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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (LODGING) NO.322 OF 2016
IN
ARBITRATION PETITION NO.432 OF 2016**

Logic Eastern India Pvt. Ltd.

..Appellant/
Org.Petitioner

Vs.

KEC International Limited (Cables SBU)

..Respondent

Mr.Milind Sathe, Senior Advocate, with Mr.Alok Shukla, Mr.Mukul Gautam, Mr.Ram Kutwal, Ms.Hemal Shah and Ms.Pooja More i/b. Ram Kutwal for Appellant.

Mr.A.Y. Sakhare, Senior Advocate, with Mr.V.B. Pandey and Mr.Yashwant Dhanegave i/b. S.P. Srivastava for Respondent.

**CORAM : NARESH H. PATIL AND
G.S.KULKARNI, J.J.**

Reserved on : 22nd March, 2018

Pronounced on : 4th May, 2018

JUDGMENT (Per G.S. Kulkarni, J.)

This appeal under Section 37 of the Arbitration and Conciliation Act 1996 (for short “the Act”) arises from an order dated 2 August 2016 passed by the learned Single Judge whereby the

appellant's arbitration petition under Section 34 of the Act assailing the award of the arbitral tribunal has been dismissed as barred by limitation.

2. It is not necessary to delve on the merits of the matter, suffice it to note that the disputes had arisen between the parties under a contract for supply of software under a '*license and technology development agreement*' dated 15 December 2002. Under this agreement, the respondent had approached the appellant for its requirement of software and the appellant had agreed to develop the said software and supply it to the respondent. It was the respondent's case that the appellant had defaulted in performing its obligations under the said contract. Accordingly, the respondent had invoked the arbitration clause under the agreement and had raised a claim before the arbitral tribunal. It is the respondent's case that despite service of notice of the arbitration proceedings, the appellant had failed to appear and the arbitral tribunal consequently proceeded to make an ex-parte award dated 7 December 2012. The award was forwarded to the parties by the learned arbitrator by registered speed post under his covering letter dated 10 December 2012 which was addressed to the two addresses of the appellant namely at “(1)Plot No.4, Road No.5313, Punjab Bagh (West), New Delhi – 110 026 (for short “the New Delhi

address”); and (2) B-2, Sector-31, Noida – 201301 (for short “the Noida address”). However, the postal authority returned the envelopes containing the award with remarks “प्राप्तकर्ता मकान छोडकर नामालुम कीधर चले गये अतः वापस” and “*No such firm at this address*” dated 17 December 2012 and 18 December 2012 respectively.

3. On the other hand, it is the case of the appellant that the appellant had not received any notice of the arbitration proceedings and thus the appellant could not participate in the arbitration proceedings. It is the case of the appellant that the appellant had become aware of the arbitral award for the first time when a copy of the execution petition in execution case No.108 of 2015 as instituted by the respondent before the Court of District Judge, Gautambudh Nagar, Greater Noida, was received by the appellant on 29 October 2015. Immediately on receiving knowledge of the award, the appellant had approached this Court on 11 December 2015 by filing the arbitration petition in question (Arbitration Petition No.432 of 2016) challenging the award under Section 34 of the Act.

4. Before the learned Single Judge, the respondent objected to the maintainability of the arbitration petition on the ground that

arbitration petition was barred by limitation in as much as the arbitral tribunal had made the award on 7 December 2012 and the appellant's arbitration petition under Section 34 of the Act was filed on 11 December 2015 and thus was beyond the prescribed period of three months and the extended period of thirty days as prescribed by Section 34(3) of the Act. The respondent contended that the appellant was well aware of the arbitration proceedings. The award passed by the learned sole arbitrator was intimated to the appellant by the learned arbitrator by his letter dated 10 December 2012 which was forwarded by registered post acknowledgment due and the envelop containing the award was returned by the postal authority as undelivered under the remarks dated 17 December 2012 and 18 December 2012. Thus, the case of the respondent was that the appellant's arbitration petition under Section 34 of the Act was clearly time barred as filed after the expiry of almost three years from the expiry of the prescribed period of limitation.

