

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

+ FAO No. 505/2011

Judgment delivered on: 28th November, 2011

Neel Kamal (Deceased) & Ors. Appellants
Through Counsel for the appellant.

versus

Citifinancial Consumer Finance India Ltd. Respondent
Through Nemo

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR:

KAILASH GAMBHIR, J.

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1. By this appeal filed under Section 37 of Arbitration and Conciliation Act, 1996, the appellant seeks to challenge the impugned order dated 6.7.2011 whereby the learned Trial Court has dismissed the petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act to set aside the arbitral Award dated 3.11.2006.

2. The short controversy arising in the present appeal is that the appellant herein had raised objections under section 34 of the Act to

the award dated 3.11.2006 passed by the arbitrator on the ground that the appellant was neither served/informed about the arbitral proceedings nor the award was ever served upon them and they came to know about the said award only at the time the respondents filed for execution of the said award, which was dismissed as being barred by imitation and not maintainable. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Assailing the impugned order, learned counsel representing the appellant submits that the appellant was never served before the Arbitrator and, therefore, was illegally proceeded ex parte. Counsel further submits that the appellant had not received the award as the same was never delivered to the appellant by the Arbitrator. Counsel further submits that the learned Trial Court has overlooked the legal position as the mandate of Section 31(5) of the Arbitration and Conciliation Act is that the signed copy of the award shall be delivered to each party and not merely dispatched to each party. Counsel further submits that the award in question was passed by the Arbitrator on 3.11.2006 but the same was sent by the Arbitrator through post on 29.5.2007 and that too from post office, which was situated far off from the place of the Arbitrator. Counsel further

submits that even the postal receipt does not carry the complete address of the appellant and, therefore, there was no proper delivery of the Award by the Arbitrator to the appellant. In support of his arguments counsel for the appellant placed reliance on the judgment of the Apex Court in *State of Maharashtra and Ors. vs. Ark Builders Pvt. Ltd. (2011) 4 SCC 616*.

3. I have heard learned counsel for the appellant at considerable length and given my thoughtful consideration to the pleas raised.

4. On perusal of para 5 of the impugned order it is evident that the learned Arbitrator had entered the reference on 22nd August, 2006 and notice was sent by the Arbitrator to the appellants to file their statement of objections/defence by 18.9.2006. The service on the appellants was effected through courier and as per the courier receipt placed on the record, the notice was received by one Ms. Saroj Bala on behalf of the appellants. Since the proof of delivery was still awaited, therefore, the learned Arbitrator on 18.9.2006 directed fresh notice on the appellants while adjourning the matter for 19.10.2006. Yet again, service on the appellants was effected through courier and as per the courier receipt placed on record, the service on the appellants was effected through Ms. Saroj Bala. Undoubtedly, Ms. Saroj Bala is one of

the appellants i.e. Appellant No. 2 herein and with the service of the notice on the appellant No. 2 this Court does not find any substance in the arguments advanced by the counsel for the appellants that the appellants were not duly served by the Arbitrator.

5. The other argument advanced by the counsel for the appellant is that there was no proper delivery of the award to the appellants as the postal receipts placed on record do not carry the complete address of the appellants. The learned Trial Court has rightly observed that it is a general practice adopted by the postal authorities to write only the name of the person to whom the letter is addressed and the name of the city on the receipts and not the complete address of the addressee on the postal receipts. Under Section 27 of the General Clauses Act, 1897 the presumption of service arises unless the contrary is proved. In the case at hand, the service on addressee is shown by filing the postal receipts and the said postal receipts bears the date as 29.5.2007 and with the placing on record the said postal receipts the delivery of the award as envisaged under Section 31(5) of the Indian Arbitration and Conciliation Act stands fully satisfied.

6. Manifestly the appellants failed to file any objections within the prescribed period of limitation as envisaged under Section 34(3) of the

said Act and, therefore, the learned Trial Court has rightly dismissed the objections filed by the appellants under Section 34 of the Arbitration and Conciliation Act being barred by limitation. During the course of the arguments, learned counsel representing the appellants was posed a question whether the appellants had paid the amount of the loan advanced to them to find out whether the appellants have any good case on merits or not, but the counsel fairly submitted that the loan amount was still outstanding. It is thus quite apparent that the appellants were using dilatory tactics merely to avoid payment of the outstanding loan amount. The contentions raised by counsel for the appellants in the present appeal have already been dealt with by the learned Trial Court supported with sound reasoning and this Court does not find any illegality or perversity in the reasoning of the learned Trial Court. The appellants have taken shelter under false pleas and the appeal deserves to be dismissed with costs.

7. Therefore, the appeal is hereby dismissed with costs of Rs. 10,000/-.

November 28, 2011

KAILASH GAMBHIR,J