

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO No. 4074 of 2012 (O&M)
Date of Decision: 24.10.2017**

Amit Kumar Jain and another

..... Appellants

Versus

Anil Kumar Jain and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. G.S. Rana, Advocate
for the appellants.

Mr. Shailender Jain, Sr. Advocate assisted by
Mr. Satyendra Chauhan, Advocate
for respondent Nos. 2 to 5.

Notice upon respondent Nos. 8 to 11 (being *pro forma* party)
dispensed with vide order dated 18.02.2015.

JASWANT SINGH, J.

1. Present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short '1996 Act') is filed by Amit Kumar Jain and Smt. Shashi Jain (appellants) seeking quashing of order dated 17.04.2012, passed by Ld. Additional District Judge, Chandigarh whereby their objection petition filed under Section 34 of the Act against award dated 26.07.2002 has been dismissed on the ground of limitation.

2. Mr. P.S. Rana, counsel of the appellant contended that the appellants were not aware of the arbitration proceedings as well as arbitration award dated 26.7.2002. The arbitrator failed to communicate to them the signed copy of award, in terms of requirement of Section 31(5) of the Act. The appellants in second week of April'2003 came to know about

the award and then served a notice dated 17.04.2003 on the arbitrator to

send them signed copy of award or to their counsel. The Arbitrator received said notice on 19.04.2003 but did not supply copy of award and they again sent reminder dated 02.05.2003. In reply to said reminder, arbitrator sent a copy of award along with forwarding letter dated 06.05.2003. The award was received on 08.05.2003, therefore objections petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'Act') was within limitation period, however, Ld. AdJ has wrongly rejected their petition on the ground of limitation. Ld. Counsel cited judgment of Supreme Court in the case of ***State of Maharashtra Vs. Ark Builders Pvt. Ltd 2011 (2) RCR (Civil) 598*** wherein while interpreting effect of Section 31(5) and 34(3), court has held that service of signed copy of award upon parties is indispensable and limitation would start only from the date of delivery of copy.

3. Per contra, Mr. Shelender Jain, Senior Advocate for respondent Nos. 2 to 5 has argued that appellants were well aware of the award and they even acted upon the award. There was no dispute between the parties and it was a case of family settlement. A memorandum of understanding was executed between the parties and there was oral partition of properties between the parties. The arbitrators were appointed only for the sake of giving legal color to the oral understanding. For the appointment of arbitrators, an MOU was signed by all the parties and accordingly arbitrators were appointed. The appellants had already enjoyed the award and just on account of greed as well harass the other parties are dragging the respondent to undesired litigation. Ld. Counsel relied upon decision of the Delhi High Court in the case of ***Continental Telepower Industries Ltd. Vs***

Union of India 2010 (2) R.A.J. 559 wherein Court has held that limitation for filing petition under Section 34 would be counted from the date of receipt of photocopy of the award as service of photocopy of award is sufficient.

4. I have considered arguments of both the parties and short issue involved is whether petition filed under section 34 was barred by limitation or not.

Before dwelling into facts and controversy involved, it would be gainsaid to look into relevant provisions of the Act. For the just decision of the present controversy, section 3/31/34 of the Act are relevant and quoted below:-

3. Receipt of written communication.—(1) Unless otherwise agreed by the parties,--

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is not delivered.

(3) This Section does not apply to written communications in respect of proceedings of any judicial authority.

31. Form and contents of arbitral award.— (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted

signature is stated.

(3) The arbitral award shall stated the reasons upon which it is based, unless.

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

34. Application for setting aside arbitral award.- (1) Recourse to a Court against an arbitral award may be made only by any application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2). XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(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.

[emphasis supplied]

From the above quoted sections, it is culled out that arbitrator is duty bound to deliver signed copy of award and delivery of award is not mere formality. The Limitation for filing appeal starts from the date on which party making application had received award. Like Section 27 of General Clauses Act, there is Section 3 in the Act of 1996 creating deeming provision that any written communication shall be deemed to be received if it is delivered to the addressee personally or at the place of business,

written communication should be delivered and Section 31(5) of the Act also requires delivery of the order.

5. Hon'ble Supreme Court in the case of *Ark Builders* ibid relying upon its earlier decision in the case of ***Union of India Vs. Tecco Trichy Engineers (2005) 4 SCC 239*** held that limitation prescribed under Section 34(3) of the Act would start running only from the date a signed copy of the award is delivered/received by the party making the application for setting aside award under Section 34(1) of the Act. Supreme Court in Para 17 has gone to the extent that appellant would appear to be deriving undue advantage due to the omission of arbitrator to give them a signed copy of the award but that would not change the legal position and it would be wrong to tailor the law according to the facts of a particular case.

Hon'ble Supreme Court in the case of ***Union of India Vs. Deepak Electric and Trading Company 2012 (12) SCC 509*** while dealing with Article 119 of the Schedule to the Limitation Act, 1963, which prescribes the period of limitation for filing application under the Arbitration Act, 1940 held that starting point of limitation for filing the application for setting aside award would be the date of service of notice on the executive engineer as provided in Article 119 (b) of the Schedule-II of the Limitation Act and not the date of knowledge of the filing of the award. The Supreme Court set aside findings of the High Court that executive engineer had knowledge of the filing of the award and limitation should be counted from the date of the knowledge.

