

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice D.V.S.S.Somayajulu

Civil Revision Petition No.1145 of 2018

Dated 30.04.2018

Between:

Bagadi Yerram Naidu

... Petitioner

and

M/s.Shriram City Union Finance Limited
Rep. by P.Jagadeswara Rao and 2 others

...Respondents

Counsel for the Petitioner: Mr.M.Krishna Rao

Counsel for respondent No.1: Mr.Maheswara Rao Kuncham

The Court made the following:



Order: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The quality of the order of the Principal District Judge, Srikakulam, appalling though, we have no option except to dismiss this Civil Revision Petition *albeit* for reasons other than those recorded by her.

The petitioner stood as a surety to the loan borrowed by respondent No.3 from respondent No.1. As respondent No.3 failed to repay the loan, respondent No.1 got the dispute referred to respondent No.2- Arbitrator for adjudication. By award, dated 31-12-2015, respondent No.2 has allowed the claim of respondent No.1 against respondent No.3 as the principal borrower and the petitioner as the surety. The petitioner has filed an Arbitration OP under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), for setting aside the award. As there was a delay of 244 days in filing the said OP, he has filed IA.No.1780 of 2016, purportedly, under Order XLI Rule 3 (A) CPC. By the order under revision, which is hard to decipher, the said IA has been dismissed by the lower Court.

We have heard Mr.M.Krishna Rao, learned Counsel for the petitioner, and Mr.Kuncham Maheswara Rao, learned Counsel for respondent No.1.

Under Section 34 of the Act, the party aggrieved by the arbitral award is entitled to avail the remedy of filing Application for setting aside the arbitral award. Sub-Section (3) thereof has stipulated limitation for filing such Application. Under the said provision, such an Application has to be made within three months from the date on which the party making that Application had received the arbitral award or if a request had been made under Section 33, from the date on which that request had been disposed of by the Arbitral Tribunal. Under the proviso to the said sub-section, if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months, it may entertain the application within a further period of thirty days but not thereafter.

The law is well settled that an application, filed beyond the period of 120 days from the time stipulated

under Sub-Section 3 of Section 34 of the Act and its proviso, cannot be entertained by the Courts by condoning the delay (See **Mic Electronics Limited And Ors. vs Union Of India And Ors¹**).

In his affidavit, the petitioner has pleaded that respondent No.2 has passed the award on 31.12.2015; that in December, 2016, he came to know about the said fact on receipt of information from respondent No.1; that immediately he has approached respondent No.2 for supply of a copy of the award; and that on 22.06.2016, a copy of the award was received by him from respondent No.2. The petitioner has not filed any proof in support of the aforementioned averments of his approaching respondent No.2 and the latter supplying a copy of the award on 22.06.2016.

In the counter-affidavit, the Senior Manager Legal - cum- Authorized Signatory of respondent No.1 has categorically averred that respondent No.2 has sent copies of the arbitral award, dated 31-12-2015, to the petitioner as well as respondent No.3 on 12-01-2016 as evident from

¹ 2002 (1) ALD 191

postal receipt Nos.FOF-062778 and 2779 addressed to both of them; that the petitioner failed to substantiate his averment that he has received the award copy only on 22.06.2016 and that having received the award copy, it is deemed that he has received the same in pursuance of respondent No.2 sending the same. Along with the counter-affidavit, respondent No.1 has filed the photocopy of the postal receipts showing that the items were booked on 12-01-2016 in the names of both the petitioner as well as respondent No.3.

Under Section 27 of the General Clauses Act, 1897, where a document is required to be served by post, 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.

No doubt, the postal receipts filed by respondent No.1 do not show the addresses (due to the space

constraint, ordinarily, the postal department does not show the addresses on receipts), an inference has to be drawn that the petitioner has received the copy of the award sent by respondent No.2 on 12-01-2016, for, it is his admitted case that he has received a copy of the award. However, evidently, to save limitation, the petitioner has come out with the averment that he has approached respondent No.2 on coming to know about the passing of the award and received a copy thereof on 22.06.2016. As observed herein before, the petitioner failed to substantiate the said averment by producing any material in that regard. Therefore, the conclusion is irresistible that the petitioner has received the award copy within a reasonable time of respondent No.2- arbitrator dispatching the same on 12.01.2016, but he failed to file the OP within the period of limitation stipulated in Section 34 (3) of the Act and the proviso thereto.

On the analysis as above, we do not find any merit in this Civil Revision Petition and the same is, accordingly, dismissed.

As a sequel to dismissal of the Civil Revision
Petition, IA.No.1 of 2018, filed by the petitioner for
interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(D.V.S.S.Somayajulu, J)

Date: 30-04-2018
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