

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

Date of Reserve: 10.8.2009
Date of Order: 4th September, 2009

OMP No. 197/2005

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04.09.2009

Rajinder Kumar Gupta

... Petitioner

Through: Mr. Pankaj Singh, Advocate &
Petitioner-in-person

Versus

M/s Escorts Securities Ltd.

... Respondents

Through: Mr. Ajay Talesara, Advocate

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

By this application/petition under Section 34 of the Arbitration & Conciliation Act, 1996 the petitioner has filed objection against award dated 13.03.2003 and prayed for setting aside the award. A prayer is also made for setting aside the interim order dated 13.10.2001 passed by the Sole Arbitrator whereby he dismissed an application made by the petitioner for recusing himself

and also rejected the prayer that the arbitration agreement entered into between the parties was not a valid agreement.

2. The award is dated 13.03.2003, the objections have been filed against the award on 25.5.2005. On the face of it, the objections seem to be barred by limitation however, it is stated by the petitioner in the objection petition that he learnt about passing of award on 5.11.2004 when he received an Execution Petition filed by the respondent for execution of the award and along with Execution petition he received a photocopy of the award. The petitioner thereafter waited for receiving a certified/signed copy of the award in terms of Section 31 of the Arbitration Act. When the same was not received, he made a request to the Arbitrator on 1.2.2005, 3.2.2005 for sending certified copy and also sent reminders dated 2.3.2005 and 4.4.2005 to the Arbitrator so that, he could challenge the award. Since he did not receive the certified copy of the award from the Arbitrator, he filed objections on the basis of photocopy received by him along with Execution Petition.

3. After filing of objections by the petitioner a notice of the objection petition was sent and directions were issued to the Arbitrator to file record of the arbitration. The notice came back with a report that Arbitrator Mr. Sushil Chauhan had expired on 21.2.2005. Thereafter, a notice was sent to wife of Mr. Sushil Chauhan to place on record the record of arbitration if she was having the same. Wife of Mr. Sushil Chauhan wrote a letter to the Registry that her

husband had expired on 21.2.2005 and she was not in possession of arbitration file. After receipt of notice from the Court she contacted the chamber of her husband and the clerk Mr. Azad Singh who had worked with her husband handed over some postal record, which related to the subject matter. The clerk informed her that her husband had called him at his residence and handed him over the signed arbitration awards in respect of arbitration proceedings, for dispatching to the parties and the postal record of dispatching the award was lying with him (Clerk). She submitted that during his last days her husband was not going to Chamber due to ill health. She along with her letter filed the postal record as handed over to her by the clerk of posting the award to the parties. The postal record consists of two postal receipts and two postal A.D. Cards one in the name of the petitioner and another in the name of the respondent. A perusal of A.D. card would show that article was duly received. It bears the signatures of petitioner with a date of 29.3.2003.

4. Despite filing of these documents by wife of the Arbitrator on record and the AD card showing that the award was posted to the petitioner and was received by him, the petitioner has not explained why he did not file objections within time. The petitioner's plea that he did not receive the award is unbelievable. It is petitioner's own contention that he raised objections against the Arbitrator's competence of entering into reference and after the Arbitrator passed interim order dated 13.10.2001 he attended only few proceedings and

thereafter he refused to participate in the arbitration proceedings after 1.6.2002. The last arbitration hearing attended by him was of 1.6.2002. The petitioner stated that thereafter he did not receive any communication with regard to the ongoing proceedings and therefore he was not aware of the conclusions of the proceedings.

The statement of the petitioner that he was not aware of the award does not inspire confidence. The Arbitrator was having his office in Delhi the petitioner who had received notice of the Execution petition on 5.11.2004, if had been interested in obtaining a signed copy of award as alleged could have gone to the Arbitrator's office. The petitioner did not go to the Arbitrator's office to make any inquiry soon after 5.11.2004. His contention that he kept waiting for certified copy also is a figment of imagination. Award was of 13.3.2003. He was facing execution of the award. If the award had not been in his knowledge or he had not received copy of award sent by Arbitrator, he would have immediately rushed to file objections on the basis of copy of award sent to him by court in Execution Petition. The petitioner has filed the present objections after more than two years of passing of the award. The postal receipt/A.D. card filed on record by the wife of the Arbitrator as retrieved from the office of the Arbitrator shows that the award was received by the petitioner on 29th march, 2003.

5. It is petitioner's own contention that he received copy of the award along with Execution on 5.11.2004, he was at liberty to file objections on the

basis of this copy of the award which he received along with the Execution as he filed now. If he would have been sincere he would have filed objection immediately after 5.11.2004 and would not have waited so long. He allegedly wrote first letter to the Arbitrator on 1.2.2005. Even this letter is written by him after expiry of 90 days of receiving the copy of the award through the Court in Execution Petition. He filed these objections on 25.5.2005 i.e. much after the expiry of 90 days even from 5.11.2004.

6. I find no force in the plea of the petitioner that he could not file objections because he was not having certified copy of the award. The objections are liable to be dismissed on the ground being barred under Section 34(3) of the Arbitration & Conciliation Act, 1996 having been filed beyond the period prescribed from the date of receipt of the award. The petition is hereby dismissed being barred by limitation.

September 04, 2009

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SHIV NARAYAN DHINGRA, J.