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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 24.03.2015

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FAO(OS) 134/2015

M/S RICHLOOK GARMENTS PVT LTD & ORS

.... Petitioners

versus

RELIANCE CAPITAL LTD

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Subodh K. Pathak and Mr Rohit Aggarwal, Advocates.

For the Respondents : Mr Rajat Katyal, Advocate

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No.5406/2015 (for Exemption)

Exemption is allowed, subject to all just exceptions.

CM No. 5407/2015 (for condonation of delay)

This is an application for condonation of delay of 17 days in filing the appeal.

The application is allowed.

FAO(OS) 134/2015 and CM No.5405/2015

1. This appeal has been preferred against the order dated 06.01.2015 passed by a learned Single Judge of this Court in OMP No.170/2013

which was a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said 'Act'). The said petition was a challenge to an *ex parte* award dated 25.09.2012 passed by the sole Arbitrator. By virtue of the said award, the appellants were held to be jointly and severally liable to pay the respondent/claimant, Reliance Capital Limited, a sum of Rs 3,00,97,712.79 together with interest thereon @ 12.5% per annum from 30.05.2012 till realisation etc.

2. We need not go into the details of the case inasmuch as the same have been dealt with by the learned Single Judge in the impugned order dated 06.01.2015. The main point of challenge is that the appellants were not granted an opportunity of presenting their case before the Arbitrator. This submission has been rejected by the learned Single Judge and, in our view, correctly. This is so because on 26.06.2012, the learned Arbitrator sent a letter *inter alia* to the appellants fixing the preliminary meeting on 25.07.2012 at 5 p.m.. Both, the claimants and the respondent were directed to be present at the given address on that date and time failing which the learned Arbitrator had indicated that he shall proceed *ex parte* and give necessary directions in the matter.

3. On receiving the said notice dated 26.06.2012 from the learned Arbitrator, the appellants sent a letter on 19.07.2012 requesting the learned Arbitrator to adjourn the matter to a date in September, 2012 on account of certain personal difficulties. The said letter reads as under:

“Shri N.F.Kumana
Senior Advocate & Arbitrator
C/o Kumana & Company Advocates & Solicitors
106, Old Bake House
Opp. MSCB Bank Ltd.
MSCB Lane, Fort
MUMBAI-400001

Re: Arbitration No.RCL/NFK/380 of 2012

(RE: Loan Account No.RLHLDEL000045044)
Reliance Capital Ltd. ...Claimant

Vs.

M/s. Richlook Garments Pvt. Ltd & Ors. Respondent

Sir,

We are in receipt of your letter dated 16.06.2012 fixing the Preliminary Hearing in the above Arbitration matter on 25.07.2012 at Mumbai.

2. Owing to our personal difficulties it would not be possible for us to appear for the Preliminary Hearing fixed on 25.07.2012 at Mumbai, hence, we request your good offices to adjourn the above matter for a date in September, 2012.

Thanking you in advance.

For Richlook Garments Private Limited.

Shiv Ratan Goyal
Director
Shiv Ratan Goyal
Mrs. Sareena Goyal”

4. On 25.07.2012, the learned Arbitrator noted that the respondents were absent, however, in the interest of justice, the learned Arbitrator granted another opportunity to the respondents/appellants herein to file their written submissions along with the documents by 13.08.2012 and the hearing was kept for 14.08.2012 at 5 p.m. at the learned Arbitrator's office. The Minutes of the arbitration proceedings held on 25.07.2012 were sent to the appellants along with a letter dated 25.07.2012. In the said letter, the learned Arbitrator had made it clear to the appellants that, in case, they did not file their written submissions before 13.08.2012 and did not appear on 14.08.2012, the Arbitrator shall be constrained to hear the matter *ex parte*. The appellant did not file their written submissions as directed nor did they appear on 14.08.2012 before the learned Arbitrator. The Minutes of the arbitration proceedings held on 14.08.2012 reveal that the Arbitrator had received a request from the appellants stating that they had received the letter dated 25.07.2012 only on 14.08.2012 which was the date on which the matter was fixed and, therefore, they were unable to either file their written submissions or appear before the learned Arbitrator on 14.08.2012. Considering the said request, the learned Arbitrator granted one more opportunity to the

