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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: May 12, 2009
Date of Order: May 26, 2009

+OMP 564/2006

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26.05.2009

Sanjay Bhatia

...Petitioner

Through : Mr. Sandeep Aggarwal with Mr. K.A. Singh, Advocates

Versus

V.K. Prabhakar & Anr.

...Respondent

Through: Mr. P.P Khurana, Sr. Adv. with Mr. Gaurav Tandon, 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

1. This petition under Section 34 of the Arbitration & Conciliation Act, 1996 (for short, "the Act") has been filed by the petitioner assailing an award dated 10th May 2005. The respondent had taken preliminary objections regarding limitation and has stated that the petition was not maintainable in view of Section 34(3) of the Act, having been filed after the period of limitation as envisaged under the Act. The arguments on this issue have been heard from both parties.

2. The arbitrator in this case was appointed under Section 11(6) of the Act by the order of this Court in Arbitration Petition No. 254 of 2001 dated 2nd September 2004. In the order, the Court gave directions to both the parties to appear before the Arbitrator on 12th October 2004. The arbitrator was also given directions to dispose of the claim within four months of the first date of

hearing. While claimant appeared before the Arbitrator on 12th October 2004, the petitioner herein did not appear before the Arbitrator on the date fixed by the Court and deliberately absented from appearing before the Arbitrator. Arbitrator, however, entered into the reference on 12th October 2004 and issued notice to the petitioner on the address of the petitioner. The record shows that the notice came back with the report that the petitioner had left the given address of H-36, Sainik Farm. The respondent/claimant was directed to furnish current address of the petitioner (although it was the duty of the petitioner to inform his fresh address to the Arbitrator as well to the respondent). The petitioner had not informed his changed address to the respondent or to the Arbitrator, however, respondent traced out the address of the petitioner and furnished the same to the Arbitrator whereby a fresh notice was sent to the petitioner at G-207, 13th Lane, Sainik Farm, New Delhi. Notice was sent by the Arbitrator by registered cover as well as by speed post. While the registered cover came back with a report of refusal, the notice through speed post was delivered at this address. The documents showing delivery of notice upon petitioner are on record of the Arbitrator. The petitioner even thereafter did not appear before the Arbitrator and the Arbitrator was constrained to proceed ex parte and gave his award on 10th May 2005. After giving his award, the learned arbitrator sent a notice of the award to both the parties with a covering letter dated 10th May 2005 at the same address. The award sent to the petitioner came back to the Arbitrator unclaimed. The claimant thereafter filed execution of the award. In the execution, the petitioner filed objections to execution under order 21 CPC and also sought stay of the execution. Subsequently, the petitioner filed this petition under Section 34 of the Act for setting aside the award.

3. Counsel for the petitioner has submitted that the petitioner was entitled to benefit of Section 14 of the Limitation Act and the time during which the petitioner was prosecuting objections against execution should be excluded while computing the time for filing the petition under Section 34 of Arbitration and Conciliation Act, 1996. It is also submitted that the petitioner learnt about the award in October 2005 when the Bailiff came to the premises of the petitioner's mother for executing certain orders passed by the Court of Additional District Judge. The petitioner engaged an advocate who filed an application under Order 21 Rule 46 CPC for stay of execution. The petitioner had been diligently prosecuting this application under Order 21 Rule 46. When the petitioner learnt that a petition under Section 34 was required to be filed, the counsel for the petitioner then filed a petition under Section 34 of the Act challenging ex parte award and the application under Order 21 Rule 46 was withdrawn on 25th February 2006. It is stated that delay in filing the application under Section 34 was because the advocates were on strike and the advocate of the petitioner did not file an application for condonation of delay. It is submitted that period between October, 2005 to February, 2006 be not counted under Section 14 of Limitation Act.

4. The counsel for the respondent argued that the address given in the execution petition was same at which notice of award and proceedings was sent to petitioner. Petitioner was very well aware of the passing of award. The period of limitation was to be counted from 16th May 2005. In October 2005, the period of limitation had already expired so no benefit of Section 14 of the Limitation Act can be given.

5. The petitioner, however, submitted that the address of the petitioner

furnished by the respondent to the arbitrator G-207, Sainik Farm was the adjoining plot and the execution was taken at G-206 and not to G-207. There was no service of the arbitration proceedings or the award on the petitioner and therefore the court should count the time for filing the objections from October 2005 and if benefit of Section 14 of the Limitation Act was given, objections were within period of limitation.

6. I consider that this plea of the petitioner must fail as it does not match with the facts disclosed from the record. The record shows that the petitioner was directed by this Court to appear before the Arbitrator on 12th October 2004. The petitioner deliberately did not appear before the Arbitrator. The record also shows that the petitioner changed his address and did not inform the arbitrator or the Court or the respondent. It was the duty of the petitioner to inform about change of his address. However, the respondent found out address of the petitioner and gave it to the arbitrator. It is not the case of the petitioner that the petitioner had not lived at his mother's address which he claimed to be G-206 instead of G-207. The service report of speed post not only shows delivery of the notice issued at the petitioner's house but also records the telephone number of the petitioner's house as 26527733 at the relevant time. It is not the case of the petitioner that this telephone number recorded in the delivery report was a wrong telephone number. It is apparent that the petitioner had first deliberately refused to appear before the Arbitrator despite directions of this Court and then refused to receive the registered copy and then did not appear before the Arbitrator despite service of second notice through speed post. In such circumstances, I consider that the date of publication of the award has to be considered the effective date for counting the period of limitation. No party can be given liberty to take

benefit of his own wrongs. The petitioner in this case delayed the proceedings prior to appointment of Arbitrator at every stage. The appointment of Arbitrator was done by this Court when it was found that petitioner was bent upon delaying the matter and he was directed to appear before arbitrator on a date fixed by this Court. He not only did not appear before the Arbitrator in defiance of the order but evaded the summons and notice sent by the Arbitrator. Even when notice was served, he adopted malafide tactics of claiming the address to be a wrong or having no notice received. It is petitioner's own case that the Bailiff of the Court with execution orders at G-207 reached the petitioner's mother house. The court can take judicial notice of the fact that the Bailiff is authorized to execute the decree only at the address given and he would not have reached G-206 instead of G-207 for execution of the decree. The plea taken by the petitioner that that G-207 was not the correct address, therefore, cannot be believed. The time for counting the period of limitation would be from the date of notice of the award. The award was published on 10th May 2005 and the copy of the award was sent to the petitioner. The postman's report that the postman visited the petitioner's house on 12th May, 2005, 13th May 2005, 14th May 2005, 16th May 2005 continuously and he returned the letter on 17th May 2005. Thus, the date of deemed notice to the petitioner is to be taken as 16th May 2005. The objections against the award could have been filed within three months i.e. by 16th August 2005 and even with an application for condonation of delay by 16th September 2005. The objections in this case have been filed by the petitioner on 14th March 2006. The objections therefore are miserably barred by limitation. The benefit of Section 14 would have been available to the petitioner if the petitioner had been prosecuting another remedy diligently within the period of limitation. When the petitioner filed objections to the

execution of the award, the time for filing the objections under Section 34 of the Act had already been expired.

7. I, therefore, consider that this petition under Section 34 is not entertainable being barred by limitation as provided under Section 34(3) of the Arbitration & Conciliation Act, 1996. The petition is hereby dismissed,

May 26, 2009
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SHIV NARAYAN DHINGRA J.