5. Learned Single Judge considering the rival pleas and the legal position on the service of an arbitration award, by the impugned order accepted the contention as urged on behalf of the respondent and held that the arbitral award was deemed to be served/delivered upon the appellant in December 2012, as it was sent on the last known

address of the appellant by Registered Post A.D. and the said communication was deemed to have been received on the day it was sought to be delivered by the postman. Further the learned Single Judge has made an observation that the appellant had evaded service of the signed copy of the arbitral award though the same was attempted to be served by the learned arbitrator at the last known address of the appellant. The learned Single Judge accordingly, dismissed the appellant's Section 34 petition.

6. Mr.Sathe, learned Senior Counsel for the appellant, in assailing the impugned order passed by the learned Single Judge, would submit that the observations of the learned Single Judge that the award was deemed to be delivered at the Noida address or the New Delhi address, cannot be accepted in view of the clear provisions of Section 31(5) of the Act which mandates delivery of the signed copy of the award. It is submitted that the appellant had shifted from the above address namely namely B-2, Sector 31, Noida in April,2012 to C-56/39, Sector-62, Noida, U.P. by referring to a rent agreement date 25 April 2012. He submits that also the registered address was changed from Plot No.4, Road No.53B, Punjabi Bagh (W.), New Delhi to Red Ford Capital Parsvnath Tower, Level 1, Bal Veer Singh Marg, Gole Market, New Delhi-110001. It is submitted that even otherwise there was no notice of the

arbitration proceeding to the appellant. It is submitted that the contention of the respondent that the notice of the arbitration proceeding was duly served on the appellant also could not be believed for the reason that in May 2012 appellant's address was in-operational on account of shifting of the business activities from the said address to a new address at C-56/39, Sector 62, Noida. It is submitted that in any case even if it was to be assumed that the appellant had not shifted their activities from Noida office, however the fact remained that there was nothing on record to show that the award was served/received by the appellant in the manner known to law. Mr. Sathe in supporting his contention submits that the endeavour of the Court would be to consider whether there is compliance of the provisions of Section 31(5) of the Act. It is submitted that the learned Single Judge has not considered these issues in the proper perspective in rejecting the impugned order. Mr. Sathe referring to the proceedings of criminal Writ Petition no.67 of 2011 between the parties and the order dated 19 July 2013 in the said petition, contends that even on 19 July 2013 the respondent has suppressed the fact of the award being pronounced by the learned Arbitrator on 7 December 2012. The submission of Mr.Sathe is that the respondent with malafide intention had suppressed from the appellant and had created a clear impression before the Court that the arbitration proceedings were yet to be served on the appellant.

In support of the submissions, Mr. Sathe has placed reliance on the following decisions - (i) **M/s.Madan and Co. Vs. Wazir Jaivir Chand** ¹, (ii) **N.Parameswaran Unni Vs. G.Kannan and Another**², (iii) **Francisco D'Souza Vs. L & T Finance**³, (iv) **Apex Encon Projects Pvt. Ltd. and Ors. Vs L & T Finance Ltd. and Ors.**⁴, and (v) **Jasvinder Kaur Vs. L & T Finance & Anr.**⁵.

7. On the other hand, Mr.Sakhare, learned Senior Counsel for the respondent, in opposing the appeal and supporting the impugned order has reiterated the respondent's contentions made before the learned Single Judge. Mr.Sakhare would submit that the stand of the appellant is not of a honest litigant in as much as the appellant was not only served of the notice of the arbitration proceedings but also the award was delivered on the appellant in a manner known to law. It is submitted that the learned sole arbitrator made an ex-parte award and award was forwarded by the learned arbitrator under the forwarding letter dated 10 December 2012 not only on Noida address of the appellant but also on the registered address namely at Plot No.4, Road No.53B, Punjabi Bagh (W.), New Delhi by registered post

1 1989(1) SCC 264

2 (2017) 5 Supreme Court Cases 737

3 2015(5) Mah.L.J. 390

4 MANU/MH/3351/2015

5 Arbitration Petition No.1053 of 2012, decided on 12/03.2015

acknowledgment due and the same was returned with the said postal remarks. Mr. Sakhare would rely on the provisions of Sections 3, 31(5) of the Act and Section 27 of the General Clauses Act 1897 to contend that the award was deemed to be delivered on the appellant on 17 December 2012 and 18 December 2012 referring to the said two remarks of the postal authorities returning the envelopes. Mr. Sakhare has principally relied on the decisions in (1) **M/s.Madan and Co. Vs. Wazir Jaivir Chand** (supra); (2) **N.Parameswaran Unni Vs. G.Kannan and Another** (supra); (3) **Apex Encon Projects Pvt. Ltd. and Ors. Vs L & T Finance Ltd. and Ors.** (supra).

