

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

% *Reserved on:17.02.2011*
Decided on: 18. 02.2011

+ FAO 23/2011

ASHOK KALRA Appellant
Through Mr. V.M. Issar, Mr. Vishesh
Issar, Advs.

versus

AKASH PAPER BOARD PVT LTD & ANR Respondents
Through None

+ FAO 24/2011

ASHOK KALRA Appellant
Through Mr. V.M. Issar, Mr. Vishesh
Issar, Advs.

versus

AKASH PAPER AGENCIES & ANR Respondents
Through None

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG,J**

1. These appeal arises out of an order passed by the Addl. District judge in having dismissed the objections filed by the appellant to the award given by the sole arbitrator dated 20.10.2008. The objections have been filed beyond a period of 120 days inasmuch it has been filed on 02.06.2009.

2. The only ground which is urged before this Court is that the address in the award as given was B-51, Jangpura, New Delhi whereas that address was not correct and, therefore, the award was not served upon the appellant.

3. I have perused the objections filed by the appellant. No such plea that the award was not served upon the appellant at the correct address has been taken therein though a condonation of delay application has been filed.

4. The record shows that the address at which the award has been sent is the same address which has been mentioned by the appellant in the affidavit filed by them by way of evidence before the learned arbitrator. In the affidavit given on behalf of the appellant by way of evidence, the address of the appellant have been given as B-51, Jangpura, New Delhi which is the same address at which the award has been sent by the arbitrator. This is reflected from the award as available on the record of the arbitrator. At no point of time there is any objection taken by the appellant that the address as given in the award or in the proceedings was not the correct address. There is no explanation as to how the appellants had come to know of the award and why did they waited till 01.06.2009 to apply for certified copy of the award which it is stated was obtained on 02.06.2009 and, therefore, it is claimed that the award filed by them is within time.

5. It is apparent from the record of the arbitrator that the service of the notice for initiating the proceedings upon the appellant was affected at B-51, Jangpura, New Delhi. He had been appearing before the arbitrator on receipt of such notices, as is apparent from the communication available on record i.e. the correspondence exchanged by the arbitrator with the appellant in question including the A.D. cards and the certificate of posting.

6. Thus, the plea of the appellant that he was not served with the award at the aforesaid address as it was not the correct address cannot be accepted and seems to be an afterthought which seems to be the very reason that he has not even taken this point as a ground in the objections. The Addl. District Judge while taking consideration has taken note of the aforesaid situation and made the following observations:

“4. From the perusal of the Arbitration file, it is clearly reflected that the process has been issued as against the petitioner herein at the address of B-51, Jangpura, New Delhi and on service of the same, petitioner herein has participated in the Arbitration proceedings. It is also revealed from the arbitration proceedings that the petitioner herein was present in both the matters on 17.09.08 and on the said date, the date of pronouncing of the Award was fixed up by the Arbitrator as 20.10.08 and thereafter, the Arbitrator is found to have

rendered the Award on 20.10.08 i.e. the date which was fixed up by him on 17.09.08. It is further revealed from the Arbitration files that copy of the said Award has been sent to the petitioner herein at his given address vide Regd. Post on 25.11.08 and since there is nothing on record that said Registered letter has been received back unserved, I have no hesitation to presume that the said letter containing the Award was duly delivered to the petitioner herein at least within a week from the date of dispatch i.e. 25.11.08. It is further revealed from the record that both petitions under Section 34 of the Arbitration & Conciliation Act 1996 in both these matters have been filed on 02.06.2009, which clearly reflect that these petitions have been filed much after the stipulated period as contemplated **under Section 34(3) of the Arbitration & Conciliation Act** which reads as under:-

“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 with the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

5. In the judgment reported as AIR 2001 SUPREME COURT 4010, Union of India Vs. M/s Popular Construction Co., it was observed by Hon'ble Supreme Court of India in Para 12 and Para 16 as under:

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result.

16. Furthermore, section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub-section (3) sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub Section (3) would not be an application "in accordance with" that sub section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasized by the provisions of Section 36 which provide that "where the time for making an application to set aside

the arbitral award under Section 34 has expired the award shall be enforced and the Code of Civil Procedure, 1908 in the same manner as if it were a decree of a court". This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow". Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the Court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the Court's powers by the exclusion of the operation of Section 5 of the Limitation Act.

6. By taking the cue from the aforesaid observation of the Hon'ble Supreme Court of India and applying the same to given facts of the present cases, I have no hesitation to safely conclude that since the petitions under Section 34 of the Arbitration & Conciliation Act, 1996 in both these matters bearing C.S. No. 65/09 and C.S. No. 66/09 have not been filed within the stipulated period as contemplated under Section 34 of the Arbitration & Conciliation Act, 1996, both these petitions deserves dismissal being time barred and are hereby dismissed accordingly.

7. Thus, when the objections have been filed belatedly, condonation of delay could have been awarded in favour of the appellant. The objections were therefore rightly dismissed. In view of that, I do not find any reason to interfere with the impugned order.

6. Accordingly, both the appeals are dismissed with no orders as to costs.

7. TCR be sent back along with a copy of this order.

CM No. 1327/2011 (stay)

CM No. 1338/2011 (stay)

Dismissed as infructuous.

MOOL CHAND GARG,J

FEBRUARY 18, 2011

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