

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.1196 OF 2014**

M/s. Sourabh Cotton Co.

...Petitioner.

V/s.

M/s. Vijay Cotton & Fibre Company

...Respondent.

Mr. Avinash V. Joshi for the Petitioner.

Mr. Sunit Purohit a/w Girish Agarwal i/b M/s. Purohit & Co. for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 24th AUGUST, 2015.

PC.:

1. By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996 ('the said Act' for short) the petitioner has impugned the award dated 14/2/2015 passed by the learned Arbitrator allowing the claims made by the respondent. The award has been impugned on the ground that the petitioner was not served with the copies of arbitral proceeding, notices as well as copy of the impugned award. The learned counsel for the petitioner submits that the petitioner came to know about the impugned award only when copy of Execution Application No.52/11-12 was received by the petitioner at his new address. He submits that the finding of the learned Arbitrator that petitioner was served with the proceeding is incorrect.

2. Mr. Purohit, the learned counsel of the respondent on the other hand invited my attention to the copy of Execution Application which was filed by the respondent in the Court of Burhandpur (M.P.) addressed to the petitioner. He submits that even the said Execution Application was served upon the petitioner at his last known address which was known to the respondent and was referred in the arbitration

proceeding. My attention is drawn to various annexures, affidavit in reply filed by the respondent and it is submitted that all such notices which were sent by the respondent to the petitioner were refused by the petitioner. In support of this submission my attention is drawn to the endorsements made on various notices which were sent by the respondent to the petitioner. He invited my attention to the averments made in the petition and in particular paragraph 8 and submits that it was the case of the petitioner that for some period the petitioner had shifted from old address to new address.

3. It is submitted that the petitioner never disclosed alleged change of address to the respondent or to the learned Arbitrator. He submits that since the endorsements clearly shows that the petitioner had refused to accept the said notice it would clearly indicate that the petitioner was available at the last known address and the petitioner deliberately refused to accept. He submits that that the learned Arbitrator has rendered a finding of fact which cannot be interfered with.

4. A perusal of record indicates that the petitioner was served by the respondent at the last known address of the petitioner. On further perusal of record it is clear that the petitioner has refused most of the notices and intimations sent by the respondent as well as the learned Arbitrator. I am not inclined to accept the submission of the learned counsel for the petitioner that the impugned award was passed ex-parte and was passed without issuing any notice upon the petitioner.

5. I am not inclined to accept the submission of the learned counsel for the petitioner that the petitioner came to know about the

impugned award only when the Execution Application was served upon the petitioner by the respondent. A perusal of the Execution Application filed by the respondent clearly indicates that the said application was also served upon the petitioner at the last known address of the petitioner and not the new address. It is not the case of the petitioner that the petitioner has not received Execution Application filed by the respondent at the said address. The submissions made by the learned counsel that said application was served at the new address is factually incorrect. A perusal of the record indicates that the petitioner has not filed any written statement though the respondent has sent statement of case which were refused by the petitioner. The petitioner also remained absent before the learned Arbitrator. I am thus not inclined to interfere with the impugned award.

6. Learned counsel for the respondent states that admittedly Arbitration Proceeding was closed before 18/8/2011 whereas alleged change of address was of 9/12/2011 I am inclined to accept the submission advanced on behalf of the learned counsel for the respondent that even if there was any change of address same was much after the closure of the arbitration proceeding by the learned Arbitrator and the award thus cannot be construed as ex-parte award.

7. A perusal of record indicates that the learned Arbitrator had rendered a finding of fact which according to me is not perverse and cannot be interfered with in this petition filed under section 34 of the Arbitration Act. The petition is devoid of merit and is accordingly dismissed. No order as to costs.

(R. D. DHANUKA, J.)