8. We have heard the learned Senior Counsel for the parties. We have also perused the record and the impugned judgment passed by the learned Single Judge.

9. Though many contentions are raised, the short issue which is required to be decided in this appeal is as to whether the award in question can be considered to be delivered on the appellant, as per the requirement of Section 31(5) of the Act.

10. Learned Counsel for the parties have advanced submissions and have referred to various documents pertaining to the notice of the

arbitral tribunal to the appellant in regard to the commencement of arbitration proceedings as also in regard to the service of the interim application. We do not intend to delve on the said issue for the reason, that even assuming, the appellant was served with the notice of arbitral proceedings, however, the delivery of the award of the arbitral tribunal on the parties before the arbitral tribunal itself is an independent issue.

11. The delivery of the award on a party to the arbitration proceedings evolves creation of a bundle of legal rights and obligations on the parties namely a party as per the provisions of Section 33 of the Act can approach the arbitral tribunal for correction and interpretation of the award and/or for an additional award within thirty days from received of the arbitral award. A party against whom an award is passed subject to the limitation as prescribed under Section 34(3) of the Act, has right to challenge the award as per the provisions of Section 34, conversely the successful party would become entitled to execute the award as a decree of the Court. Thus, delivery of the award raises several legal consequences between the litigating parties. Thus, the requirement of Section 31(5) that after the arbitral award is made, a signed copy of the award shall be delivered to each party is a significant issue in the arbitral process.

12. In the facts of the present case, it is not in dispute that the appellant did not participate in the proceedings before the arbitral tribunal, as according to the appellant it had no notice of the arbitration proceedings. It is also not in dispute that the arbitral tribunal made an award on 7 December 2012. The case of the respondent is that the learned arbitrator forwarded a copy of the award dated 7 December 2012 to the parties under a covering letter dated 10 December 2012. In paragraph 2 of this letter, the learned arbitrator recorded that the final award is being sent to the appellant by 'Registered acknowledgment due' and receipt whereof be acknowledged. By the said letter, award was forwarded by the learned arbitrator on the following two addresses of the appellant:-

- “(i) Plot No.4, Road No.5313, Punjab Bagh (West), New Delhi – 110 026.
(ii) B-2, Section 31, Noida-201301.”

The envelopes were returned by the postal authorities with the following remarks:-

Address	Remark
Plot No.4, Road No.5313, Punjab Bagh (West), New Delhi – 110 026	No such firm at this address 17/12/2012
B-2, Sector-31, Noida – 201 301	“प्राप्तकर्ता मकान छोडकर नामालुम कीधर चले गये अतः वापस” 18/12/2012

In view of the return and non delivery of the said envelopes, the learned arbitrator by his letter dated 1 February 2013 informed the advocate for the respondent that he had forwarded the award to the appellant under covering letter dated 10 December 2012 and the return of the envelopes containing the award by the postal authority as unserved. The learned arbitrator recorded that both the returned envelopes were being forwarded to the Advocate for the respondent with a direction that the learned Advocate for the respondent shall ensure personal service thereof upon the appellant and confirm the compliance thereof to the tribunal by producing the proof of service. Both the parties have advanced arguments on this letter and hence it would be appropriate to note the contents of the letter dated 1 February 2013 of the learned arbitrator, which read thus:-

“ The final Award passed by the Tribunal on 7th December 2012, in the captioned Arbitral Reference was forwarded to the Respondents separately at their addresses on record of the proceedings, by its letter dated 10th December 2012, transmitting the same by Post as Regd. A.D. on 10th December 2012, as the service upon them under section 31 of the Arbitration & Conciliation Act 1996. However, both the envelopes containing the said Award have been returned by the Postal Authority as “unserved”.

The Tribunal herewith is forwarding both the returned envelopes to you with a direction that you shall ensure personal service thereof upon the Respondents and confirm the compliance thereof to the Tribunal by producing the proof of service, without fail.”

