

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

ARBITRATION PETITION NO. 1008 OF 2014

M/s. Nikhil Textiles

... Petitioner

vs.

M/s. Bhumi Yarn Pvt. Ltd.

... Respondent

Mr. Akshay P. Shinde, Advocate for the petitioner.
Respondent and Advocate absent.

Coram : Smt. R. P. SondurBaldota, J.

Date : 21st December, 2015

P.C. :

1. The challenge in this petition to the Arbitral Award dated 17th September, 2012 is under Section 34(2)(iii) of the Arbitration and Conciliation Act, 1996, i.e. on the ground that the petitioner was not given proper notice of the appointment of the Arbitrator and of the Arbitral proceedings and as such was unable to present in his case.

2. The petitioner is a Proprietary concern located at Ichalkaranji in District - Kolhapur. It had business dealings with the respondent. On 11th September, 2012, the petitioner received two envelopes. One was addressed to M/s. Nikhil Textiles, Mr. Navnath Patil, 8/38, Vikramnagar, Ichalkaranji-416 115, in which the applicant found notices of the previous dates, 11th May, 2012, 6th June, 2012, 24th July, 2012 and 16th August, 2012. The

notices from the envelope referred to the dispute for arbitration, pending before The Bombay Yarn Merchants Association and Exchange Ltd. located in Mumbai. The second envelope addressed to the petitioner contained notice dated 5th September, 2012. This notice informed the petitioner of the proceedings before the Arbitrator at Mumbai on 17th September, 2012 at 6 p.m. The notice contained a warning that it was the last notice and the date was the final date. If the petitioner did not attend the Arbitration proceedings on that date, the Arbitrator would pass an award. The postal remarks on the envelopes showed that it was posted on 5th September, 2012. On the very day as the receipt of envelopes i.e. on 11th September, 2012, the petitioner sent reply to the notice pointing out that he had not received any notice of arbitration and that the claim made by the respondent before the Arbitrator, was not correct. The claim did not disclose payment of Rs.2,75,000/- made by the petitioner to the respondent from time to time. While the petitioner was awaiting reply from the Association, he received, on 15th December, 2012, the Arbitral award calling upon him to pay the respondent a sum of Rs.7,01,287/- along with interest at the rate of 18% p.a. from the date of the invoices till the date of the award.

3. Notice of this petition has been served upon the respondent, who is absent despite service.

4. The petitioner has annexed copies of the several notices sent to him in one envelope, to the petition. Perusal of the same shows that the notices dated 11th May, 2012, 6th June, 2012, 24th July, 2012 and 16th August, 2012 were addressed, not to the petitioner, but to one Mr. Navnath Patil as the Proprietor of M/s. Nikhil Textiles. The address of the petitioner mentioned therein is also incorrect. Consequently, it is obvious that these notices were not received by the petitioner whenever the same had been sent. The last notice being the notice dated 6th September, 2012 alone has been sent to the correct address with the correct name of the petitioner. This fact had been brought to the notice of the Arbitrator by the petitioner, by his letter dated 11th September, 2012. Unfortunately, the learned Arbitrator has not taken note of this fact. The impugned award also does not take note of the fact alleged in the petitioner's letter that the respondent has not given proper credit to the payments made to him.

5. In the above circumstances, the impugned award clearly falls within the mischief of Section 34(2)(iii) of the Arbitration and Conciliation Act, 1996. Therefore, the same cannot be sustained. The petition is allowed in terms of prayer Clause (a).

[Smt. R. P. SondurBaldota, J.]