appellants to file the written submissions and they were directed to do so by 24.09.2012 and the matter was listed for hearing on 25.09.2012 at 5 p.m. The Minutes of the proceedings held on 14.08.2012 were also enclosed along with a letter dated 21.08.2012 addressed to the appellants. In the said letter dated 21.08.2012, the learned Arbitrator had once again intimated to the appellants that, in case, they did not file their written submissions on or before 24.09.2012 and did not appear on 25.09.2012, he shall be constrained to proceed with the hearing *ex parte*. In the meanwhile, the appellants had also sent a letter dated 18.08.2012 requesting the learned Arbitrator to fix a date in September, 2012. We have already indicated that the Arbitrator had fixed the dated of 25.09.2012 as per the proceedings held on 14.08.2012. Thus, the appellants' request had been acceded to.

5. However, despite these opportunities, the appellants did not file their written submissions before the learned Arbitrator nor did they appear for the arbitration proceedings on 25.09.2012 on which date the award was published, which was impugned before the learned Single Judge by way of the said petition under Section 34 of the Act.

6. In the circumstances narrated above, it is clear that the appellants have been given ample opportunities to file their written submissions and appear before the learned Arbitrator. In fact, three opportunities were given and none of them were availed of by the appellants. Therefore, we are entirely in agreement with the learned Single Judge in his rejecting the plea of the appellants that they were not granted a reasonable opportunity to participate in the arbitration proceedings. The appellants did not participate in the said proceedings despite, peremptory notices on each occasion by the learned Arbitrator. Therefore, there is no infirmity in the impugned order of the learned Single Judge.

7. The learned counsel for the appellants made a plea before us which, obviously, was not made before the learned Arbitrator, that the respondents had received the entire money and the claim stands satisfied. He drew our attention to the document at page 381 of the paper book. It is a copy of a letter stated to have been issued by the DLF Universal Limited on 09.08.2012 in favour of the respondent. The said letter indicates that an amount of Rs 2,25,73,844.98 vide cheque No.1032588 dated 26.07.2012 drawn on ICICI Bank had been issued in favour of the respondent as full and final settlement. According to the learned counsel

for the appellants, this was not brought to the notice of the learned Arbitrator or the learned Single Judge by the respondents. It is further submitted by the learned counsel for the appellants that in view of the said refund nothing was due from the appellants to the respondents.

8. The submissions of the learned counsel for the appellants are not tenable for two reasons. First of all, despite opportunities having been given to the appellants they did not file the written submissions nor did they participate in the arbitral proceeding and, therefore, they cannot make any grievant about the letter dated 09.08.2012 not having been placed before the learned Arbitrator or noticed by the Arbitrator. Secondly, in reply to the Section 34 petition filed by the appellants before the learned Single Judge, the respondent has categorically taken a stand as under:

“That the contents of Ground ‘É’ as stated by the Petitioners are wrong and denied. It is denied that the answering Respondent has improperly procured the Award by playing and perpetrating fraud and concealing material fact of receiving and also acknowledging the payment of Rs2,25,73,844.98/- received by the respondent in full and final satisfaction of their claim vide letter dated 9th August, 2012 and the fact of receiving a sum of Rs 10,26,297/- (three cheques of Rs.3,42,099/-) from the Petitioners on the pretext that they would withdraw the arbitration proceedings at Mumbai, which the Respondent failed and neglected to do. It is submitted that an amount

of Rs.2,52,73,844.98/- has been received directly from the DLF in view of the answering respondent's lien marked on property. The alleged settlement of account is done by the Petitioners herein with the DLF and it is submitted that there is no full and final settlement of the present loan account as alleged by the Petitioners. The petitioners are deliberately misreading the said letter as issued by DLF. The petitioners are still required to make the payment of the remnant dues as are being reflected in the foreclosure statement." (underlining added)

9. Thus, on both counts the appellants have no case. The appeal is dismissed.

BADAR DURREZ AHMED, J

MARCH 24, 2015
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SANJEEV SACHDEVA, J

