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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.793 OF 2015

Bharat L. Dedhia

...Petitioner

V/s.

M/s.Clothing Intelligence Agency
Through its Proprietor Mr.Hiren Vira

...Respondent

Mr.Paras Vira for the Petitioner.

Mr.Lalit Jain for the Respondent

CORAM : R.D. DHANUKA, J.

DATE : 28TH SEPTEMBER, 2015.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 (for short "Arbitration Act"), the petitioner has impugned the arbitral award dated 31st December, 2014, allowing the claim of the respondent in the sum of Rs.95,086/- being the principal amount and Rs.35,259/- by way of interest and Rs.1500/- by way of arbitration costs. The learned arbitrator has also directed to pay the additional interest at the rate of 18% p.a. on the awarded amount if the said amount was not paid within 15 days from the date of award.

2. Learned counsel appearing for the petitioner submits that though the learned arbitrator had not heard the parties, in the impugned award the learned arbitrator has recorded that both the

parties were heard by the learned arbitrator at length. He submits that various correspondence which are addressed by the petitioner in the year 2010 to the respondent regarding defective goods have not been considered by the learned arbitrator.

3. A perusal of the record and also the impugned award indicates that there is no dispute that the goods were delivered to the petitioner by the respondent during the period July, 2009 to November, 2009. The petitioner raised the dispute in respect of the alleged defect only in the month of June, 2010 through his advocate's letter. The learned arbitrator took cognizance of the fact that the dispute regarding the alleged defect of quality of goods was raised after 8 to 9 months. The learned arbitrator also noticed that the petitioner had also issued the cheques in respect of such supply effected by the respondent to the petitioner, which cheques were dishonoured. The learned arbitrator has thus rightly held that the petitioner had failed to produce any evidence on record that the goods were defective and had not produced on record any correspondence to prove that they have intimated the parties regarding the alleged defective goods.

4. The findings recorded by the learned arbitrator are after considering the documents produced by both the parties and such findings are not perverse. No interference with such finding of fact is

thus permissible under section 34 of the Arbitration Act. The learned arbitrator has also considered the correspondence addressed by the petitioner and thus there is no substance in the submission of the learned counsel for the petitioner that the correspondence was not considered.

4. The petition is devoid of merits and is dismissed. No order as to costs.

5. The respondent would be at liberty to execute the arbitral award and also to apply for withdrawal of the amount of Rs.50,000/- deposited by the petitioner.

6. The application of learned counsel appearing for the petitioner not to permit the respondent to withdraw the amount deposited by the petitioner is rejected.

(R.D. DHANUKA, J.)

"Certified to be true and correct copy of original signed order."