

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****CIVIL APPELLATE JURISDICTION*****ARBITRATION APPEAL (ST) NO. 7053 OF 2016****ALONGWITH****CIVIL APPLICATION (ST) NO.7055 OF 2016****Adinath Bhujaballi Kuchanur****..... Appellant****VERSUS****M/s.Vardhaman Developers & Ors.****..... Respondents**

Mr.V.B.Tiwari, a/w. Mr.N.R.Tiwari for the Appellant.

Mr.Anurag Jain, a/w. Mr.Amey Deshpande for Respondent nos. 1 and 2.

**CORAM : R.D. DHANUKA, J.****DATED : 14<sup>th</sup> MARCH, 2016****P.C.**

By this appeal filed under section 37 of the Arbitration and Conciliation Act, 1996, the appellant has impugned the order passed by the Principal District Judge, Pune on 11<sup>th</sup> February, 2016 dismissing the Civil Misc. Application No.826 of 2015 which was filed by the appellant herein under section 34 of the Arbitration and Conciliation Act, 1996 on the ground of limitation.

2. It was the case of the appellant before the Principal District Judge that the appellant was not served with the copy of the award by the learned arbitrator. It was the case of the appellant that the appellant came to know about the impugned award only after the appellant was served with the copy of the execution proceedings filed by the respondents.

3. On the other hand, it was the case of the respondents that the learned arbitrator had sent a copy of the impugned award duly signed by the learned

arbitrator by registered A.D. A copy of the award was sent through the postal authority however the appellant refused to accept the service. According to the respondents, the intimation was dropped by the postman in the premises of the appellant but the copy of the award was not collected by the petitioner from the post office.

4. Before the learned Principal District Judge, the appellant produced certain documents obtained under the provisions of Right to Information Act.

5. A perusal of the impugned order indicates that the learned Principal District Judge has held that from the endorsement of the postal authority on Ex.18 and information of postal authority to the applicant, it was revealed that the said information was not sufficient to give inference that Ex.18 was suspicious or doubtful or fabricated. The appellant however produced information from the postal authorities under the provisions of Right to Information Act, which according to the appellant indicated that the Postal Department was not having information about Ex.18. In view of the rival version of both the parties about the issue whether the appellant was infact served with the copy of the impugned award by the learned arbitrator or not, or whether the appellant had not collected the packet though an intimation was dropped in the premises of the petitioner by the postal department, it would be appropriate if the matter is remanded back to the learned Principal District Judge for rendering the said issue on oral evidence as to whether the postal department had infact intimated the appellant or not about the packet sought to be delivered by the postal department to the appellant and if such intimation was sent, whether the appellant had not collected the said packet from the postal department.

6. It is submitted by the learned counsel for the respondents that since the appellant had not applied for leading oral evidence before the learned Principal District Judge, no such opportunity should be rendered by the appellant at this stage. He submits that the learned Principal District Judge was justified in holding after considering the fact that the appellant had appeared before the learned judge and was fully aware of the award having been declared by the learned arbitrator, the matter thus shall not be remanded back.

7. In my view since there was a dispute about the service of the impugned award upon the appellant by the learned arbitrator, it would be appropriate if the parties are allowed to lead oral evidence if they so desire before the learned Principal District Judge to arrive at a conclusion on the aforesaid issues to enable the learned Principal District Judge to decide whether the arbitration petition filed under section 34 was filed within time or not.

8. Insofar as submission of the learned counsel for the respondents that the appellant had not applied for any such opportunity before the learned Principal District Judge for leading oral evidence is concerned, since the right of the appellant for challenging the impugned award within the time prescribed in view of the controversy about the date of service would be taken away, I am inclined to grant such opportunity to the appellant to lead oral evidence before the learned Principal District Judge. The respondents would also be at liberty to lead oral evidence in support of their plea that the petition filed by the petitioner under section 34 of the Arbitration and Conciliation Act, 1996 was not filed within three months from the date of service of the impugned award or within three months from the date of alleged refusal on the part of the petitioner to accept the copy of the award or not collecting copy of the award from the postal department.

9. I, therefore, pass the following order :-

(a) The impugned order dated 11<sup>th</sup> February, 2016 passed by the Principal District Judge is set aside.

(b) Civil Misc. Application No.826 of 2015 is remanded back to the learned Principal District Judge for deciding the issue of limitation afresh after giving an opportunity to both the parties to lead oral evidence. It is made clear that if the parties do not choose to lead any oral evidence inspite of such opportunity given by the learned Principal District Judge, the Principal District Judge shall decide the matter in accordance with law and on the basis of material placed on record by both the parties.

(c) The learned Principal District Judge shall make an endeavour to dispose of the issue of limitation within three months from today. The parties shall not take any unnecessary adjournments before the learned Principal District Judge.

(d) If the learned Principal District Judge comes to the conclusion that the arbitration petition was filed within three months in accordance with section 34(3) of the Arbitration and Conciliation Act, 1996, the learned Principal District Judge shall decide the Civil Misc. Application No.826 of 2015 in accordance with law.

(e) Both the parties are directed to appear before the learned Principal District Judge on 22<sup>nd</sup> March, 2016.

(f) The parties are at liberty to furnish authenticated copy of this order to the learned Principal District Judge.

(g) The parties as well as the learned Principal District Judge to act on the authenticated copy of this order. The parties are directed to convey their desire if any of oral evidence to the learned Principal District Judge on the next date.

10. Arbitration appeal is disposed of in the aforesaid terms. No order as to costs.

11. In view of disposal of the arbitration appeal, civil application does not survive and is accordingly disposed of.

**[R.D. DHANUKA, J.]**