

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO.1944 OF 2018
IN
ARBITRATION PETITION (L) NO.903 OF 2018**

Sharokh Fareedoon Calcuttawala ...Applicant
Versus
Shree Akshar Corporation and another ...Respondents

Ms. Sheetal V. Malvankar for the Applicant.

Dr. Birendra Saraf a/w Mr. Rajeev Carvalho, Mr. Shiraj Menon I/b M. J. Juris, for Respondent No.1.

Mr. Sharan Jagtiani a/w Ms. Aarti Kulkarni I/b Mr. Sachin Masrukar, for Respondent No.2.

CORAM : S. C. GUPTE, J.

DATED : 26 SEPTEMBER 2018

P.C.:

1] Heard learned counsel for the parties. This Notice of Motion seeks condonation of delay of 29 days in filing the Arbitration Petition. It is the case of the Applicant/Petitioner that he came to know about the Award on 12th April 2018 and though the Petition is filed beyond the ordinary period of limitation, it is within 120 days.

2] Learned counsel for the Respondents opposes the application.

Learned counsel submits that it is the Petitioner's own case that a copy of the consent Award was served on him on 30th March 2018. Learned counsel submits that that the Petitioner got to see the Award only on 12th April 2018 is not relevant for the purposes of computing the period of limitation. Any service, for it to be termed as legal service, must be effected on the addressee or a person authorised by him for receipt of such service. Leaving the copies at the shop is no service. Learned counsel for the Respondents submits that receipt of written communication in so far as Arbitration Proceedings are concerned, is governed by Section 3 of the Arbitration and Conciliation Act, 1996 (for short "the said Act") and not by the ordinary rules of service provided in the Civil Procedure Code or the High Court Rules. The communications referred to in Section 3 of the said Act are inter-se communications between parties to a reference or to an Award. In the present case, the Petitioner is neither a party to the arbitration reference nor a party to the award. The Respondents are unable to point out, if there is any acknowledgment obtained from any authorized representative of the Applicant/Petitioner so as to term 'leaving' of copies on 30th March 2018 as an effective service. There is no reply filed by the Respondents to the Notice of Motion joining issues with the statement of facts contained in the affidavit in support of the Notice of Motion. In the

premises, leaving of copies at his shop would not amount to receipt of written communication by him. In any event, under Section 3 of the said Act, what is contemplated is delivery either personally or at the place of business and not “leaving” copies at the place.

3] The Notice of Motion in the premises is made absolute in terms of prayer clause (a). The office to number the Arbitration Petition and place the Petition for admission in due course.

4] It is clarified that all contentions of the parties on maintainability of the Arbitration Petition are kept open.

Balaji
Govindrao
Panchal

Digitally signed by
Balaji Govindrao
Panchal
Date: 2018.09.27
11:13:24 +0530

(S. C. GUPTE, J.)