

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1281 of 2016**

- Dipak Agrawal S/o Shri Chandrabhan Agrawal, Aged About 53 Years R/o Near Pranami Mandir, Kotra Road, Raigarh Chhattisgarh,

---- Petitioner**Versus**

1. M/s Shriram Transport Finance Co. Ltd. (A Company Regd, Under The Indian Companies Act, 1956), Head Office Third Floor, Mookambika (Wrongly Mentioned Mukabila) Complex No. 4, Lady Desika Road, Mylapore, Chennai Through Branch Manager, Raigarh Branch Office Krishna Shopping Mall, Dhimrapur Road, Raigarh Chhattisgarh
2. Rajiv Kumar Shah, S/o Jawahar Lal Shah, R/o Chakradharnagar, Raigarh Chhattisgarh R/o Dipka Agrawal, Near Pranami Mandir, Kotra Road, Raigarh Chhattisgarh
3. Ashok P. Lakhnikar, Sole Arbitrator, 133 Pande Lay Out, Khamla, Nagpur Maharastra 440025

---- Respondents

For Petitioner : Shri Varun Sharma, Advocate

For Respondents : Shri Ratnesh Kumar Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****26/08/2019**

1. Heard.
2. The present petition is against the order dated 11.03.2016 whereby an application filed by the petitioner objecting to the execution of arbitral award has been dismissed.

3. The short facts of this case are that an agreement dated 03.11.2006 was executed in between the parties and the loan was financed to purchase the vehicle on 26.12.2008. Since the petitioner defaulted in making repayment of the loan of the vehicle bearing No.CG 13 A 9291, therefore, the same was repossessed and thereafter the claim was raised before in house arbitrator at Chennai according to the hypothecation agreement. The petitioner was ex-parte before the arbitrator and the arbitrator eventually passed an award of Rs.743372/- beside the interest. The award was passed on 10.05.2012. When the execution was filed before the local Court on 12.09.2012, the petitioner after notice of the execution raised objection with a ground that the arbitral award was never supplied to him, therefore, he could not challenge the same before the proper forum. Learned Court below dismissed the objection vide impugned order dated 11.03.2016 by holding that the petitioner has not challenged the arbitral award by way of an application under Section 34 of the Arbitration and Conciliation Act, 1996.
4. Learned counsel for the petitioner submits that as per the law laid down in the case of **Anilkumar Jinabhai Patel** (DEAD) THROUGH LEGAL REPRESENTATIVES **Versus Pravinchandra Jinabhai Patel and others** {(2018) 15 SCC 178} since the petitioner was not served with the signed copy of the arbitral award, he could not challenge the same and it is mandatory under Section 31 (5) of the Act, 1996 so that he could challenge the same.
5. Per contra learned counsel for the respondent opposes the arguments advanced by learned counsel for the petitioner and submits that the petition is liable to be dismissed.

6. I have heard learned counsel for the parties and perused the documents.
7. Perusal of the order-sheet of this Court dated 12.05.2016 would show that the interim protection was granted to the petitioner against the execution. Before this Court too nothing has been placed on record to show that the signed copy of the arbitral award was delivered to the petitioner, who is an affected party. The sub-section (5) of Section 31 of the Act, 1996 makes it mandatory that after the arbitral award is passed, the signed copy to be delivered to each party. There cannot be presumption of compliance of sub-section (5) of Section 31 of the Act, 1996 and as per the law laid down in the case of ***State of Maharashtra V. A.R.K. Builders (P) Ltd. {(2011) 4 SCC 616}*** which is reiterated by the Supreme Court in the case of ***Anilkumar (supra)*** and has laid down that the limitation period prescribed under Section 34 (3) of the Act, 1996 would commence from the date of signed copy of the award delivered to the party making the application for setting it aside. For the sake of brevity para 17 of the ***Anilkumar (supra)*** is reproduced hereinbelow:-

17. In *State of Maharashtra v. ARK Builders (P) Ltd.*, (2011) 4 SCC 616, while following the judgment in *Tecco Trichy Engineers case*, held that the expression "*...party making that application had received the arbitral award...*" cannot be read in isolation and it must be understood that Section 31(5) of the Act requires a signed copy of the award to be delivered to each party. By cumulative reading of Section 34(3) and Section 31(5) of the Act, it is clear that the limitation period prescribed under Section 34(3) of the Act would commence only from the date of signed copy of the award delivered to the party making the application for setting it aside.

8. Since it is not established that the signed copy of the arbitral award dated 10.05.2012 was delivered to the petitioner, the respondents are directed to give

a signed copy of the arbitral award to the petitioner on the next date of hearing of the execution case. Thereafter, the petitioner shall be free to avail the remedy as available to him under the statute. The interim protection shall continue for a further period of 45 days from today before the execution Court.

9. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu