

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION APPEAL NO. 11 OF 2019

M/s.K.B.Tiwari Electricals Company Pvt. Ltd. ... Appellant

Versus

Union of India and Anr. ... Respondents

Mr.Harshad M. Inamdar for the Appellant.

Mr.B.B.Sharma a/w. Mr. Adnan Ansari i/b. Mr. S.P.Ladda for the Respondents.

Mr.B.A.Kaygude - Junior Engineer (QS and C) from the office of the Garrison Engineer (MH and RH) Kirkee, Pune, present in person.

CORAM : S.J. KATHAWALLA, J.
DATED : 12TH APRIL, 2019

P.C.:

1. The Appellant filed an Application under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act) impugning the Award passed by the learned Arbitrator. The Appellant also filed a Misc. Application seeking condonation of delay if any in filing the Application under Section 34 of the Act. The learned District Judge-5, Pune by his oral Judgment dated 21st January, 2019, has dismissed the Misc. Application seeking condonation of delay. The Appellant has therefore filed the above Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (the Act) impugning the Oral Judgment passed by the District Judge-5, Pune dated 21st January, 2019.

2. On 15th March, 2019, this Court passed the following Order :

"The learned Arbitrator shall in a sealed cover produce / cause to be produced before this Court the entire record pertaining to the arbitration proceedings maintained by him. Stand over to 29th March, 2019."

3. I have perused the original record submitted in Court. A covering letter signed by the learned Arbitrator, inter alia addressed to the Appellant stating that the signed copy of the Award is enclosed with the same is found in the records. However, there is nothing on record to show that the said letter along with a copy of the signed Award was in fact forwarded to the Appellant.

4. The Hon'ble Supreme Court has in the case of State of Maharashtra and Ors. V. ARK Builders Private Limited, (2011) 4 Supreme Court Cases 616 inter alia held as follows :

"12. The appellants are now before this Court by grant of special leave. The two provisions of the Arbitration and Conciliation Act, 1996, relevant to answer the question raised in the case are Sections 31 and 34. Section 31 deals with form and contents of arbitral award; and insofar as relevant for the present provides as follows :

"31. Form and contents of arbitral award. - (1) An arbitral award shall be made in writing and shall be signed by the members of the Arbitral Tribunal.

*(2)-(4) * * **

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

*(6)-(8) * * **

(emphasis added)

Section 31(1) obliges the members of the Arbitral Tribunal / arbitrator to make the award in writing and to sign it and sub-section (5) then mandates that a signed copy of the award would be delivered to each party. A signed copy of the award would normally be delivered to the party by the arbitrator himself. The High Court clearly overlooked that what was required by law was the delivery of a copy of the award signed by the members of the Arbitral Tribunal / arbitrator and not any copy of the award.

13. Section 34 of the Act then provides for filing an application for setting aside an arbitral award, and sub-section (3) of that section lays down the period of limitation for making the application in the following terms :

"34 Application for setting aside arbitral award. - (1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

*(2) * * **

(3) An application for setting aside may not be made after three months have elapsed 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.

Provided that 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.

(4)

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The expression "party making that application had received the arbitral award" (emphasis supplied) cannot be read in isolation and it must be understood in light of what is said earlier in Section 31(5) that requires a signed copy of the award to be delivered to each party. Reading the two provisions together it is quite clear that the limitation prescribed under Section 34(3) would commence only from the date a signed copy of the award is delivered to the party making the application for setting it aside.

14. We are supported in our view by the decision of this Court in Union of India v. Tecco Trichy Engineers and Contractors in SCC para 8 of the decision, it was held and observed as follows : (SCC p. 243)

"8. The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be 'received' by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 33 (3)

and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings."

(emphasis added)

15. The highlighted portion of the judgment extracted above, leaves no room for doubt that the period of limitation prescribed under Section 34(3) of the Act would start running only from the date a signed copy of the award is delivered to / received by the party making the application for setting it aside under Section 34(1) of the Act. 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.

17. In the light of the discussions made above, we find the impugned order of the Bombay High Court unsustainable. The High Court was clearly in error not correctly following the decision of this Court in Tecco Trichy Engineers and Contractors and in taking a contrary view. The High Court overlooked that what Section 31(5) contemplates is not merely

the delivery of any kind of a copy of the award but a copy of the award that is duly signed by the members of the Arbitral Tribunal.

18. In the facts of the case, the appellants would appear to be deriving undue advantage due to the omission of the arbitrator to give them a signed copy of the award coupled with the supply of a copy of the award to them by the respondent claimant but that would not change the legal position and it would be wrong to tailor the law according to the facts of a particular case.

19. In the light of the discussion made above, this appeal must succeed. We, accordingly, set aside the judgments and orders passed by the Bombay High Court and the Principal District Judge, Latur. The application made by the appellants under Section 34 of the Act is restored before the Principal District Judge, Latur, who shall now proceed to hear the parties on merits and pass an order on the application in accordance with law. Since the matter is quite old, it is hoped and expected that the Principal District Judge will dispose this matter preferably within 6 months from the date of receipt of this Order."

5. The learned Advocate appearing for the Respondent states that they had forwarded a copy of the Award in the year 2008 to the Appellant, which was returned with the remark 'unclaimed' and that the Respondent had in the execution proceedings admitted that the Award is passed. This submission will not assist the Respondent since the procedure to be followed qua service of the Award on a party as set out / explained by the Hon'ble Supreme Court and quoted above, does not appear to have

been followed by the learned Arbitrator in the instant case.

6. In view of the above, the following Order is passed :

- i. The above Appeal is allowed and the Oral Judgment passed by the District Judge-5, Pune dated 21st January, 2019, is set aside.
- ii. The Application filed by the Appellant under Section 34 of the Arbitration and Conciliation Act, 1996, is restored to file and the concerned District Judge, Pune shall dispose off the same on merits preferably within a period of 8 weeks from today.
- iii. The original record is returned to Mr.B.A.Kaygude - Junior Engineer (QS and C) from the office of the Garrison Engineer (MH and RH) Kirkee, Pune.
- iv. The above Appeal is accordingly disposed off.

(S.J.KATHAWALLA, J.)