

GAHC010160682018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : FAO/32/2019

BHASKAR JYOTI BURAGOHAIN
S/O- SRI THANURAM BURAGOHAIN, R/O- VILL.- PANKAJ NAGAR, GOHAIN
COMPLEX, BHETAPARA MAIN ROAD, P.S. BASISTHA, DIST.- KAMRUP M,
GUWAHATI-28.

VERSUS

MAHINDRA AND MAHINDRA FINANCIAL SERVICE LTD
CORPORATE OFFICE 2ND FLOOR, SADHANA HOUSE BEHIND MAHINDRA
TOWERS 570 PB MARG, WORLI, MUMBAI- 400018, HAVING ITS
REGISTERED OFFICE AT GATEWAY BUILDING, APOLLO BUNDER,
MUMBAI- 400001, ITS REGIONAL OFFICE AT KUSHAN PLAZA, 3RD FLOOR,
GANESHGURI, GUWAHATI- 781005.

Advocate for the appellant(s): Mr. R Goswami

Advocate for the respondent(s): Mr. M Sarma

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

24.05.2024

This is an application filed against the order dated 19.05.2018 passed by the learned Additional District Judge No.2. Kamrup (M) Guwahati in Misc. Arbitration Case No.41/2016, whereby the application seeking condonation of delay was rejected.

2. Although the appeal has been filed in terms with Order XLIII Rule 1(d) of the Code of Civil Procedure, 1908 (for short the Code), but taking into account that this appeal ought to have been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, the Act of 1996), this Court converts the instant appeal into an appeal under Section 37 of the Act of 1996.

3. It is seen from the application which was filed for condonation of delay that the appellant herein categorically stated that the appellant had not received the copy of the original award. It was further mentioned that on 12.09.2015 and lastly on 03.08.2016, the appellant has sought for the certified copy of the Arbitration Award dated 24.12.2013 in Arbitration Case No.493/2013. However, the Arbitrator had not furnished the same. It is no longer, *res integra*, that an application under Section 34 of the Act of 1996 has to be filed within three months from the date the award is delivered to the aggrieved party.

4. This Court also finds it relevant to take note of Section 31(5) as well as Section 32 of the Act of 1996 which stipulate that the Arbitration Proceeding shall only terminate when the award is delivered to the parties. This Court further takes note of the submission of Mr. M Sarma, the learned counsel for the respondent that the award was duly delivered to the appellant in terms with Section 3 of the Act of 1996. Be that as it may, one aspect of the matter is very clear that unless and until the award is delivered in accordance with the provisions of the Act of 1996, the Arbitration Proceedings does not terminate. This aspect of the matter, however, seems to be not taken into consideration by

the Court of the learned Additional District Judge No.2. Kamrup (M) at Guwahati while passing the impugned order dated 19.05.2018.

5. Accordingly, the instant appeal stands allowed by setting aside the order dated 19.05.2018 and thereby directing the learned Additional Sessions Judge No.2, Kamrup (M) Guwahati to decide afresh the application under Section 34(2)(iii) of the Act of 1996 as to whether the same is within the period of limitation on the basis of the above observations.

6. The respondent herein shall be at liberty to produce all such documents, if so advised, to prove that the award has been duly delivered upon the appellant.

7. With the above, the instant appeal stands disposed of.

8. Taking into account that the parties are duly represented, they are directed to appear before the learned Court below on 17.07.2024.

JUDGE

Comparing Assistant