

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****ARBITRATION APPEAL (ST) NO.29420 OF 2016****ALONGWITH****CIVIL APPLICATION NO. 59 OF 2016****Adinath Bhujaballi Kuchanur****..... Appellant****VERSUS****M/s.Vardhaman Developers & Ors.****..... Respondents**

Mr.Navin Tiwari for the Appellant.

Mr.Vishal Kale, a/w.Mr.Prashant Shinde, Mr.Ganesh Misal, i/b. Mr.Amey Deshpande for the Respondent no.1.

CORAM : R.D. DHANUKA, J.**DATE : 16th NOVEMBER, 2016****P.C.**

By this appeal filed under section 37 of the Arbitration and Conciliation Act, 1996, the appellant has impugned the order dated 10th October,2016 passed by the learned Principal District Judge, Pune dismissing the Misc.Application No.826 of 2015 on the ground of limitation. The dispute between the parties was referred to arbitration.

2. The learned arbitrator has rendered an award in favour of respondent nos. 1 to 5. The said award was impugned by the appellants before the learned District Judge by filing an application under section 34. The said application filed by the appellant came to be rejected. The appellant preferred an appeal before this court. The grievance of the appellant in Arbitration Appeal (St.) No.7053 of 2016 was that the appellant was not served with the signed copy of the award rendered by the learned arbitrator. It was also the case of the appellant that the learned arbitrator had not rendered any opportunity to the appellant for leading oral

evidence. By an order dated 14th March, 2016, this court was pleased to set aside the order dated 11th February, 2016 passed by the learned Principal District Judge and remanded the Civil Misc.Application No.826 of 2015 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. This court made it clear that if the 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.

3. Pursuant to the said order passed by this court, the appellant led oral evidence before the learned Principal District Judge in support of his allegations that the copy of the award was not served upon the appellant by the learned arbitrator.

4. The learned Principal District Judge after considering the oral and documentary evidence on the issue of limitation held that the address mentioned by the learned arbitrator on the envelope was correct and appellant had not collected the envelope containing copy of the award from the postal department. The appellant thus deemed to have been served with the copy of the impugned award rendered by the learned arbitrator and dismissed the application under section 34 filed by the appellant as barred by limitation. This judgment of the learned Principal District Judge is impugned by the appellant in this appeal filed under section 37 of the Arbitration and Conciliation Act, 1996.

5. Mr.Tiwari, learned counsel for the appellant invited my attention to the address of the appellant mentioned in the agreement entered into between the

appellant and the respondent and submits that the appellant was not residing in Ratnadeep Society but was residing in the Ratnadeep Colony. He submits that under the said agreement entered into between the parties, the respondent was required to serve the appellant at the address mentioned in the said agreement. He submits that the envelope annexed at Ex.P at page 369 of the arbitration appeal clearly indicates the address of the appellant as Survey No.19/7/2-3, Ratnadeep Society. He submits that the correct address of the appellant was Flat No.302, 'A' Wing, Ratnadeep Colony, S.No.19/7/3, Ganesh Nagar, Dange Chowk, Thergaon, Pune 411 033. He submits that since the signed copy of the award as contemplated under section 31(5) of the Arbitration and Conciliation Act, 1996 was not received by the appellant, the limitation under section 34(3) of the Arbitration and Conciliation Act did not commence and thus the application filed under section 34 filed by the appellant was within time prescribed under the said provisions and was not barred by law of limitation.

6. It is submitted by the learned counsel that the learned Principal District Judge has passed an erroneous order and thus this court thus shall give an opportunity to the appellant to appear before the learned arbitrator. He submits that though the appellant had appeared before the learned arbitrator on two occasions, the same was not pursuant to any intimation in writing from the learned arbitrator but in view of the fact that the appellant had come to know about the ongoing arbitration proceedings.

7. Learned counsel for the respondent nos. 1 to 5 on the other hand invited my attention to the address mentioned by the appellant in the application filed under section 34 of the Arbitration and Conciliation Act before the learned Principal District Judge. He submits that the appellant has disputed the survey number

which according to the appellant was 19/7/2-3. He submits that it is not the case of the appellant that in the near vicinity there was any other person staying on the said address or that the notice was received by somebody else and not the appellant. He submits that it was not the case of the appellant that there was another person whose name was Adinath staying in the nearby vicinity.