13. The contention as urged on behalf of the appellant is that the learned arbitrator himself had acknowledged that the envelopes containing the award were returned by the postal authority as unserved. It is submitted that it was thus clear that the award was not served on the appellant and consequently, the learned arbitrator entrusted the responsibility of service of the award on the respondent's Advocate, by recording in the last paragraph of the said letter that the Advocate for the respondent shall ensure personal service thereof upon the appellant and confirm the compliance to the tribunal by producing proof of service, without fail. According to the appellant, this direction of the learned arbitrator was never complied by the respondent and thus service of the award was never effected on the appellant, so as to carry out the directions of the learned arbitrator. On 18 July 2013, an application came to be made by the respondent before the arbitrator for publication of the award which was allowed by the learned arbitrator by an order dated 19 July 2013. In pursuance of the said directions of the learned Arbitrator, the respondent published the award in two newspapers on 23 September 2013. Thereafter the respondent had approached this Court by filing an execution application seeking to execute the award. On 17 April 2014 an application came to be made by the respondent before this Court for transfer of the decree to the Noida Court, which came to be transferred on 6 May 2014. Accordingly,

in January, 2015 execution application no.108 of 2015 was filed by the respondent before the Noida Civil Court for execution of the award.

14. On the execution application the Noida Civil Court issued a summons on the appellant in August, 2015 on the following addresses i) Plot No.4, Road No.53B, Punjabi Bagh (West), New Delhi – 110 026 and ii) B-2, Sector-31, Noida – 201 301. According to the appellant, on 9 October 2015 when the appellant appeared before the Noida Court, the appellant learnt about the award and applied for a copy of the award. It was on 29 October 2015 a copy of the award was received by the appellant from the executing court and thereafter on 11 December 2015 the appellant filed the arbitration petition in question on 11 December 2015 under Section 34 of the Act challenging the said award.

15. On the above conspectus we consider whether the award can be said to be delivered on the appellant as per the requirement in law. Section 31(5) of the Act provides that after the arbitral award is made, a signed copy shall be delivered to each party. Section 31(5) of the Act reads thus:-

“31. Form and contents of arbitral award:-

....

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

16. In the context of delivery of an award, Section 3 of the Act which provides for “receipt of written communications” also has relevance. Sub-clauses (a) and (b) of Section 3(1) of the Act provides as to when a written communication is deemed to have been received. As the said provision has been an issue of contention and arguments have been advanced on the purport and effect of the said provision, we deem it appropriate to note the provision hereunder. Section 3 reads thus:-

“3.Receipt of written communications.- (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 so delivered.*

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

17. In the facts as they stand, we are of the opinion that sub-clause (b) of Section 3(1) would become applicable to the written communication of the learned arbitrator dated 10 December 2012,

forwarding the award as the learned arbitrator forwarded the award by registered post to the appellant, at the last two known places of business or mailing address of the appellant. The record indicates that there was an attempt to deliver the said communication. In this situation, sub-clause (b) of Section 3(1) of the Act provides that a written communication is deemed to have been delivered. It is not in dispute that the postal envelopes were returned undelivered with remark “*No such firm at this address*” and “प्राप्तकर्ता मकान छोडकर नामालुम कीधर चले गये अतः वापस” as noted above. The requirement of sub-clause (b) of Section 3(1) is that a written communication is deemed to have been received, if it was 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. It cannot be disputed that the award was sent by the learned arbitrator by post and there was an attempt to deliver the award in the manner the provision contemplates. We were also shown the originals of the envelopes so returned by the postal authorities bearing the remarks of the postman.

18. It is also not the appellant's case that the change of address, if any, namely an address different from the address as appearing in the

agreement or the address already known to the respondent and for that matter even the registered address, was at any point of time informed to the respondent. We are not impressed with the case of the appellant that in view of the change in address of the appellant, the service of the award on the addresses as incorporated in the letter dated 10 December 2012 ought to be considered as invalid. This contention of the appellant is on the basis of an averment in paragraph 2(A) of Section 34 petition filed by the petitioner which states that its registered office is at “Red Ford Capital Parsvnath Tower, Level 1, Bhai Veer Singh Marg, Gole Market, New Delhi – 110001”. However there is also a clear averment in the same paragraph stating that the appellant has its' Work, Research and Development Centre at B-2, Sector-31, Noida, U.P. Further in the title of the Section 34 petition, this address has been referred. Notably the learned arbitrator had forwarded the award under his covering letter on this very address at Noida. It is therefore, difficult for us to believe the case of the appellant of change of address. This also for another reason and in our opinion which is quite significant, namely that the appellant has received the summons (page 362) issued by the District Judge, Gaziabad in Execution Petition No.108 of 2015 at the same address on which the arbitral award was forwarded by the learned arbitrator under his letter dated 10 December 2012 as in the said proceedings the respondent had titled the same two addresses of the

appellant on which the learned Arbitrator had forwarded the award. The receipt of the summons on the said addresses has been clearly admitted by the appellant in paragraphs 2-AA and 2-BB of the Section 34 petition. The said averments read as under:-

