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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
DECIDED ON: 26th July, 2013

+ **FAO(OS) 330/2013 & FAO(OS) 332/2013**

M/S RAINBOW ELECTRIC SUPPLY CO Appellant

**Through : Mr. Pawan Kumar, Mr. Prithvi
Pal, Advs.**

versus

NORTH DELHI POWER LTD & ANR

..... Respondents

**Through : Mr. K.Datta, Mr. Manish
Srivastava, and Mr. Parijat
Kishore, Advs.**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 26.07.2013

CM Nos.11219/2013 & 11227/2013 (exemption)

Allowed, subject to all just exceptions.

The applications stand disposed off.

FAO(OS) 330/2013 & FAO(OS) 332/2013

1. "The present appeals are directed against the common order of the learned Single Judge dated 7th February, 2013 in which he dismissed applications for condonation of delay. The petitioner filed the present appeal in support of the proceedings under Section 34 of

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the Arbitration and Conciliation Act and challenged the final award. Specific grounds urged in support of the applications seeking condonation of delay were that the appellants had not been intimated or informed of the present award. It was urged that Section 34 of the Arbitration & Conciliation Act compelled the Arbitrator to ensure that a notice of the award and the award itself was duly served upon the concerned party.

2. The brief facts are that the appellant sought to challenge the award dated 13th March, 2008 and 4th February, 2008. The appellant urged that he participated in the proceedings but was unaware of the making of the award after the final hearing had been concluded and the matter reserved for appropriate orders/award. It was contended before the learned Single Judge that the appellant became aware of the award only upon initiation of execution proceedings and service of notice in those proceedings in March, 2012. In these circumstances, the petitions under Section 34 were preferred on 10th September, 2012.

3. Learned counsel for the appellant urged that the findings of the learned Single Judge that the award had been duly served are in error. He emphasized that the notice of service upon the agent is not

considered service at all and relied upon the decision of the Supreme Court in *Benarsi Krishna Committee and others v. Karmyogi Shelters Private Limited*, 2002 (9) SCC 496. It was also argued that the observations of the learned Single Judge about due service, based on the record, are without factual support. Counsel submitted that the pages indicated in the impugned order where said registered post/acknowledgement due said to have been placed in fact do not reveal such fact and that in any event the same were not available to him or noticed at the stage of inspection. At the same time, learned counsel stated that there is something on the record to indicate that a document of India Post was on record but that was not the acknowledgment of the Appellant.

4. The learned Single Judge in the impugned order has noticed the contentions of the appellant with regard to Section 31(5) and also cited the decision in *Benarsi* (supra). Thereafter, the impugned order proceeded to analyse the relevant facts as follows:-

12. The original record of the Arbitral proceedings relating to the Arbitral Award dated 13th March, 2008 would reveal that original award was sent to the petitioner on 24th March, 2008 through registered post, which is at page No.782 of the original record of arbitrator before this Court

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which is original record of OMP No.888/2012. Similarly, perusal of Arbitral record to the award dated 4th February, 2008 would reveal that the award was received by the petitioner, which is evident from the duly signed Postal acknowledgment receipt, which is at page 543 of the original record of the Arbitral Tribunal before this Court which is subject matter of OMP No.889/2012. It is submitted that even during course of arguments, the petitioner's proxy counsel did not controvert acknowledgement of receipt. OMP No.888/2012 & OMP No.889/2012 Page 6 of 16

13. Even otherwise, the record of this Court would reveal that in Execution Petition Nos.321/2011 (in relation to Award dated 13th March, 2008) notice was served on the judgment debtor on 31st January, 2012 and on 19th March, 2012 counsel entered appearances on behalf of the judgment debtor by filing his Vakalatnama.

14. Similarly, in Execution No.320 of 2011 (in relation to award dated 4th February, 2008), the record of this Court would reveal that notice was served on the judgment debtor on 17th February, 2012 and the judgment debtor entered appearances through his counsel on 15th March, 2012, when the counsel filed his Vakalatnama.

15. It is not in dispute that both the petitions under Section 34 of the Act were filed on 10th September, 2012 about 4 ½ years after the passing of the awards and about 6 months after the judgment debtors were served in Execution Petitions and received a copy of the Arbitral Award. Hence, despite knowledge of the Arbitral Award, the judgment debtor took no steps to file objections under Section 34 of the Act within the mandatory

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and statutory period, despite entering appearances in the execution proceedings in March, 2012.

16. The plea that the original signed award had not been received by the judgment debtor is also of no consequences, specifically in the view that postal receipt and acknowledgment were not controverted by the petitioner. In any event, after it was served in the Execution Proceedings, it was for the judgment debtor to take steps to obtain an original signed copy of the award, inter alia, by writing to the Arbitrator. Admittedly, no such steps have been taken till date."

5. The Court notices that in neither appeals have the existence of acknowledgment of receipt of the present appellant been specifically challenged in relation to such findings in the impugned order; all that has been urged is that upon inspection of the records by the appellant, no proof of service was found. Yet the factual observations and findings in para 12 have not been specifically challenged anywhere in the appeals.

6. Having regard to these facts and the further circumstance that due despatch of the award by registered post AD does not appear to have been contested at any stage, this Court is of the opinion that even apart from the reasoning indicated in the impugned order, due notice has to be presumed by virtue of Section 27 of the General Clauses

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Act. The said provision reads as follows:-

"27. Meaning of service by post.- Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

7. In view of the above discussion, the Court is satisfied that the appeals are meritless. The same are accordingly dismissed.


S. RAVINDRA BHAT, J
(JUDGE)


NAJMI WAZIRI, J
(JUDGE)

JULY 26, 2013

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