

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

**CIVIL APPLICATION NO. 897 OF 2017
IN
APPEAL FROM ORDER NO. 307 OF 2017**

M/s. R.K.Associates

...Applicant

Versus

Union of India through General Manager,
Central Railway, Mumbai & Ors.

...Respondents

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Mr.Ashutosh Kaushik i/b. Kaushik & Co. for the Applicant.
Mr.T.J.Pandian for the Respondents.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: NOVEMBER 07, 2017**

P.C. :

1. In this Civil Application, the applicant seeks direction that the respondents be directed to restore status quo ante as on 17th October 2017 in respect of tea stall no. 2 on platform nos. 4/5, South of Daund End FOB at Pune Railway Station, Central Railway by restoring electricity and removing obstruction.

2. It is the case of the respondents that tea stall is unauthorized and that was to be removed and therefore, the applicant had filed civil proceedings before the Civil Court. In this Appeal from Order, the order dated 19th October 2016 passed by the learned 10th Jt. Civil Judge, Senior Division, Pune is under challenge. In the said Appeal from Order, this Court by order dated 5th April 2017 directed the parties to go before the Arbitrator and further directed the respondents to maintain status quo in respect of tea stall no.2 on platform nos. 4/5 until the Award is passed.

3. It is the contention of the applicant that the Award was passed on 12th October 2017. The copy of the Award signed by the Arbitrator was not at all served on him and the certified copy of the Award, which is not contemplated under Section 31 (5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Said Act”) was received by him on 21st October 2017. However, on 18th October, 2017, the respondent took action hastily and disconnected the electricity and cordoned the tea stall and thus, the tea stall is inaccessible to the applicant since 18th October 2017.

4. Learned counsel for the applicant has submitted that the respondents have committed two illegalities. The copy of the Award as per requirement of Section 31 (5) of the said Act was not served on the applicant. It was the duty of the Arbitrator to serve a copy of the Award signed by him. He has argued that Award was lying in his office and stand taken by the respondents that they have served the copy of the Award to the applicant on 17th October 2017 is false. On the point of proper compliance under Section 31 (5) of the said Act, he relied on the judgments of the Supreme Court in the case of *State of Maharashtra Versus ARK Builders Private Limited*, reported in (2011) 4 Supreme Court Cases 616 and *Union of India Versus TECCO Trichy Engineers & Contractors*, reported in (2005) 4 Supreme Court Cases 239.

5. Per contra, the learned counsel for the respondents has submitted that the respondents have taken care of proper service of the Arbitral Award on the applicant and it was served in his office. In support of his submission, he relied on the Affidavit dated 1st November 2017 of A. Subramanian, Office Superintendent in the

Office of Chief Commercial Engineers, Central Railway, Mumbai. So also, he relied on the Affidavit dated 3rd November 2017 of Suresh Saxena, Deputy Chief Commercial Manager, Central Railway, Mumbai. He has further submitted that the copy of the Award served on him was signed by Mr.Saxena. The original signatures are appearing on all the papers. He relied on the judgment of the Supreme Court in the case of ***Hindustan Construction Company Ltd. Vs. Union of India***, reported in ***AIR (1967) SC 526***. He has further submitted that copy of the Award was served on the applicant on 17th October 2017 and thereafter, on the next date i.e. on 18th October 2017, the electricity was cut and cordoned the tea stall.

6. On query, it is found that the said tea stall still exists. However, the respondents have disconnected the electricity supply and cordoned the tea stall and made it non accessible and non functional. The issue is raised in respect of proper service contemplated under Section 31 (5) of the said Act.

7. Whether the service is proper or not it depends on facts of each case and it is to be examined by keeping the ratio laid down by the different Courts on the point of service. In the present case, the Award was passed on 12th October 2017. The order of status quo to be maintained till the Award is passed. The proper service of the Award on both the parties is a part of compliance and, therefore, it is necessary for the Arbitrator to serve both the parties. Without service, the process of passing an Award is incomplete. The affidavits and records show that on 13th October 2017, the Arbitrator sent the copies of the Award signed by him to both the parties. The copy of the Award which was served on the applicant was a photocopy of the Award. However, the Arbitrator has also signed on each page of the Award and on last page of the Award, he has written as certified by him. The objection of the applicant is that as the Arbitrator has written the word 'certified', it means this is a certified copy, which is not signed by the Arbitrator. Submissions are not correct. If the photocopy of the Award certified by the office of the Arbitrator and it would have been sent, then the objection taken by the applicant was sustainable. However, the Arbitrator himself has signed and certified photocopy

of the Award, then it is compliance under Section 31 (5) of the said Act. Moreover, it shows that copy of the Award was delivered to the applicant on 17th October 2017, however, it may not be received by the applicant personally till 21st October 2017. Service cannot be doubted and, therefore, the service is complete.

8. In the case of *State of Maharashtra Versus ARK Builders Private Limited (supra)*, the Supreme Court has discussed Section 31 (5) of the said Act and has held that signed copy of the Award is not to be dispatched, but is to be delivered to each party.

9. In the case of *Union of India Versus TECCO Trichy Engineers & Contractors (supra)*, the Supreme Court was dealing with the point of limitation for filing an application for setting aside the Arbitral Award and it has held that the compliance of sub Section (5) of Section 31 is not a matter of mere formality, but it is a matter of substance and only after the stage under Section 31 has passed, then only the passing of an Arbitral Award is complete.

These two rulings are mainly on the point of delivery of the signed copy of the Award. (emphasis placed)

10. In the case of *Hindustan Construction Company Ltd. Vs. Union of India* (*supra*), the Supreme Court has elaborately discussed what is meant by 'signed copy' of the Award. The word 'copy' means a full reproduction or transcription of the original matter and it should be exact, identical and true. The Supreme Court also considered the meaning of word 'sign' which means to write one's name on documents is signature. In the said judgment, the Supreme Court has rightly explained as follows :

“It would in such circumstances be immaterial whether the arbitrator or umpire put down the words "certified to be true copy" before signing the copy of the award. If anything, the addition of these words (namely, certified to be true copy) would be the clearest indication of the authentication of the copy as a true copy of the award, which is what s. 14(2) requires, so long as the authentication is under the signature of the arbitrator or the umpire himself”.

11. In the present case as discussed above, the Arbitrator took out the copy of the Award, which shows his signature on the last page below his order and thereafter, signed on each page of the Award and certified the same. These are original signatures appearing on each page of the copy of the Award served on the applicant. It is

very well covered under the ratio laid down in the case of *Hindustan Construction Company Ltd. (supra)*

12. I am not inclined to pass any direction of status quo ante as on 17th October 2017, however, time upto 10th November 2017 is given to the applicant. The applicant has come to this Court, however, he should have filed the proceedings before the District Court challenging the Award, but he has not done though he had knowledge of this Award on 21st October 2017 according to him and, therefore, I direct the respondents not to demolish the tea stall or not to take possession of the tea stall till 10th November 2017. Civil Application is disposed of accordingly.

(MRIDULA BHATKAR, J.)