“2BB. That in the month of August, 2015, for the first time, the Applicant received summons from District Judge Ghaziabad in Execution Petition No.108/2015, which was filed by KEC International Limited. The applicant was surprised to receive the summons as he had never dealt with the said company. Thereafter the applicant appeared before the Ld. District Judge, Gautambudh Nagar and requested for supply of copy of execution petition as the summons was not accompanied with the same. The Ld. District Judge vide order dated 22.08.2015 and 09.10.2015 directed the Respondent to supply the copy of the Petition to the applicant, which was supplied to the applicant by the respondent counsel on 29.10.2015 and the Applicant for the first time received the copy of the exparte Arbitral award passed by the Ld. Arbitrator. The Execution petition itself states that the copy of the award dated 07.12.2012 was not served upon the applicant. True copy of the Execution Petition No.108/2015 is annexed herewith and marked as Annexure “K”. True copy of the ordersheet of the Execution Petition No.108/2015 pending in the Court of District Judge, Gautambudh Nagar is annexed herewith and marked as “Annexure L”.

CC. Thus the applicant became aware of the Arbitral Award for the first time, when copy of the execution Petition in execution Case No.108 of 2015 was received by the Applicant on 29th October, 2015.”

19. In the circumstances, considering the provisions of sub-clause (b) of section 3(1) of the Act read with provisions of Section 31(5), we are of the clear opinion that when the learned arbitrator had forwarded the award at the last known address of the appellant namely

B-2, Sector-31, Noida – 201 301 and the same being returned by the postal authority with the said remarks as noted above, it is required to be held as an appropriate and lawful delivery of the award on the appellant, on the day, the same was attempted to be delivered namely on 17 December 2012 and 18 December 2012 respectively as clearly seen from the postal remark on page Nos.558 and 559 of the paper book. The appellant has no material by which the appellant can rebut the presumption of the deemed delivery of the award as noted above.

20. We may also refer to the provisions of Section 27 of the General Clauses Act, 1897 which provides for “*Meaning of service by post*”, which in our opinion is applicable when we consider the issue of “delivery of the award” under Section 31(5) read with Section 3 of the Act. Section 27 of the General Clauses Act, 1897 reads thus:-

“27 Meaning of service by post. Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.” (emphasis supplied.)

Section 31(5) uses the expression “*delivered*” and thus, would squarely

fall within the connotation “*or any other expression is used*” as provided under Section 27 of the General Clauses Act. The cumulative effect of Section 3 of the Act read with Section 27 of the General Clauses Act would be that the communication and/or the award in the present case would be deemed to have been delivered when the learned Arbitrator properly addressed the same to the appellant on the known addresses, and on pre-paying and posting by registered post the envelop containing a covering letter and the award. The services would be deemed to be effected at the time at which the said envelop was being delivered in the ordinary course of post, as Section 27 of the General Clauses Act would provide. As noted the consequence and effect of Section 27 of the General Clauses Act qua the delivery of the award on the appellant is further amplified by the clear provisions of sub-clause (b) of Section 3(1) of the Act.

21. If we are to accept the submissions as urged on behalf of the appellant, then, the consequence would be to render, the provisions of not only Section 3 of the Act which is a Special Act but also the provisions of Section 27 of the General Clauses Act, nugatory. We need to bear in mind that the duty of the Court when confronted with such pleas as raised by the appellant would be to safeguard the intention of the legislature behind Section 3 of the Act read with the provisions of

Section 27 of the General Clauses Act in its applicability to Section 31(5) of the Act, namely to maintain the salutary efficacy of arbitral procedure which cannot be left to be frustrated.

22. We may also refer to the provisions of Order XXIX of the Code of Civil Procedure which concerns “Suits by or against Corporations”. Rule (2) of Order XXIX provides for 'Service on Corporation' in the following terms:-

“**2.Service on corporation.**- Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served-

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business. (emphasis supplied)

Thus, for the purpose of sub-rule (2) 'service on corporation' would be recognized as a good service by leaving it or sending it by post addressed to the corporation at the registered office, or when there is no registered office then at the place where the corporation carries on business.

