

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION APPEAL NO.33 OF 2016

M/s. Shriram Transport Finance Co. Ltd. ... Appellant
vs.
Shri Abhijeet Roghunath Koli & Anr. ... Respondents

Mr. Shashank V. Choudhary i/b Mr. Sachin V. Masurkar for the Appellant.
Mr. Ramdas Shelke for the Respondent No.1.

Coram : **A.A.Sayed, J.**
Date : 28 February 2017

P.C. :

1 The above Arbitration Appeal impugns an order dated 30 December 2015 passed by the Principal District Judge, Pune in Civil M.A. No.882 of 2013 in proceedings filed by the Respondents under section 34 of the Arbitration and Conciliation Act, 1996 for setting aside an ex-parte onward dated 8 July 2013. The operative part of the impugned order reads as under:

- "1. Civil M.A. No.882/2013 is allowed.*
- 2. Arbitral award dated 08.07.2013 passed by Arbitrator in Arbitration case No.1862/2012, is set aside.*
- 3. Arbitral case No.1862/2012 is remanded for fresh hearing with direction to give an opportunity of hearing to the applicant."*

2 Learned Counsel for the Appellant submitted that the matter is required to remand back to the learned Principal District Judge, Pune.

He submitted that the learned Principal District Judge, Pune has simplicitor remanded the matter to the learned Arbitrator to grant an opportunity to hearing without recording any finding whether the Respondents were served. Learned Counsel for the Appellant has invited my attention to pages 36, 37 and 38 of the Arbitration Appeal to show certain postal endorsement and signatures. Learned Counsel for the Appellant submits that as a matter of fact, the learned Arbitrator had issued notice to the Respondents and the service report indicates that service was refused, therefore, the service was effected and complete and that even if notice is refused that amounts to proper service. My attention is also invited to para 8 of the Award dated 8 July 2013 (page 25 of Arbitration Appeal) wherein it is observed as follows:

“8. On 10/12/2012 the notice/s by registered post acknowledgement/s due were issued to both the respondents, by this tribunal. The notice to the respondent No.1 AND 2 was duly served. REPORT NO.1 SERVED NO.2 NOT CLAIMED. Both OF them were absent. I therefore passed the order to proceed exparte against them both.”

3 I find merit in the submission of learned Counsel for the Appellant. From a bare perusal of the impugned order it is apparent that there is no discussion by the learned Principal District Judge, Pune insofar as the service upon the Respondents is concerned. There is no

finding by the learned Principal District Judge, whether the Respondents were matter of fact served or not and/or whether the Respondents had refused to accept notice and chose not to remain present before the learned Arbitrator.

4 Having regard to the facts and circumstances of the case, in my view, the following order would meet the ends of justice:

O R D E R

- i) The impugned order dated 30 December 2015 is set aside.
- ii) The matter is remanded to the learned Principal District Judge, Pune, to decide the Civil M.A. No.882 of 2013 afresh. The learned Principal District Judge, Pune shall record a finding on the aspect whether the Respondents were served or not.
- iii) The learned Principal District Judge, Pune shall decide the matter without being influenced by the impugned order or this order.
- iv) The parties shall appear before the learned Principal District Judge, Pune on 27 March 2017 at 11 a.m. when appropriate directions as to hearing of the Civil M.A. No.882 of 2013 may be given by the learned Principal District Judge, Pune.

iv) All contentions of parties are kept open.

5 Arbitration Appeal is disposed of in the above terms.

(A.A.Sayed, J.)

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