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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO 88/2017 & CM Nos. 7077/2017, 7079/2017 & 7080/2017

SAWAN KAPOOR

..... Appellant

Through : None

versus

RAJ KUMAR SAHNI & ANR

..... Respondent

Through : Mr. V. D. Pahuja, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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02.08.2017

1. None appears for the appellant. No one appeared for the appellant even earlier on 28.03.2017.
2. In a more or less similar FAO, being FAO No. 98/2017, a judgment was passed on 05.05.2017, dismissing the said FAO and which was filed by the same appellant who has filed the appeal in this case also. The judgment dated 05.05.2017 reads as under:-

“FAO No. 98/2017 and C.M. Appl. Nos. 7500/2017(for stay), 7502/2017 (for condonation of delay of 72 days in filing the appeal), 7503/2017 (for condonation of delay of 12 days in re-filing the appeal)”

1. This first appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘the Act’), impugns the judgment of the court below dated 11.7.2016 which has dismissed the objections filed by the appellant herein under Section 34 of the Act.
2. Appellant/petitioner by the objections under Section

34 of the Act challenged the award passed on 28.9.2013 by the arbitration tribunal of the Delhi Hindustani Mercantile Association (Regd.). The respondent no.1 herein had filed the claim petition in the arbitration proceeding seeking an amount of Rs.16,61,690/- being the unpaid amount with respect to the goods (cloth) which the respondent no. 1/claimant had supplied to the appellant, and thus the award was passed in favour of the respondent no.1 herein for the monetary amount.

3. Appellant did not appear in the arbitration proceedings and hence was proceeded *ex-parte* by the arbitration tribunal and which thereafter on the basis of evidence on record allowed the claim in the arbitration proceedings.

4. In law, once a respondent in the arbitration proceedings, being the appellant herein, does not appear inspite of service, such a person cannot be allowed to challenge the arbitration award on merits, inasmuch as, merits of the matter have to be seen by the arbitration tribunal and it was in the realm of jurisdiction of the arbitration tribunal to consider the evidence on record in the form of bills and statement of accounts, etc, and consequently pass an award allowing the claim. This Court at this stage is only to examine whether the appellant validly did not appear in the arbitration proceedings i.e whether the appellant was not served in the arbitration proceedings.

5. In the petition under Section 34 of the Act filed by the appellant, he pleaded that he was never served in the arbitration proceedings and the registered cover sent to the appellant are forged and fabricated.

6. To determine the fact as regards service of the appellant on the arbitration proceedings I have gone through the original arbitration record before me, and it is seen that as many as eleven times the present appellant was sought to be served, inasmuch as, there are eleven registered AD covers in original in the arbitration record. It is not the case of the appellant in his objections filed under Section 34 of the Act that the eleven registered AD covers have been sent to the address at which the appellant has no connection whatsoever. Once it is not the case of the appellant that the addresses given on the registered AD covers are such to which the appellant has no connection, hence it has to be held that the appellant was validly served in the arbitration proceedings and was rightly proceeded *ex-parte* as he failed to appear inspite of service. Sending of registered covers to a proper address amounts to service under Section 27 of the General

Clauses Act, 1897. Accordingly, I hold that the appellant was validly proceeded *ex-parte* by the arbitration tribunal.

7. In fact, in my opinion, the arbitration petition under Section 34 of the Act was hopelessly time barred and there did not arise any question of condonation of delay or considering the objections on merits. The list of dates with respect to passing of the award and when the objections were filed are dealt with in para 20 of the impugned judgment and which reads as under:-

“20. Applying the settled principles of law to the facts of the present case, at the very **Outset** I may observe that a preliminary objection has been raised by the respondent no. 1 that the present objection are not maintainable being barred by the period of limitation. In this regard, I may observe that the impugned awarded was passed on **28.09.2013** after which the execution petition was filed by the respondent no. 1 on **23.12.2014** pursuant to which notice was issued to the petitioner for **10.02.2015** on which date the petitioner had put in this appearance and objections were filed on **13.03.2015** which objections were dismissed vide order dated **28.08.2015**. Thereafter, the present objections were filed on 26.10.2015 i.e. within the stipulated period of 90 days and hence, I hereby hold that the present objections are maintainable.”

8. It is seen from the aforesaid para 20 that the award was passed on 28.09.2013 and objections under Section 34 of the Act were filed on 26.10.2015 i.e after two years and one month. The limitation period for filing of objections under Section 34 of the Act is a period of ninety days with condonation of delay being allowed for maximum period of thirty days thereafter, and after a total period of 120 days there cannot be condonation of delay in filing of the objections in view of the judgment of the Supreme Court in the case of ***Union of India Vs. M/s Popular Construction Company (2001) 8 SCC 470***.

9. I have gone through the arbitration record and it is seen that the arbitration award was duly sent to the appellant/petitioner by registered post AD. The award was passed on 28.09.2013 and there are four registered post receipts dated 1.10.2013 showing of posting of the award to the appellant. Accordingly, at the very maximum period of 120 days will have to be calculated from 1.10.2013. The period of 120 days, therefore, expired in around first week of March, 2014. Objections, however, were filed only on 26.10.2015 and therefore being hopelessly time

barred had to be dismissed *in limine* by the court below instead of entertaining the same on merits. It is, therefore, held that the objections being time barred need not have been at all considered on merits by the court below.

10. In view of the above discussion, the objections under Section 34 of the Act filed by the appellant/objector were rightly dismissed by the court below. There is no merit in the appeal and the same is hereby dismissed, leaving the parties to bear their own costs.”

3. In the present case, this appeal will be covered *mutatis mutandis* in terms of paras 7 to 9 of the judgment dated 05.05.2017.

4. This appeal is accordingly dismissed in default and for non-prosecution and after noting that even otherwise objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 were time barred.

5. No application for restoration or recall of this order be entertained unless costs of Rs 25,000/- are first paid to the counsel for the respondent No.1.

VALMIKI J. MEHTA, J

AUGUST 02, 2017
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