23. We also refer to the provisions of Section 114 of the Evidence Act which enables the Court to presume the existence of certain facts which the Court thinks likely to have happened regard

being had to the common course of natural events, human conduct and public and private business, in relation to the facts of the particular case. Consequently, the Court can presume that the common course of business has been followed in particular cases. Applying the test to the communication sent by post, as prescribed under Section 114 of the Evidence Act, the Court can draw a presumption that in the common course of natural events, in public and private business, the communication has been delivered at the address of the addressee. There is no material whatsoever, on the basis of which it can be held that the presumption of deemed delivery of the award was rebutted by the appellant.

24. As regards the contention of Mr.Sathe referring to the proceedings of Criminal Writ Petition no.67 of 2011 and order dated 19 July 2013 passed thereon that the intention of the respondent was to suppress the declaration of award by the arbitrator on 7 December 2012 also cannot be accepted. These were distinct proceedings. There is no material by which it can be unhesitantly held that the representatives of the respondent who were pursuing the proceedings on the very day were aware and had knowledge of the arbitral proceedings.

25. Now coming to the decision as relied on behalf of the

appellant in *Union of India vs. Tecco Trichy Engineers & Contractors*⁶, there can be no dispute on the legal position as set out in paragraph 8 of the decision that the delivery of arbitral award by the arbitral tribunal and receipt by the party of the award sets into motion several periods of limitation. This was a case where the service of the arbitral award was made on the General Manager by way of receipt in his inward register which was held to be not sufficient notice, so as to activate the department to take appropriate steps in respect of and in regard to the award passed by the arbitrators to constitute the starting point of limitation for the purposes of Section 34(3) of the Act, as it was the Chief Engineer who was the signatory to the agreement and who had represented the Union of India in the arbitral proceedings. In the circumstances, it was held that the service on the General Manager was held to be not an appropriate service. The facts of the present case are completely distinct.

26. Similarly the decision of the Supreme Court in “*State of Maharashtra Vs. Ark Builders Pvt. Ltd.*”(supra) in the facts of the present case would not assist the appellant. Moreover, the observations of the Supreme Court in paragraph 15 of the decision fortify the conclusion we have reached when the Supreme Court has laid down

6 (2005) 4 Supreme Court Cases 239

the legal position in the following words:-

“15. The legal position on the issue may be stated thus. If the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law.”

27. Further the appellant's reliance on the decision of the Supreme Court in *Benarsi Krishna Committee & Ors. Vs. Karmyogi Shelters Pvt.Ltd.* (supra), is also not well founded. The Court had held that the delivery of arbitral award on agent or advocate of party would not amount to service of the award on party itself. The decision holds that if copy of signed award was not delivered to party itself, it would not amount to compliance of Section 31(5) of the Act.

28. The appellant's reliance on the decision of Punjab and Haryana High Court in “*Amit Kumar Jain Vs. Anil Kumar Jain*” (supra), would also not help the appellant's case. In the facts of the said case the learned Single Judge has observed that there was no evidence or any concrete argument that a signed copy of the award was duly delivered upon the appellant. What we note is that in making the observations in paragraph 8 of the decision, the purport and effect of the provisions of Section 3 of the Act as though noted in the paragraph

(4) of the judgment, has not been considered.

29. The respondent's would be justified in relying on the decision of the Supreme Court in *M/s.Madan & Co., Vs. Wazir Chand* (supra) wherein the Court was considering the issue 'whether notice sent by the respondent therein by registered post was said to have been served on the petitioner.' The evidence on record indicated that the petitioner had gone away from the premises without intimating landlord or neighbours of his correct address. The Supreme Court in the context held that dispatch of notice by registered post AD was sufficient compliance for landlord for eviction of the tenant. In the said context, the Supreme Court in paragraph 5 has observed thus:-

“5. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the assessee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a Court under Order V of the C.P.C. The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret the

provision as requiring that the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal PG NO 990 course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant."

