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IN THE HIGH COURT OF DELHI AT NEW DELHI

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EFA(OS) 20/2014

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Date of decision: 13th April, 2015

M/S GAIL (INDIA) LTD

..... Appellant

Through: Mr. Manoj Kumar, Mr. Kaushal
Kumar and Ms. Preeti Bhandari,
Advts.

versus

M/S SURYA ROSHINI LTD

..... Respondent

Through: Mr. Samrat Nigam, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE P.S. TEJI

GITA MITTAL, J. (Oral)

1. The instant appeal impugns the order dated 16th July, 2014 passed by the learned Single Judge, accepting objections on behalf of the respondent to the execution case filed by the appellant pursuant to an arbitral award dated 19th April, 2007. As we had heard the matter on merits, we have examined the matter on merits as well. It appears that by an arbitral award dated 19th April, 2007, an award for Rs.20,69,711/- was made in favour of the appellant. The learned arbitrator had rejected the petitioner's claim No.5 seeking an amount over Rs.61,00,000/- against the respondent herein.

2. Barely five days after the making of the award the respondent addressed a letter to the appellant dated 24th April, 2007 referring to several telecommunications with the General Manager (Legal) of the appellant since 20th April, 2007 to pay the awarded amount. The letter sought information as to the particulars of the person to whom the cheque for Rs.20,69,711/- was to be submitted in full and final payment. The respondent also sent another letter dated 2nd May, 2007 addressed to the Chairman-cum-Managing Director of the respondent seeking a meeting to settle the long pending matter. On 4th May, 2007, Executive Director of the respondent had held a meeting with Chairman-cum-Managing Director, all of which is evidenced by correspondence placed on record. Additionally, on 9th May, 2007, the respondent deposited with the appellant a cheque bearing No.019648 dated 9th May, 2007 drawn on the IDBI Bank, New Delhi in the sum of Rs.20,69,711/- towards the full and final settlement of the amount awarded. The respondent informed the appellant that “*after this payment, no claim shall be pending*”. Photocopy of the entire correspondence as well as the cheques were filed with its objections by the respondent before the learned Single Judge.

3. It appears that apprehending that the amount tendered may not of a correct value, the respondent addressed a letter dated 30th May, 2007 seeking intimation as to whom the cheque should be submitted. It was only the 31st May, 2007 that the

appellant informed the respondent that it should correspond with the Legal Department of the appellant.

4. On 4th June, 2007, the appellant GAIL wrote to the respondent that it was contemplating preferring objections against the arbitral award and at the same time informed the petitioner that the amount in terms of the award be paid in favour of the company by cheque or demand draft. It is noteworthy that this letter was addressed to the petitioner by the respondent that the Manager (Law) i.e. Legal Department of the appellant. The cheque of 9th May, 2007 had been deposited with the Executive Director (Project) of the appellant.

5. It appears that the parties are involved in several business transactions. The respondent repeatedly adverts to the long standing good relations between the parties and seeking amicable end to the dispute. For this reason on 7th June, 2007, the respondent had also made a grievance that despite the payment of money by it, GAIL was still contemplating filing of objections. The deposit of the cheque is also confirmed by this letter (dated 7th June, 2007) whereby the respondent again requested the Chairman-cum-Managing Director of the appellant to deposit the amount of Rs.20,69,711/- as full and final settlement so that the matter is over.

The receipt of this correspondence was not disputed before the learned Single Judge. The communications from the respondent adequately manifest that the cheque in the sum of

Rs.20,69,711/- was actually tendered to the appellant and received on 9th May, 2007 itself.

6. It is now necessary to note a few intervening events. As communicated to the respondent, the appellant filed objections by way of OMP No.405/2007 under Section 34 of the Arbitration and Conciliation Act, 1996 assailing the Arbitral Award. These objections came to be dismissed by an order on 24th July, 2007 by the learned Single Judge. The matter did not end here. The order of the learned Single Judge was upheld before the Division Bench of FAO(OS)357/2007 was filed by the appellant challenging the order dated 24th July 2012. This appeal was also dismissed on 14th April, 2012. GAIL did not rest even here. We are informed that the matter was taken to the Supreme Court of India by way of a Special Leave Petition which has also been dismissed.

7. All this time, the appellant was sitting over the said cheque for the awarded amount of Rs.20,69,711/- without encashing the same, despite repeated entities by the respondent. To say the least, the appellant is dealing with public monies. It was an admitted position that the respondent was liable to make the payment in terms of the amount awarded. It was open for the appellant to intimate the respondent that it reserved its rights to challenge the award and to have recovered the amount which had already been awarded, without prejudice to do so. We find that the objections by GAIL related only to the claim which had

been rejected. There is no objection at all so far as the award in its favour was concerned.

