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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 547 OF 2017

R.M. Textiles ...Petitioner

V/s.

Vajubhai Investment Pvt Ltd ...Respondent

Mr. Rakesh Agrawal for the Petitioner.
Mr. Rajeev Carvalho a/w. Mr. Mayur Bhojwani a/w. Ms. Prangana Barua i/b. M/s. Manilal Kher Ambalal & Co. for Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 05TH FEBRUARY, 2018.

P.C. :-

1. By this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 01st June, 2016 passed by Arbitrator Tribunal along with the claims made by the respondent. The Arbitral Tribunal was constituted under the provisions of The Bombay Yarn Merchants Association and Exchange Limited.
2. It was the case of the respondent that the petitioner had not made payment to the respondent arising out of 17 invoices referred to in the impugned award.
3. It was the case of the petitioner that since petitioner did not

make payment under those invoices to the extent of Rs. 28,12,910/-, the respondent invoked arbitration agreement recorded on the invoices. The petitioner however did not file any statement of defence and did not remain present before the Arbitral Tribunal. The Arbitral Tribunal by an award dated 01st June, 2016 directed the petitioner to pay a sum of Rs. 28,12,910/- with interest accrued thereon.

4. The respondent has raised an issue of limitation at the threshold in the petitioner filing this petition beyond the period of limitation prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996. Despite of the orders passed by this Court, the Bombay Yarn Merchants Association and Exchange Limited could not produce the records and proceedings of the arbitration, perhaps in view of the late communication of the order of this Court to the association. Be that as it may, both the parties have proceeded with the matter without any original records and proceedings being produced by the association.

5. Mr. Agrawal, learned counsel for the petitioner invited my attention to some of the correspondence annexed to the petition and also some of the annexures to the affidavit in reply and rejoinder. He submits that neither any notice nor copy of the award was received by the petitioner from the Arbitral Tribunal. He invited my attention to

some of the averments and more particularly in paragraphs 1 to 6 of the arbitration petition and would submit that admittedly in the notices allegedly sent to the petitioner by the learned arbitrator does not disclose the name of the building i.e. Aftab Apartment. He submits that none of those notices or even award was received by the petitioner. The award in violation of the principles of natural justice and thus deserves to be set aside. The submission of the learned counsel is that in the impugned award, the learned Arbitral Tribunal did not render any reasons.

6. The learned counsel for the respondent on the other hand invited my attention to the correspondence exchanged between the Bombay Yarn Merchants Associations and Exchange Limited with Bhajipala Post Office inquiring about the service of the arbitral award sent by Registered A.D. upon the petitioner. He submits that Post Office had confirmed that the copy of the award was delivered upon the petitioner. Insofar as the notices which are issued and served upon the petitioner are concerned, learned counsel invited my attention to the findings rendered by the Arbitral Tribunal in the impugned award and would submit that those notices were sent by the Arbitral Tribunal by Registered A.D. post and also by hand delivery post sent through the office of the association calling upon the petitioner to attend the proceedings before the Arbitral Tribunal

and to raise his defence, if any.

7. Learned Counsel also invited my attention to the order passed by Shri Justice G.S. Patel in Chamber Summons (L) No. 2095 of 2016 making observations about the conduct of the petitioner. He submits that in order dated 29th March, 2017 this Court directed the registry to effect service at the address mentioned in the said order. He submits that even in the said order the name of the building i.e. Aftab Apartment was not mentioned. The said notice was admittedly served upon the petitioner. It is submitted that the petitioner has thus avoided the notice served by the Tribunal through the association including copy of the award which was sent by the Arbitral Tribunal.

8. Insofar as the submission of learned counsel for the petitioner that the Arbitral Tribunal has not allowed the claim on merits is concerned, the learned counsel for the respondent invited my attention to the averments made by the petitioner in the arbitration petition and also in the rejoinder and would submit that the petitioner has not disputed the invoices which were subject matter of the arbitration. He submits that the Arbitral Tribunal has recorded reasons in the impugned order and has rendered a findings on the factum of issuance of the invoices and demanding the payment by the respondent from the petitioner.

9. A perusal of the record indicates that the petitioner has not

disputed the factum of issuance of invoices by the respondent upon the petitioner. A perusal of the rejoinder filed by the petitioner indicates that it is the case of the petitioner that the entire business was carried out between the petitioner and the respondent in good faith. The petitioner has not opposed the transaction between the petitioner and the respondent. In these circumstances, I am not inclined to accept the submission of learned counsel for the petitioner that there were no transactions between the petitioner and the respondent. The Arbitral Tribunal has categorically rendered a finding in this regard in the impugned award.

10. Insofar as service of notices by the Tribunal through the association is concerned, the Arbitral Tribunal has rendered a finding that all the notices were served upon the petitioner. The association had exchanged correspondence with the concerned post office insofar as service of the award made by Arbitral Tribunal is concerned. A perusal of the correspondence exchanged between the association and the post office clearly indicates that a copy of the award was duly served upon the petitioner at the same address without mentioning the name of the building i.e. Aftab Apartment. Pursuant to the order passed by Shri Justice G.S. Patel on 29th March, 2017, the petitioner was duly served with the papers and proceedings in Chamber Summons (L) No. 2095 of 2016 upon the

petitioner at the same address, which also did not disclose the name of the building.

11. Insofar as the submission of the learned counsel for the petitioner that the second address of the petitioner is mentioned on the leave and license premises was vacated by the petitioner in the month of December 2015 and thus no service of any of the notices could have been served upon that address is concerned, in my view there is inconsistency in the case of the petitioner insofar as this issue is concerned, in the averments made in the petition as well as affidavit in rejoinder. Be that as it may, it is not the case of the petitioner that the petitioner had informed about its new address in lieu of old address mentioned in the leave and license agreement to the respondent.

12. A perusal of the impugned award clearly indicates that the Arbitral Tribunal has recorded reasons which are recorded after considering the pleadings and the documents produced by the respondent before the Arbitral Tribunal. The findings rendered by the Arbitral Tribunal being not perverse, the same cannot be interfered in this petition.

13. To test the bonafides of the petitioner, this Court called upon the petitioner to deposit the entire amount. The learned counsel appearing for the petitioner on instructions states that his client is

unable to deposit any amount. Considering the conduct of the petitioner as noticed by this Court in the order dated 29th March, 2017 passed in Chamber Summons (L) No. 2095 of 2016, I am of the view that the petitioner has been avoiding service of notices and copy of the award. The award thus rendered by the Arbitral Tribunal cannot be considered as an ex-parte award. The petition is devoid of merits and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)