30. The Supreme Court in *Parameswaran Unni Vs. G.Kannan & Anr.* (supra) in examining the provisions of Section 27 of the General Clauses Act read with Section 114 of the Evidence Act, held that when a notice is sent by registered post and is returned with postal endorsement "refused" or "not available in the house" or "house locked"

or “shop closed” or “addressee not in station”, due service is required to be presumed. The Supreme Court in paragraph 15 has observed thus:-

“15. This Court in a catena of cases has held that when a notice is sent by registered post and is returned with postal endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station”, due service has to be presumed. Though in the process of interpretation right of an honest lender cannot be defeated as has happened in this case. From the perusal of relevant sections it is clear that generally there is no bar under the NI Act to send a reminder notice to the drawer of the cheque and usually such notice cannot be construed as an admission of non-service of the first notice by the appellant as has happened in this case.”

31. The Division Bench of this Court in “***Apex Encon Projects Vs. L&T Finance Ltd. & Anr.***” (supra) referring to the Judgments in ***Union of India Vs. Tecco Trichy Engineers and Contractors (supra)***, ***The State of Maharashtra Vs. Ark Builders Pvt. Ltd.(supra)***, ***Benarsi Krishan Committee & Ors. Vs. Karmyogi Shelters Pvt.Ltd.(supra)***, considering the issue as to whether the arbitral award was served within the meaning of the provisions of Section 31(5) of the Act and the provisions of Section 27 of the General Clauses Act, held that the packets sent by registered post were properly addressed to the corporate office of the appellants and the presumption would be if it is properly addressed and sent by registered post after pre-payment upon the correct address of the addressee, the award was served properly as per the provisions of Section 3(1)(a) read with Section 27 of the

General Causes Act. We note the observations of the Division Bench in paragraphs 8 and 10 which read thus:-

“8. The communication made to the appellants at his place of business, therefore, is sufficient for proving receipt of written communication. The learned Single Judge therefore relying on Section 51 of the Companies Act, 1956 and 3(1)(a) of the Arbitration and Conciliation Act has, in our view, correctly held that the award was served properly as per the provision of law and therefore, since it was duly served at the registered office, it was deemed to be served upon the Corporate Office.

10. The learned Single Judge, therefore, in our view, has rightly recorded a finding of fact that the packets sent by registered post are properly addressed to the corporate office of the appellants. A perusal of the said provisions reveals that a presumption is raised about proper service if it is properly addressed and sent by registered post after pre-payment upon the correct address of the addressee.

32. Having considered the position in law, we do not wish to burden this judgment by referring to the other decisions which relied on behalf of the respondent laying down similar principles.

33. Thus in our opinion when the learned Arbitrator had forwarded the award in question to the appellant under his covering letter dated 10 December 2012 by registered post and the same was returned undelivered with the said remarks dated 17 December 2012 and 18 December 2012 as noted above, it would be required to be presumed that the Award was delivered on the appellant.

34. Curiously, though a plea was taken by the appellant that

the address on which the award was forwarded by the learned Arbitrator under his letter dated 10 December 2012, was not a correct address, however, the summons of the District Court Noida under the execution proceedings was forwarded on the same address and same was received by the appellant. Furthermore the Noida address has also been incorporated by the appellant in the title of the petition in question filed under Section 34 of the Act. We therefore, cannot at all, accept the case of the appellant on the change of address. In this regard, in our opinion, the observations of the Supreme Court in *M/s.Madan & Co., Vs. Wazir Chand* (supra) as noted by us above in regard to the remarks made by the postmaster would stare at us, namely, that it cannot be overlooked that an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it and he can so manipulate matters that it gets returned to the sender with vague endorsements such as "*not found*", "*not in station*", "*addressee has left*" and so on.

35. In the circumstances, the appellant's case that the appellant became aware of the arbitral award only when a copy of the execution proceedings was received by the appellant on 29 October 2015 and thereafter within the prescribed limitation had presented the petition under Section 34 of the Act on 11 December 2015, cannot be accepted.

It is correctly held by the learned Single Judge that the Award was deemed to be delivered on the appellant on 18 December 2012 when the delivery was sought to be made on the address of the appellant under covering letter dated 10 December 2012 of the learned Arbitrator, and consequently the Section 34 petition which was thereafter filed by the appellant almost after three years, was clearly time barred considering the provisions of Section 34(3) of the Act.

36. In the light of the above discussion, we are not persuaded to interfere with the well reasoned order passed by the learned Single Judge. The appeal lacks merits. It is accordingly dismissed.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]