

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No. 298 of 2018

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Sharat Kumar Sinha, S/o Late Jai Kishore Prasad, Resident at Opposite A/136
People's Cooperative Colony, P.S. - Kankarbagh, District - Patna.

... .. Appellant/s

Versus

M/s Arjuna Construction (P) Ltd. through its Managing Director, Sri Arvind
Kumar, S/o Sri Jagdish Thakur, C/o Sri Mayank Sinha, Resident at Purbi Patel
Nagar, P.S. Shastri Nagar, District - Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Manoj Kumar Sinha, Advocate Mr. Brisketu Sharan Pandey, Advocate
For the Respondent/s	:	Mr. Rajendra Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 29-01-2019

Heard the parties and with consent, the matter is
being disposed of at this stage.

2. This appeal has been preferred, under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996, against the order dated 28.02.2018, passed by the learned 10th Additional District Judge, Patna, in Miscellaneous Case No. 81 of 2016.

3. There was an arbitral proceeding between the parties arising out of a development agreement of multi storied building vide Request Case No. 83 of 2007.

4. By award dated 10.09.2011, a copy at Annexure-2, the learned Arbitrator allowed the prayer of the appellant ex parte against respondent M/s Arjuna Construction



Pvt. Ltd. as the respondent did not appear before the learned Arbitrator even after substituted service of notice through paper publication.

5. The respondent challenged the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 (in short the 'Act') before the learned District Judge, Patna in Miscellaneous Case No. 81 of 2016 and by order dated 28.02.2018, the learned 10th Additional District Judge, Patna who heard the matter, set aside the award, after condoning the delay, in approaching the Court, under Section 34 of the Act. The award was set aside for two reasons. First that the matter was heard ex parte by the learned Arbitrator and second that the subsequent, development agreement dated 31.10.2000, between the parties, was not considered while passing the award.

6. Though, the learned counsel for the appellant has challenged the impugned order on the ground that after expiry of the period mentioned in sub-section 3 of Section 34 of the Act along with period mentioned in proviso to that sub-section, the award could not have been challenged. However, the record does not reveal that arbitral award was ever served on the respondent M/s Arjuna Construction Pvt. Ltd. It is well settled that unless copy of the award is received by the parties



challenging the award, the period of limitation would not start to run.

7. Learned counsel for the appellant has drawn attention of the court towards some papers to substantiate that the respondent appeared in the execution proceeding arising out of the said arbitral award and prayed for setting aside of the arbitration award in the year 2012 itself, therefore, he had knowledge of the arbitral award.

8. The knowledge would not comply the requirement of law of receiving the copy of the arbitral award, hence, the impugned order cannot not be faulted on this ground.

9. However, once the court below came to the conclusion that the matter was heard ex parte by the learned Arbitrator against respondent M/s Arjuna Construction Pvt. Ltd. as such important documents could not be placed by the respondent before the learned Arbitrator, coupled with the fact that the award did not consider the subsequent agreement between the parties dated 31.10.2000, the court below should have remitted back the matter to the learned Arbitrator for substantial justice between the parties. Hence, the impinged order to the extent of setting aside the arbitral award is affirmed and stands set aside to the extent that the learned court below



failed to exercise the jurisdiction to remit back the matter to the learned Arbitrator for substantial justice between the parties.

10. Accordingly, the matter is remitted back to the learned Arbitrator to decide the matter afresh after giving opportunity to the parties. The parties shall suo motu appear before the Arbitrator on 03.03.2019.

11. Let a copy of this order along with a copy of the impugned order and record of arbitration proceeding, if any, in Request Case No. 83 of 2007 be sent to the learned Arbitrator (Hon'ble Mr. Justice Nagendra Rai, Former Judge of this Court), at once.

12. Accordingly, this appeal is partly allowed and partly dismissed.

(Birendra Kumar, J)

Kundan/Rajan

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	01.02.2019
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