

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

**ARBITRATION APPEAL NO. 12 OF 2017
WITH
CIVIL APPLICATION NO. 9 OF 2017
IN
ARBITRATION APPEAL NO. 12 OF 2017**

Mr. Phiroze Shavak Dadachanji .. Appellant
Vs.
M/s. Shriram City Union Finance Ltd.
Through its GPA Mrs. Smita Shirkar .. Respondent

Mr. Amey Deshpande for appellant.

None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 4TH OCTOBER 2017**

P.C.

1 Heard the counsel for appellant. This Appeal is filed impugning an order dated 7th November 2016 passed by the Principal District Judge, Pune dismissing the Civil Miscellaneous Application filed by appellant and refusing to condone the delay in preferring the Appeal under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act).

2 It is stated in the Appeal that appellant had not participated in the Arbitration Proceedings because appellant never received any notice from the Learned Arbitrator. It is also stated that appellant never received copy of

the Award. The case of appellant is that one Mr. Shashikant Patil, guarantor to the loan transaction between appellant and respondent had received a notice in Execution Petition No. 1921 of 2014 issued by the Learned Execution Court, Pune on 26th August 2015 and he contacted appellant. Appellant, only at that time, came to know about the Award passed by the Learned Arbitrator on 22nd February 2014.

3 Appellant, on 16th October 2015 filed an application under Section 34 of the Act for for setting aside the Award. As there was a perceived delay, appellant also filed an application for condonation of delay on the ground that the Award was never served upon appellant. The Principal District Judge rejected the application for condonation of delay on the basis that there is no whisper in the application as regards incapacity of the appellants or any other ground as contemplated under Section 34, Sub Section (2) of the Arbitration and Conciliation Act, 1996. The District Judge also relied upon a statement of respondent that the Award was sent to petitioner by the applicants therein/including the petitioner herein as well as the guarantor but the packet was returned with the remark '*Refused*' on 7th May 2014. The District Judge, therefore, came to conclusion that the delay cannot be condoned under Section 34(III) of the Act.

4 Mr.Deshpande for petitioner states that there is no document shown or available to show that petitioner herein refused service. The counsel tenders a copy of the document on which the Court had relied on to conclude that the Award sent by RPAD was refused. From this document, it is clear that the packet has been sent only to the guarantor Mr.Shashikant Patil who refused to accept on 7th May 2014. Respondent, though served, has not appeared nor filed any reply.

5 In the circumstances, I will have to accept the statement made by the counsel for petitioner that the Award was sent only to Mr.Shashikant Patil, who is the guarantor and it was he who refused to accept service.

6 In the circumstances, respondent having failed to prove that it was the appellant herein who had refused service as recorded in the impugned order, the Appeal requires to be allowed.

7 The Appeal is hereby allowed. The Order of the Principal District Judge, Pune dated 7th November 2016 is set aside. The Principal District Judge, Pune to consider the application/petition under Section 34 of the Act in accordance with law.

8 Appeal disposed accordingly.

9 In view of above, Civil Application No. 9 of 2017 also stands disposed.

(K.R. SHRIRAM, J.)