

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION PETITION No. 350 OF 2017**

Ravindra Engineering  
through Sham Bahadur Singh and Ors. ...Petitioners

Vs.

The Punjab and Maharashtra  
Co-operative Bank Ltd. ...Respondents

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Mr. Kunal Kataria i/b. Aagam Doshi for Petitioners

Mr. Atul Daga i/b. Purnand and CO. for Respondents

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**CORAM : M.S. SANKLECHA, J.**  
**WEDNESDAY, 8TH NOVEMBER, 2017**

**P.C.**

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act) takes exception to the award dated 20th August, 2016 passed by a Sole Arbitrator. The impugned award arose out of the application made under Section 84 of the Multi State Co-operative Societies Act, 2002 seeking to recover the amount advanced to the principal borrower i.e. Petitioner No.1 and the guarantors to the above advance viz. Petitioner Nos.2 and 3.

2. At the very outset, Mr. Daga, learned counsel appearing for the Respondent raised a preliminary objection to the petition being entertained. This on the ground that the petition has been filed beyond three months and 30

days from the date of service of the arbitral award on the petitioners from the Arbitrator. Thus time barred under Section 34 (3) of the Act. It is pointed out that the arbitral award dated 20th August, 2016 under the cover of the letter dated 16<sup>th</sup> September, 2016 was served upon the Petitioners by the Arbitrator posting the award on 4th October, 2016 to the known addresses of the Petitioners by registered post. The impugned award posted on 4th October, 2016 was not claimed by Petitioner No.1, accepted by Petitioner No.2 and refused to accept by Petitioner No.3 on 5<sup>th</sup> October, 2017 as is evidenced from the annexures/ exhibits to the affidavit in reply dated 6th September, 2016 of Mr. Satvinder Singh Komal. This according to Mr. Daga, amounts to a good service and the period of three months and further extended period of 30 days would have to be computed from the date when the Petitioners would have in normal course received a packet posted under RPAD on 4th October, 2016 i.e. 5<sup>th</sup> October, 2016. Admittedly, the petition filed on 20<sup>th</sup> March, 2017 i.e. beyond the period of 3 months and 30 days.

3. Mr. Daga in support relies upon the decision of this Court in ***Jenjon Retail and Services Pvt. Ltd. v. Lavasa Corporation Ltd. [2016 SCC Online Bom 5321]***. In the above case, the question which arose before this Court was to whether the unclaimed service of the signed copy of the arbitral award sent by the Arbitrator to a party under Section 31(5) of the Act would amount to a good service for the purposes of the period of limitation commencing under

section 34(3) of the Act. This Court while relying upon the decisions of the Apex Court in ***C.C. Alavi Haji v. Palapetty Muhammed [(2007) 6 SCC 555]*** and the Calcutta High Court in the case of ***New Global Transport Corporation v. Magma Shrachi Finance Ltd. [AIR 2011 Cal. 72]*** held that an unclaimed service amounts to a refusal to accept the delivery of the arbitral award which was sent at the correct address which is on record before the arbitrator and, therefore, a good service. Therefore, the period of limitation for filing the arbitration petition under section 34 (3) of the Act would commence from the date on which the intimation left by the postman and not collected by the Petitioner.

4. Mr. Kataria, learned counsel appearing for the Petitioners sought to distinguish the decision of the Court in ***Jenjon Retail and Services Pvt. Ltd. (Supra.)*** on the ground that in the facts of that case, the Petitioner therein had received notices earlier at that very address from the arbitrator which according to him is not the case in the present facts. Mr. Katarai also states that there is a difference between the unclaimed service and refusal to accept service. In the above case, it was case of refusal to accept service while in this case it is unclaimed service.

5. So far as Petitioner No.2 is concerned, it is undisputed that the impugned award was received by him on 5<sup>th</sup> October, 2017. Therefore, the petition filed by him would stand dismissed as the petition itself is filed beyond a

period of 3 months and 30 days as provided in Section 34(3) of the Act.

6. So far as the case of Petitioner Nos. 1 and 3 is concerned, the first distinction made to the decision of this Court in ***Jenjon Retail and Services Pvt. Ltd. (Supra.)***, is that the Petitioner in that case had received notices earlier at the same address unlike in this case. However, in this case, the Petitioners have not stated that the address at which the award and notices were sent including the notice of the arbitrator entering upon the reference which was also refused by Petitioner Nos.1 and 3 was not the correct address of Petitioner Nos.1 and 3. Once the signed copy of the award has been posted at the correct address and parties refused to accept the award by either specifically refusing it or not claiming the same, it would amount to a good service for the purposes of commencement of limitation under Section 34 (3) of the Act. The issue for consideration is the date of service of the award upon the Petitioner Nos. 1 and 3. This has to be examined on the basis of the date of service of the award and not dependent upon the receipt/non-receipt of earlier communications. Thus in the absence of the Petitioner contending that the award was sought to be served on a incorrect address, the service done by the Petitioner is good service in terms of Section 3 of the Act and also in terms of Section 27 of the General Clauses Act, 1897. The said distinction with regard to not claiming (unclaimed) and consequently refusing to accept service would not in any manner detract from completion of service having regard to section 27 of the

General Clauses Act, 1927.

7. In the above view, the petition as filed is time barred under section 34(3) of the Act as it is beyond the period of 3 months and 30 days from the completion of service of the signed copy of the award upon Petitioner Nos.1 and 3. Admittedly, Petitioner No.2 had received a copy of the impugned award on 5th October 2016. Thus time barred.

8. Accordingly, petition is dismissed. No orders as to costs.

**[M. S. SANKLECHA, J.]**