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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 1568/2014

SURINDER SINGH

..... Petitioner

Through: Mr.Sudhir Naagar, Mr. Vijay Kasana
Advocates.

versus

M/S S.E. INVESTMENTS LTD & ORS

.... Respondent

Through: Mr. P. Nagesh, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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24.10.2016

1. This petition under Section 34 of the Arbitration & Conciliation Act , 1996 ('Act') seeks to challenge the Award dated 20th November 2013 passed by the learned Sole Arbitrator.

2. The background of the present petition is that the Respondent No.2 - Schiffli India Ltd., a company of which the Petitioner was the Director at the relevant time, availed the loan from the Respondent No.1, vide loan agreement dated 26th March 2010 which contained the arbitration clause. Both the Petitioner as well as other Director namely Respondent No.3 herein stood as guarantors for the loan.

3. The Respondent No.2 Company having defaulted in the repayment of the loan, the dispute was referred to the Arbitrator appointed by the Respondent No.1 under Clause 20 of the loan agreement.

4. One of the principal grounds of challenge to the Award passed by the sole Arbitrator is that the Petitioner was not served notice of the arbitral proceedings and that the Petitioner became aware of the passing of the impugned Award only when the Petitioner was served with a notice in the execution petition bearing No. 385 of 2014 in the third week of November 2014.

5. In the reply filed to the present petition, it is urged by the Respondent No.1 that the Petitioner was indeed aware of the arbitral proceedings. The reference is made to the averments made in the Crl. Misc. Writ Petition No. 8232 of 2015 filed in the High Court of judicature at Allahabad, jointly by the company (Respondent No. 2 herein) and its two directors, including the Petitioner herein seeking quashing of the FIR being Case Crime No. 991 of 2013, Police Station Hari Parvat, Agra. In particular, reference is made to the averments in para 15 of the said petition where it was stated that “finally the informant-company had also invoked the arbitration clause contained in the loan agreement against the petitioner company vide notice dated 26.06.2013 served at New Delhi upon the petitioner-company and its Directors i.e., petitioner No. 2 & 3”.

6. On the basis of the above, it is contended by Respondent No. 1 that “it is crystal clear that Petitioner was aware of the Arbitration Proceedings before the Ld. Sole Arbitrator and cannot be permitted to resile from the same”. In addition, Mr. P. Nagesh, learned counsel for the Respondent also draws attention of the Court to para 16 of the said petition, wherein it was stated that the informant-company filed its arbitration claim before its Sole

Arbitrator against the Company and its Directors.

7. It is noticed that in the above para 16 while it was stated that the claim was filed before the sole Arbitrator it was further stated in the said para that “While the said claim was being contested by the petitioner-company, the sole arbitrator who was appointed by the informant-company, quite arbitrarily and without issuing proper notice for the date fixed, passed an award vide its order dated 20.11.2013 against the petitioner-company thereby making the informant-company entitled to a claim of Rs.2,24,22,033/- against the defaulter i.e. petitioner-company and its Directors”. Therefore, it is seen that even in the petition before the Allahabad High Court as far as Respondent Nos. 2 and 3 were concerned, there was no admission that the Petitioner herein was served. Further even *qua* the company it was claimed that proper notice for the date fixed in the arbitration was not issued.

8. On the first date of hearing in the arbitration proceedings, the Arbitrator required filing of fresh address by the Claimant-Company i.e. Respondent No.1 herein. The next hearing took place on 19th July 2013. None appeared on behalf of the Respondents before the Arbitrator. The Arbitrator noted in particular that the “copy of last order was duly sent to all the Parties but copy of order to Respondent No.3 was returned to me as unserved”. It may be noticed at this stage, the Petitioner herein was Respondent No.3 in the arbitral proceedings. Surprisingly at the hearing on 19th July 2013, the Arbitrator did not enquire whether in fact the fresh address of the Petitioner herein was filed by the claimant-company. The Arbitrator also failed to

further direct notice to the Respondent No.3 i.e., Petitioner herein and simply stated in the order that “Respondent No. 1 & 2 are hereby directed to inform Respondent No.3 about these proceedings before this tribunal”.

9. It was sought to be suggested by Mr. Nagesh that since both the Petitioner herein as well as the other Director, as of that stage, continued to be the Directors of the Respondent No.2, the notice to Respondent No.2 should be treated as good as a notice as to its Directors. It is not possible to accept this submission for the simple reason that the Respondent No.1 as a claimant thought it proper to separately implead Respondent No. 2 Company and its Directors. When the Arbitrator came to know that the process sent to the Petitioner herein was returned with remarks “left address” she should have directed the claimant company to ascertain and file the fresh address of the Petitioner. She clearly failed to do so. If, as is contended now, the last known address of the Petitioner was the one to which the process was sent, and that there was no other address available with the claimant company, then the next logical step should have been for the claimant company to have sought to serve the Petitioner through substituted service. However, that was not sought to be done. What is surprising is that at the second hearing despite noticing that even the copy of the order passed at the first hearing when sent to the Respondent No.3 (Petitioner herein) in the arbitral proceedings was returned unserved, the Arbitrator did not thereafter direct proper service of notice of the arbitral proceedings upon the Petitioner herein.

10. At the third hearing, which took place on 29th July 2013, the Arbitrator

noticed that the copy of the order sent to the Petitioner herein was returned unserved. Again no effort was made to direct service of notice upon the Petitioner herein either at the last known address or through substituted service.

11. The record of the arbitral proceedings therefore shows that in the proceedings, the Petitioner herein remained unserved throughout. The address given of the Petitioner in the arbitral proceedings was SD-418, Pitampura, New Delhi. It transpires that the Petitioner tendered his resignation from the directorship of the Respondent No. 2 company with effect from 3rd October 2013. A copy of the Form 32 filed with the Registrar of Companies has been placed on record by the Petitioner. The Petitioner moved from the earlier address to the present address i.e. SD-216, Pitampura, New Delhi. What is surprising is that when the execution petition was filed by the Respondent No.1, it seems to have known of the present address of the Petitioner. A copy of the summons issued in the execution petition reveals that the present address of the Petitioner was indeed mentioned in the said summons in the execution petition. This explains why the summons were promptly served on the Petitioner and upon such service of summons in the execution petition, the Petitioner has, without any delay, filed the present petition under Section 34 of the Act.

12. Learned counsel for the Petitioner pointed out that the Crl. Misc. Writ Petition No. 8232 of 2015 was filed long after the filing of the present petition and by that time the fact concerning the arbitral proceedings having taken place was already known. This appears to be a plausible explanation.

In other words, the Court is unable to draw any adverse inference against the Petitioner as regards the averments made in paras 15 and 16 of the said petition. On the other hand, the averments made in para 16 makes it clear that as far as the present Petitioner is concerned, there was no proper service of notice.

13. For the aforementioned reasons, the impugned Award as far as the Petitioner is concerned, is in violation of principle of natural justice and is required to be set aside in terms of Section 34 (2) (a) (iii) of the Act.

14. The impugned Award dated 20th November 2013 passed by the learned sole Arbitrator is hereby set aside *qua* the Petitioner. The petition is accordingly allowed but in the circumstances, with no orders as to costs.

OCTOBER 24, 2016
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S. MURALIDHAR, J