

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

OP(C).No. 1102 of 2012 (O)

AGAINST ORDER DATED 28.01.2012 IN IA NO.3868/1995 IN OP(ARB.) NO.53/1995 OF III
ADDITIONAL SUB COURT, ERNAKULAM.

PETITIONER(S)/PETITIONER:

A.SAGARAN
VAKKAYIL KIZHAKKATHIL HOUSE, PERINGALA P.O, KAYAMKULAM
ALAPPUZHA DISTRICT.

BY ADVS.DR.K.P.SATHEESAN
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.VNAIR

RESPONDENT(S)/RESPONDENTS:

SENIOR DIVISIONAL MANAGER,
BHARAT PETROLEUM CORPORATION LTD
COCHIN DIVISIONAL OFFICE, KOCHI-682031

BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH MENON
SRI.BENNY P. THOMAS
SRI.JOHN MATHAI K.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 08-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C) NO.1102/2012

APPENDIX

PETITIONER(S) EXHIBITS :

EXT.P1:- TRUE COPY OF THE ORDER DTD 28/1/2012 IN IA NO. 3868/1995 IN OP
(ARBITRATION)NO. 53/1995 OF THE III ADDITIONAL SUB COURT,ERNAKULAM

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

A.HARIPRASAD, J.

O.P.(C) No.1102 of 2012

Dated this the 8th day of June, 2015

JUDGMENT

This is a petition filed by the petitioner in O.P.(Arb.) No.53 of 1995 before the Sub Court, Ernakulam. An award was passed in the arbitration proceedings. Petitioner approached the court below with I.A.No.3868 of 1995 for setting aside the award dated 10.09.1993 passed in the above O.P.(Arb.). The petition was barred by limitation. Hence, he requested the court to condone delay in filing the petition to set aside the award. Court below dismissed the petition to condone the delay finding that no sufficient cause was shown by the petitioner for condonation of delay. Feeling aggrieved by the order, he has come up before this Court under Article 227 of the Constitution of India.

2. Heard the learned counsel for the petitioner.

3. Learned counsel for the petitioner submitted that the court below erred in not considering the fact that the petitioner could not approach the court with a petition to set aside the award in time due to reasons beyond his control. It is the submission that the petitioner sustained injuries in a major accident in the year 1988. The award was passed on 10.09.1993. During the period in which the award was passed

he was forced to shift residence for treatment purpose. It is the definite case of the petitioner that the award sent by registered post in accordance with the provisions of the Arbitration Act, 1940 (old Act) could not be received as he was not available in the address shown in the award. Learned counsel for the petitioner submitted that the finding of the court below in this regard is incorrect. Had he received the award, he would have challenged the same promptly.

4. I have been taken through the impugned order. Learned Judge has observed in paragraph 11 of the order that there is no mention by the petitioner about the dates of his shifting residence neither in the petition nor in the affidavit filed in lieu of chief examination. It is also found by the court below that copy of the award was sent by the arbitrator to the petitioner in his known address and it is sufficient compliance of the provision of law. It is not clear as to whether the copy of award sent by the arbitrator by registered post was served on the petitioner or was it returned unserved. It is seen that three witnesses were examined on the side of the petitioner to show that he was laid up and was undergoing continuous treatment for the injuries sustained in the accident. Section 27 of the General Clauses Act, 1897 allows an award to be served on a party by properly addressing, pre-paying and posting it by registered post. If it is so done, unless the contrary is proved, it should be presumed to have been

properly done. It is the submission of the petitioner that he did not get any cover sent in his registered address. As rightly observed by the court below, it is for the petitioner to establish that he did not get the copy of award sent by the arbitrator by registered post. It is not seen from the impugned order as to whether the registered cover or acknowledgement card was produced to show reception of award by the petitioner. The petitioner can only succeed if he is able to establish that he did not receive the cover containing the award sent in his address available in the records. Similarly, he is bound to prove that he was not available in the address shown in the records at the time when the award was sent. Learned counsel for the petitioner sought one more opportunity to establish these contentions of the petitioner. It is made clear that the petitioner has the burden to rebut the presumption carried in the above mentioned provision. In the absence of any satisfactory evidence, the petitioner will have to suffer the consequences. However, I feel that one more opportunity can be given to the petitioner to establish the fact that he did not receive the award sent to him by the arbitrator by registered post in the available address. For that purpose the matter is remitted to the court below with following directions.

Petitioner shall produce sufficient evidence to show that the award dated 10.09.1993 sent in his address was not delivered to him as he

shifted residence before that date. Petitioner is permitted to adduce evidence to establish non-receipt of the copy of the award by reliable evidence. Court below shall dispose of the matter within a period of three months from the date of receipt of a copy of this judgment. Petitioner shall appear before the court below on 01.07.2015.

Original petition is disposed of accordingly.

A. HARIPRASAD, JUDGE.

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