

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.973 OF 2019
IN
ARBITRATION PETITION (L) NO.14 OF 2019**

Kalaivani Air Travels Pvt. Ltd. ... Petitioner
versus
Travel Agents Association of India and Ors. ... Respondents

Mr. H.S.Mohammed Rafui, for Petitioner.
Mr. Rajeev Ravi, for Respondent Nos.1 to 3 and 5.
Ms. Kavita M. Pawar, for Respondent No.4.

CORAM: S.J. KATHAWALLA, J.

DATE: 15th APRIL, 2019

P.C.:

1. The above Notice of Motion is taken out by the Petitioner seeking condonation of delay of 24 days in filing the Arbitration Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act). The learned Arbitrator passed his Award dated 8th March, 2017, but failed to send the original copy of the same to the Petitioner herein as more particularly explained by the Hon'ble Apex Court in its decision in the case of State of Maharashtra V/s. ARK Builders Pvt. Ltd.¹ the relevant paragraphs of which are reproduced hereunder :

*"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.*

¹ 2011 (4) SCC 616

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) * * **

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."

2. The Petitioner obtained a photocopy of the Award from the other side and on realizing that there was some error in the Award, sought amendments/corrections to the Award which were carried out on 9th September, 2018. The original corrected Award was sent to the Petitioner by the learned Arbitrator through registered post A.D., which was received by the Petitioner on 15th September, 2018 at Trichy. According to the Petitioner, they were unable to file the Petition under Section 34 of the Act within time and the same is delayed by 24 days. In Paragraph No.4 of their Affidavit dated 19th February, 2019 and paragraph No.6 of the affidavit dated 13th April, 2019, reasons for not filing the present Appeal within the time prescribed are mentioned, and the same are reproduced hereunder :

4. The present Arbitration Petition has been filed on there is a delay of 28 days in filing the Petition. The delay is neither wilful nor wanton. The Petitioner was contacted by the well wishers at the local chapter level after the amendment of the award and assure that they are trying to sort out the issue with the national office bearers to drop further proceedings in the matter to put an end to all the litigation. Later the Petitioner came to know that the 4th Respondent has filed the Execution Petition before the Trichy Court and received the Court Notice. The Petitioner is a permanent resident of Trichy was suffering from illness of continued fever unable to coordinate with his counsel since the petition has to be filed in Mumbai High Court., within 120 days the Appeal was required to be preferred before Hon'ble High Court, Bombay. I say that the Appellant required to approach the Advocate for giving instructions for

filing Petition against amended Order dated 9th September, 2018. I say that the Petitioner was advised medical rest was under treatment during all this period, advised me to take rest and was unable to attain Advocate Office and/or give instructions for drafting the Appeal, hence there is delay of 28 days in filing the present Petition”.

6. *I submit that the limitation period of ninety days calculated from the date of receipt of the hard copy of the award by post expires on 13th December, 2018. The period of 120 days for filing Arbitration Petition expires on 13th January, 2019. I have filed the Arbitration Petition on 7th January, 2019. I submit that there is a delay of 24 days only in filing the Petition which is beyond the period of Ninety days. I respectfully submit that the above Arbitration Petition was filed within the period of 120 days excepting the delay of 24 days which is after the expiry of the Ninety days. Due to inadvertence it has been earlier stated that the date of receipt of the hard copy of the award as 11th September, 2018 which is typographical error. The total delay would be only 24 days in filing which is beyond the period of ninety days and well within the period of 120 days. As a matter of fact my counsel in Chennai prepared the Arbitration Petition and sent to me for signing at Trichy. I also signed and sent it to the learned Counsel and the same was forwarded to Bombay for filing.*

I further respectfully submit that the papers prepared for filing initially was not in conformity with the prescribed format of the Original Side Rules of this Hon'ble High Court and some corrections and changes were required to be made. I could not meet my counsel at Chennai and Mumbai for finalizing the filing papers till the end of December, 2018 as I was suffering from severe illness of fever and I was advised medical rest at Home. The

delay in contacting my counsel before the end of December is neither willful nor wanton. My counsel arranged to file the same after the reopening of the Court after December vacation. In the interest of justice, I humbly pray that this Hon'ble Court may be pleased to condone the delay of 24 days in filing the Arbitration by allowing the Notice of Motion and thus render justice.”

3. In view of the above, I am satisfied that sufficient cause is shown by the Petitioner for condonation of delay of 24 days. The delay of 24 days is accordingly condoned. Office to number the Petition and place the same for Admission on 3rd May, 2019. The Notice of Motion is accordingly disposed of.

4. The execution proceedings shall not commence until 3rd May, 2019.

(S.J.KATHAWALLA,J.)