

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

Date of decision: 23.11.2016

+ FAO 527/2016 & CM 41942/2016 (stay)

M/S AMARDEEP PRAKASHAN Appellant
Through Mr. Rajat Sharma, Advocate

versus

M/S SIDDHARTH TRADEX (P) LTD. & ANR. Respondent
Through None

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CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA
: SUNITA GUPTA, J. (ORAL)

1. The challenge in this appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') is to the order dated 13th July, 2016 passed by the Additional District Judge-17, Central/THC, Delhi in Arbitration No.84190/2016 whereby the application u/s 5 of the Limitation Act arising out of objections/application u/s 34 of the Act for setting aside the award dated 25th August, 2014 passed by the Sole Arbitrator Sh. Satya Narain Gupta, Paper Merchants Association (Regd.) in Arbitration proceedings No.23/2011-2012 titled as M/s. Sidharth Tradex Pvt. Ltd. vs. M/s. Amardeep Prakashan was dismissed.

2. Counsel for the appellant submits that the respondent invoked the arbitration proceedings on the basis of invoice. The appellant was never served with notice issued by the Arbitrator and came to know about the existence of the award only in the month of February, 2016

when the notice of execution petition was received by the appellant from the District Judge, Jalandhar, Punjab. The appellant appeared before the District Judge, Jalandhar, Punjab on 1st March, 2016 and received the copy of the award and, thereafter, the objection petition u/s 34 of the Act along with an application for condonation of delay in filing the objection petition was filed which was dismissed by the learned Additional District Judge which deserves to be set aside as the appellant did not get fair chance to defend herself as the arbitral award is an *ex parte* award. The Arbitrator had no right to entertain the claim petition as there was no agreement signed by the appellant and respondent No.1. Mere mention of arbitration clause in the invoice raised by respondent No.1 does not give the power to the arbitrator to initiate arbitral proceedings.

3. I have carefully gone through the impugned order passed by the learned Additional District Judge and find no reason to interfere in the impugned order whereby the application u/s 5 of the Limitation Act seeking condonation of delay in filing the objection was dismissed. Resultantly, the petition u/s 34 of the Act was also dismissed.

4. Section 34 of the Act deals with the application for setting aside arbitral award. The sub clause 3 provides the limitation for filing such an application and this sub-section reads as under:-

“34(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three

months it may entertain the application within a further period of thirty days, but not thereafter.”

5. A bare perusal of this sub-section goes to show that the period of limitation for moving an application for setting aside an arbitral award is three months from the date of receipt of arbitral award or if a request is made u/s 33 from the date on which the request has been disposed by the arbitral tribunal. The proviso appended to the sub-section, however, empowers the Court to entertain the application within a period of 30 days thereafter on showing sufficient cause which prevented the applicant from moving the application but it does not extend thereafter.

6. Reverting to the case in hand, the basic submission of learned counsel for the appellant is that the appellant was never served with the notice of the arbitration proceedings by the Arbitrator. This contention is belied by the award and reference in this context may be made to the following para:-

*“Notices were issued to both the parties to be present on 04-03-2013. On this date nobody was present on behalf of the defendant. The case was adjourned to 03-04-2013. On this date also defendant was not present and the case was adjourned to 24-05-2013 and again adjourned to 06-06-2013. **The case was again adjourned to 26-06-13 both the parties were present. Defendant was asked to file the written reply to the claim on the next hearing fixed for 30-07-13, on the request of the defendant.** The case was again adjourned to 17-08-13. On this date nobody was present on behalf of the defendant. In spite of various opportunities given to the defendant, the defendant is not participating in the proceedings. Hence I proceed exparty in the case. It case was adjourned to 03-10-13. It was again adjourned to 23-11-13. It was again adjourned to 25-03-14.”*

7. A bare perusal of these averments made in the award goes to show that the appellant/defendant was duly served with the arbitration

proceedings. Not only that, the appellant did appear before the Arbitrator on 26th June, 2013 on which date she was asked to file reply to the claim by the next date of hearing, i.e., 30th July, 2013. Thereafter, the appellant/defendant failed to appear and did not participate in the proceedings. Therefore, there was no option available with the Arbitrator but to proceed her *ex parte*. Despite having the knowledge of the fact that the arbitration proceedings were pending before the Sole Arbitrator, the appellant did not take any steps to join the proceedings thereafter by moving appropriate application to challenge the jurisdiction of the Arbitrator and the claim filed by the respondent.

8. It is alleged that the appellant came to know about the award only on receipt of notice of the execution proceedings and thereafter copy of the award was received on 1st March, 2016, however, no such proceedings/documents has been placed on record to fortify the claim of the appellant. There is nothing on record to show that any request was made by the appellant u/s 33 of the Act before the Arbitral Tribunal.

9. Under the circumstances, in view of the fact that there was no sufficient explanation given by the appellant which prevented her from filing the objections within time, the application u/s 5 of the Limitation Act was rightly dismissed by the learned Additional District Judge. In fact, the appellant had tried to mislead not only the trial court but this court as well by stating that the appellant was never served with the notice by the Arbitrator regarding the arbitration proceedings which fact is belied by her presence before the Arbitrator on 26th June, 2013.

10. Neither in the appeal nor during the course of the arguments, the appellant/her counsel has been able to show any infirmity in the impugned order which calls for interference. The only submission is that the arbitral proceedings could not have been invoked on the basis of an invoice. The same pertains to the merits of the proceedings which the appellant did not choose to contest at the relevant juncture. That being so, there is no ground to interfere with the order passed by the learned Additional District Judge.

The appeal is accordingly dismissed.

CM No. 41942/2016(stay)

Keeping in view the fact that the appeal itself is dismissed, nothing survives in this application, the same is accordingly dismissed.

**(SUNITA GUPTA)
JUDGE**

NOVEMBER 23, 2016

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