Hon'ble Supreme Court in the case of ***Benarsi Krishna Committee and Ors. Vs. Karmyogi Shelters Pvt. Ltd. 2012 (9) SCC 496*** has

held that delivery of signed copy of award upon the counsel of the parties is not sufficient and signed copy of award has to be delivered to the party. If signed copy of award is not delivered to the party himself, it would not amount to compliance of provisions of Section 31 (5) of the Act.

6. The undisputed facts emerging from pleadings and oral arguments of counsel are that the parties in appeal are family members and were holding various properties jointly. For the sake of partition they executed an MOU dated 31.05.2002, whereby four arbitrators were appointed. It was also agreed that award given by the arbitrators shall be binding on all the parties and no party shall have right to appeal in any court of law against the award. The MOU is dated 31.05.2002 and it has been signed by eight persons who are members of same family. In view of oral understanding, property was partitioned and partition of property took place even prior to declaration of award dated 26.07.2002. The appellant in his cross-examination admitted that residential property could not be transferred on the basis of award and for that purpose separate relinquishment deed was signed. The appellants were staying with Mr. Anil Kumar Jain (respondent No. 1) who is father of appellant No.1 and husband of appellant No.2. Mr. Anil Kumar Jain (respondent No. 1) admitted in his cross-examination that from 01.06.2002, the rent of SCF-4A, Sector 7C, Chandigarh was received by Mr. Pardeep Jain and Kuldeep Jain as per terms and conditions of the award.

7. The above facts and arguments of counsel for the respondents indicate that appellants were aware about the proceedings before the arbitrator and outcome of the proceedings. The arbitration award was

nothing more than legal colour to oral settlement consented by all the parties and there was constructive knowledge to the appellants and they have acted upon on the basis of said knowledge. There are various acts regarding properties which took place even prior to pronouncement of award like Mr. Pardeep Jain and Mr. Kuldeep Jain received rent w.e.f. 01.06.2002 and relinquishment deed was executed on 08.07.2002 whereas award is dated 26.07.2002.

8. This court is not oblivious of the law laid down by Hon'ble Supreme Court in umpteen number of cases that delay beyond 30 days from the normal period of limitation i.e. 3 months cannot be condoned by Court under Section 34(3) of the Act. Therefore, if it is held that constructive knowledge is sufficient and amounts to compliance of Section 31, the petition filed by appellant would be barred by limitation. However, it is settled law that if an act is required to be done in a particular manner and it affects rights and liabilities of parties, it cannot be done in any other manner. Section 31 (5) of the Act candidly requires that signed copy of award should be delivered. Delivery may take place by hand or by post, however, actual delivery of signed copy is indispensable. In the present case, I do not find either any evidence or any concrete argument of the respondent that signed copy of award was duly delivered upon the appellants before 8.5.2003. The appellants having acted upon the award is not sufficient because parties to award acted even prior to date of award so it cannot be assumed that signed copy of award was delivered prior to 8.5.2003. The parties could be present at the time of final arguments still compliance of section 31(5) is mandatory. Supreme Court in para-17, in

case of *Ark Builders* has held that even though appellants would appear to be deriving undue advantage, the legal position cannot be changed and it would be wrong to tailor the law according to facts of a particular case. For the ready reference said Para 17 is reproduced below:

“In the facts of the case the appellants would appear to be deriving undue advantage due to the omission of the arbitrator to give them a signed copy of the award coupled with the supply of a copy of the award to them by the claimant-respondent but that would not change the legal position and it would be wrong to tailor the law according to the facts of a particular case.”

9. In the present case, no doubt the argument of respondent appears to be convincing that parties were aware of the award, however, there is nothing on record to show that signed copy of award was delivered prior to 8.5.2003, therefore, this court has no option except to hold that petition filed under Section 34 of the Act was not barred by limitation. Staying of appellants with respondent No. 1, return of record by Arbitrators to respondent No. 1 or forwarding letter dated 6.5.2003 of the arbitrators, at the most cumulatively indicate that appellants were aware of the award, however constructive knowledge, in the absence of delivery of award, is not sufficient to start limitation for filing appeal. The right of appeal is a right created by Statute and it is trite law that legislature while granting right to appeal may impose certain limitations including limitation of time. Court has limited power to condone delay of upto 30 days from the expiry of time granted to file appeal i.e. three months. Section 34(3) of the Act mandates counting of limitation from date of delivery and not knowledge. The provisions of limitation Act are not applicable so 1996 Act needs to be

interpreted strictly. Delay beyond 30 days may deprive a party his valuable right of appeal so provisions of Section 31(5) of the Act in the backdrop of proviso to Section 34(3) of the Act needs to be interpreted strictly. The language of Section 31(5) of the Act is plain and unambiguous so this court has no right to add or subtract any word in said sub section. As held by Hon'ble Supreme Court in the case of *ARK Building (supra)* law can not be tailored according to the facts of a particular case and applying the said judgment to the facts of present case, this court holds that limitation for filing objection petition under Section 34 of the Act would start from 8.5.2003. Hon'ble Supreme Court has rejected delivery of signed copy of award even upon counsel of the party so judgment of Delhi High Court in the case of *Continental Telepower (supra)* does not advance the cause of the respondent.

Accordingly, the instant appeal is allowed and the impugned order dated 17.04.2012 is set aside; the Petition dated 4.6.2003 filed under Section 34 of the Act before Ld. ADJ, Chandigarh is ordered to be restored. The matter is pending since 2013 so I think it appropriate to direct Ld. ADJ to decide the matter expeditiously, preferably within 6 months from the date of receipt of certified copy of this order.

October 24th, 2017

'dk kamra'

**(JASWANT SINGH)
JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No