8. As affirmed by the learned Single Judge, and as manifest from the record, the respondent tendered a fresh cheque on 29th April, 2010 in the sum of Rs.20,39,711/- to the appellant. Mr. Samrat Nigam, learned counsel appearing for the respondent informs that inadvertently in spite of writing the cheque for Rs.20,69,711/- the cheque for Rs.20,39,711/- was sent. The deficiency of Rs.30,000/- was made good by a cheque dated 21st July, 2010. The receipt and encashment of this cheque are both admitted by the appellant.

9. In its letter dated 19th July, 2010, the appellant called upon the respondent to remit the deficiency in the amount as also interest with effect from 19th April, 2007 @18% p.a. on the full amount awarded. In these circumstances, the respondent disputed liability to make payment of interest inasmuch as took the stand that it had tendered full amount as back as 9th May, 2007.

10. The appellant filed an execution case on 4th January, 2012 claiming an amount of Rs.14,51,378/- details whereof have been mentioned in para 5 of the petition. In response, the respondent filed objections. We find that so far as the tender of the amount in terms of the arbitral award on 9th May, 2007 is concerned, the appellant submitted in the execution petition that *“firstly, the tender was not in terms of the decree and secondly it was*

conditioned”. This objection has been considered by the learned Single Judge and rejected holding that there was no condition attached to the amount tendered by the judgment debtor inasmuch the cheque was as in terms of the award and at that stage, the judgment debtor could have been called upon only to pay the same with interest.

11. As per the award, interest was to run @18% per annum from the date of the award till the date of its realisation and it is open to the appellant/decreed holder to have adjusted the tendered amount towards interest and remaining balance towards principal. In these circumstances, the interest liability, if at all, would be on any balance amount which may be payable after effecting the adjustment of the amount which has been tendered on 9th May, 2007. The above mentioned correspondence details would also show that the appellant did not object to the tender at any point of time. On the contrary, it chose to receive the tender without protest by cheque on 9th May, 2007 which was retained in its record for encashment.

12. After a detailed consideration, the learned Single Judge has rightly held that the tender of the fresh cheque does not in any manner further the case of the appellant for interest. It is not disputed before us that tender of payment on 9th May, 2007 was in terms of the arbitral award. Therefore, no interest liability can be levied upon the respondent after 9th May, 2007.

13. We may also note the excuse set up by the appellant that the cheque was not encashed for the reason that it was conditional. So far as the submission by the respondent, the same was to be treated as full and final settlement is concerned, it was open to the appellant to communicate its calculation to the respondent and encash the cheque amount without prejudice to its rights and contentions. Not having done so, it is not open to the appellant to fasten a non-existent interest liability upon the respondent.

14. It is apparent that the appellant first filed objections to the Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996. It thereafter assailed the order dismissing them and further carry the matter to the Supreme Court of India. The appellant obviously had no intention at all of encashing the cheque which had been tendered by the respondent.

15. In these circumstances, the challenge by the appellant in the present appeal is not on any factual or legally tenable grounds at all.

16. We also find that even on the date of filing the appeal, the appeal was delayed by 5 days. The application for condonation of delay (CM No.14297/2014) was taken up on the very first date without examining the matter on merit and the delay was condoned in routine by the order dated 30th October, 2014. Notice was issued in the appeal on 30th October, 2014 to the

respondent. Consequently, we had called for the record of Execution Petition No. 28/2012.

17. The instant appeal has assailed the order dated 16th July, 2014 passed by the learned Single Judge. While hearing the appeal, we find that the appellant has enclosed a copy of the impugned order which appears to have been downloaded from the website of Delhi High Court without even making an effort to type the same in a legible format. No certified copy of the order appealed against has been obtained by the appellant or filed on record. It is the mandate of law that every appeal must be accompanied by a certified copy of the judgment/order impugned thereby. Inasmuch in the present case, as the certified copy has not even been applied, the appeal ought not to have been entertained by the Registry in these circumstances. The appeal is therefore hopelessly barred on the date of its filing. The delay continues to run against the appellant, even after filing of the appeal and as on date the appeal is barred by 9 months.

18. Inasmuch as this objection came to our notice while dictating this order, we have maintained our consideration on the merits of the challenge and not dismissed this appeal on limitation.

19. The appeal which is without factual or legal merit, has been filed extremely casually without even complying with the procedural requirements imposed by law. The appeal filed is

dismissed with costs which are assessed at Rs.25,000/- payable within six weeks.

GITA MITTAL, J

P.S.TEJI, J

APRIL 13, 2015
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