8. Learned counsel for the respondent nos. 1 to 5 also invited my attention to the cross examination of the appellant referred by the learned Principal District Judge in the impugned order and would submit that the appellant had admitted about this correct address.

9. Learned counsel for the respondent nos. 1 to 5 also invited my attention to one of the provision of the agreement entered into between the parties and would submit that even the said agreement indicated two separate survey numbers including survey no.19/7/2-3 at which address, the notices as well as the copy of the award was sent to the appellant.

10. Learned counsel for the respondent nos. 1 to 5 invited my attention to the order passed by this court and would submit that pursuant to the said order passed by this court, the learned Principal District Judge had granted an opportunity to lead oral evidence to the appellant to prove that the address mentioned by the learned arbitrator on the envelop containing a copy of the award was not the correct address of the appellant and that the appellant was not served with the copy of the award to the learned arbitrator as contemplated under section 31(5) of the Arbitration and Conciliation Act, 1996. He submits that the appellant has habit of delaying the proceedings and making false statements.

11. Learned counsel for the respondent nos. 1 to 5 also invited my attention to some of the documents forming part of the record in support of the submission that the appellant had fabricated the signature of the learned arbitrator and had contended that the impugned award was in favour of the appellant and not in favour of the respondent. He submits that in view of such fabrication of the appellant, the learned arbitrator was required to file a police complaint against the appellant.

12. A perusal of the agreement entered into between the parties indicates that the building in which the suit property was situated, was bearing two survey numbers including survey no.19/7/2-3. The appellant has not disputed that the survey number on which the property of the appellant is situated is 19/7/2-3. It is not the case of the appellant that in the nearby vicinity the property known as Ratnadeep Society exists. It is not the case of the appellant that some other person was staying at the address situated at Ratnadeep society.

13. Pursuant to the opportunity granted by this court, the appellant had led oral evidence before the learned Principal District Judge which has been considered at great length by the learned District Judge. A perusal of the envelop containing the copy of the arbitral award annexed at Ex.P to the present appeal clearly indicates that the postal department had made an endorsement 'addressee not claimed and thus return'.

14. In my view if according to the appellant, the address of the appellant as mentioned on the envelop was not the correct address, the postal department in that event would have made endorsement 'address not found' and not 'the addresses not claimed'. There is thus no substance in the submission of the appellant that the

signed copy of the award was not sent by the learned arbitrator at the correct address of the appellant.

15. In my view the learned Principal District Judge had given an opportunity to the appellant pursuant to the order passed by this court to prove that the address mentioned by the learned arbitrator on the envelop containing the copy of the award was not a correct address and to prove the correct address of the appellant. In spite of such opportunity rendered by the learned Principal District Judge, the appellant however could not prove that the copy of the award was not served at the correct address or that the endorsement made by the postal authority on the envelope containing a signed copy of the impugned award annexed at Ex.P was false or incorrect. The appellant did not examine the concerned post master in support of his allegation.

16. In my view, the learned Principal District Judge has rightly held that the arbitration application under section 34 was not filed within the time prescribed under section 34(3) of the Arbitration and Conciliation Act and has rightly dismissed the application filed under section 34 (3) having found the same as barred by law of limitation.

17. A perusal of the record further indicates that the appellant has prima facie fabricated the signature of the learned arbitrator and had falsely contended that the impugned award was rendered in his favour by the learned arbitrator which compelled the learned arbitrator to file a police complaint against the appellant. In my view, there is thus no merit in the present appeal filed by the appellant.

18. The arbitration appeal is accordingly dismissed with cost quantified at

Rs.15,000/- which shall be paid by the appellant to the respondent nos. 1 to 5 within two weeks from today.

19. In view of the dismissal of the arbitration appeal, civil application does not survive and is accordingly dismissed.

(R.D.DHANUKA, J.)