

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No. 333/2017**

% **9th August, 2017**

RAJESH JAIN Appellant

Through: Ms. Stuti Gupta, Advocate.

versus

SUKHMAL CHAND JAIN Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') is filed by the appellant (respondent in the arbitration proceedings) impugning the judgment of the court below dated 6.4.2017 dismissing the objections filed by the appellant under Section 34 of the Act challenging the award dated 21.7.2016.

2. The facts of the case are that the respondent initiated arbitration proceedings in order to recover dues payable by the appellant to the respondent on account of supply of paper and board by the respondent to the appellant. As per the dues payable on the

basis of the outstanding invoices the subject arbitration proceedings were initiated.

3. Appellant appeared in the arbitration proceedings as he appeared before the Arbitrator for the first time as early as on 4.7.2014. Appellant thereafter also appeared on subsequent dates being 22.7.2015, 16.9.2015, 6.10.2015, 20.10.2015 and 19.1.2016. On 19.1.2016, the arbitrator passed the following order:-

“Mr. Rajesh Jain defendant stated that proceedings are prejudice against him and further stated that he will not file any reply and will not cooperate, the matter can be decided on merits.

The defendant is directed to file the defence in the case and in the interest of justice one more chance is given to the defendant within 15 days and the matter will be decided on the reply and merits of the case.

The case is filed for 19.02.2016 at 3:30 P.M.”

4. Appellant in spite of the order dated 19.1.2016 did not file his written statement. In fact in the opinion of this Court the written statement which should have been filed much earlier because a long period from July, 2014 till June, 2016 cannot be taken for filing of the written statement by the appellant.

5. Arbitrator ultimately proceeded *ex-parte* against the appellant and thereafter the impugned Award dated 21.7.2016 was passed allowing the claim petition for a sum of Rs.25,39,358/-.

6. Arbitrator in the award notes that arbitration clause is printed in the bills and the bills have been accepted by the appellant in token of acceptance of the arbitration clause as well as the bill amount.

7. Against an *ex-parte* Award the scope for challenge is extremely limited. Even against a reasoned Award a court ordinarily does not interfere and once the Award is an *ex-parte* Award passed on account of non-appearance of the appellant, effectively, the challenge to the *ex-parte* Award becomes almost non-existent because the objector/appellant has not filed his defence, and nor lead any evidence whereas the Arbitrator has considered the case of the respondent/claimant along with the documents on record being the unpaid invoices.

8. Learned counsel for the appellant firstly argued that the Award is bad on account of Section 21 of the Act and which argument, in my opinion, is an argument which in fact is totally frivolous because Section 21 of the Act only provides for initiation of arbitration proceedings and thus arresting of limitation for the claim petition to be filed, and in the present case it is seen that the appellant had repeatedly and regularly appeared in the arbitration proceedings and that ultimately since the appellant failed to appear and also did not

file his defence, appellant was proceeded *ex-parte* and thereafter the impugned Award was passed. This argument of the appellant is therefore rejected.

9. Learned counsel for the appellant also argued with respect to the fact that the Arbitrator has fabricated the order dated 19.2.2016, but once again I find this argument to be totally frivolous because it is seen that admittedly till 19.2.2016 appellant had not filed his written statement in spite of having been served for around one and a half year earlier in the arbitration proceedings and he had also appeared on around half a dozen occasions. If according to the appellant the order dated 19.2.2016 was fabricated recording therein that appellant had not appeared although the appellant had appeared then surely the appellant would have brought to the notice of the court below as also this Court as to when written statement was filed by the appellant. Obviously, no written statement was filed by the appellant and appellant was deliberately delaying the conduct of the arbitration proceedings resulting in his being proceeded *ex-parte*. Also, if the appellant had appeared on 19.2.2016 then there was sufficient time thereafter till the impugned Award was passed on 21.7.2016 for finding out as to what transpired on 19.2.2016 but the appellant has

failed to do so because the moto of the appellant in the arbitration proceedings was to delay and drag the proceedings instead of contesting the case on merits.

10. I also note that the appellant had filed an application under Section 16 of the Act, but once the appellant fails to appear and pursue the application, the application is deemed to be not pursued and hence dismissed and therefore there was no requirement of the Arbitrator to consider the application under Section 16 of the Act. In any case, on merits with respect to the existence of arbitration clause impugned Award notes that with respect to the five invoices that the same contained arbitration clause of the disputes being decided by an Arbitrator appointed by the Executive Committee of the Paper Merchants Association (Regd.) Delhi.

11. In view of the above, there is no merit in the appeal and the same is hereby dismissed.

AUGUST 09, 2017/

VALMIKI J. MEHTA, J