through his counsel.

5. Section 34(3) provides that objections against the award may be filed within 03 months from the date on which party making application under Section 34 had received the arbitral award. The learned Counsel submits that receipt of arbitral award by the counsel for the petitioner was not material and it is only when the party received the award, the limitation started. I consider that this argument is not tenable. The Counsel for the petitioner was acting on behalf of the petitioner. He made a specific and formal request to the Arbitrator on behalf of the petitioner to send him a copy of the decision. On this request, the learned Arbitrator sent the award to the counsel for the petitioner since the counsel was acting on behalf of the petitioner and had made a request for sending the award on behalf of the petitioner. Receipt of award by the counsel for the petitioner has to be considered a receipt of award by the petitioner and the period of limitation has to start from the day when the copy of the award was received by the counsel for the petitioner on behalf of the petitioner. If the petitioner did not enquire from his counsel or the counsel did not

advise the petitioner about any infirmity in the award worth filing objections, the period of limitation would not stop running. In this case, the parties were communicating through e-mail with the Arbitrator and with each other. The subject matter of dispute was also a domain name and website. The sending of award by the learned Arbitrator in 'PDF' format to the counsel for the petitioner is a valid communication of the award and a plea cannot be taken that the award was not received by the petitioner on 27th June, 2006 when it was received by the counsel for the petitioner but was received only on 19th October, 2006 when the counsel for the petitioner informed the petitioner about receipt of award. It is not the plea of the petitioner that the counsel for the petitioner had received communication from the arbitrator on 19th October, 2006 and had not received the communication on 27th June, 2006. I, therefore, consider that the period of limitation would start from 27th June, 2006 and not from 19th October, 2006.

This petition having filed beyond the period as provided under Section 34(3) of the Arbitration & Conciliation Act, 1996 cannot be entertained and is liable to be dismissed and is hereby dismissed. No orders as to costs.

August 03, 2009
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SHIV NARAYAN DHINGRA, J.