

\$~13

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

% Judgment delivered on: 19.11.2015

+ **FAO (OS) 542/2015**

FULLERTON INDIA CREDIT COMPANY LIMITED Appellant

versus

JAI PRAKASH SHARMA Respondent

Through

Advocates who appeared in this case:

For the Appellant : Mr Sanjeev Sagar with Ms Jasvin Dhama,
Advocates.

For the Respondent : Mr Ravinder Yadav with Ms Arti
Anupriya, Advocates.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the order dated 15.07.2015 passed by a learned Single Judge of this Court in OMP 379/2015 which was a petition under Section 34 of the Arbitration & Conciliation Act, 1996. The said OMP had been filed by the respondent herein challenging the ex-parte award dated 23.05.2014.

2. One of the points taken in the said petition was that the award was liable to be set aside on the ground that proper notice of the appointment of the Arbitrator or of the arbitral proceedings was not given to the respondent and it is for this reason that the respondent was unable to be

present and participate in the arbitral proceedings. This ground is in consonance with Section 34(2)(a)(iii) of the said Act. Under the said provision, an arbitral award may be set aside by the Court, if the party making the application, was not given proper notice of the appointment of an Arbitrator or of the arbitral proceedings or otherwise unable to present his case before the Arbitral Tribunal.

3. It was submitted that the grievance of the respondent in the said OMP was required to be looked into by the learned Single Judge as it clearly fell within the ambit of Section 34 and, in particular, Section 34(2)(a)(iii) of the said Act. But, as indicated in the impugned order, the respondent relied upon a decision of the Supreme Court in the case of **Rabindra Singh v. Financial Commissioner, Cooperation, Punjab and Others: (2008) 7 SCC 663** with the request that an application under Order IX Rule 13 CPC would be moved before the Arbitrator for setting aside the ex-parte award. The learned Single Judge agreed with this and also granted liberty to the respondent to revive the said OMP in case the application under Order IX Rule 13 CPC failed.

4. The appellant is aggrieved by the fact that the respondent has been granted liberty, first of all, to approach the Arbitrator by moving an application under Order IX Rule 13 CPC for setting aside the award and, secondly, to revive the said OMP in case the said application failed. It was contended by the learned counsel for the appellant that the decision of the Supreme Court in ***Rabindra Singh*** (*supra*) was not rendered in the context of arbitration under the said Act. The observation that was perhaps relied upon by the respondent and considered by the learned

Single Judge was to the following effect:-

“18.All courts in a situation of this nature have the incidental power to set aside an ex parte order on the ground of violation of the principles of natural justice.”

5. The said observation pertains to Courts and not to Arbitral Tribunals or Arbitrators which can, by no stretch of imagination, be construed to be Courts. Consequently, it was submitted by the learned counsel for the appellant that the decision in **Rabindra Singh** (*supra*) was clearly inapplicable in the facts and circumstances of the present case. It was also contended that once an award has been made by an Arbitrator, the only power which the Arbitrator can exercise in respect of the award has been specified under Section 33 of the said Act. It was submitted that a petition under Order IX Rule 13 CPC is not contemplated under Section 33 of the said Act. Consequently, it was contended by the learned counsel for the appellant that the impugned order be set aside.

6. The learned counsel for the respondent, after some arguments, submitted that either the Arbitrator may decide the application under Order IX Rule 13 CPC which has already been filed or the OMP be revived and the learned Single Judge be required to dispose of the same on merits.

7. We agree with the submissions made by the learned counsel for the appellant that the Arbitrator does not have powers akin to the powers given under Order IX Rule 13 CPC. The only powers contemplated, post the making of an award, are prescribed in Section 33 of the said Act.

Section 33 of the said Act reads as under:-

“(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties-

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.”

8. It, *inter alia*, deals with correction of any computation errors, any clerical or typographical errors or any error of a similar nature occurring in an award. It also permits the interpretation of a specific point or any part of the award subject to certain conditions. Section 33 does not contemplate the setting aside of an ex-parte award. That recourse has been specifically built into Section 34(2) (a) (iii) of the said Act which falls purely within the domain of the Court to which the petition under Section 34 is made for setting aside the award.

9. Consequently, we set aside the impugned order and revive the OMP No.379/2015 before the learned Single Judge, who shall hear the said petition on merits as also on the issue of limitation which, according to the learned counsel for the appellant, arises in this case. The OMP be listed before the learned Single Judge, in the first instance, on 09.12.2015.

10. We are making it clear that we have not expressed any opinion on the merits of the matter, particularly, pertaining to the receipt or non-receipt of sufficient notice to the respondent for participating in the arbitral proceedings.

11. The appeal stands allowed as above.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

NOVEMBER 19, 2015
st

