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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO.486 OF 2017

- 1). Dr.Writer's Food Products Pvt. Ltd.)
Registered under Indian Companies)
Act, Having Office at : Unit No.325,)
3rd Floor, Adhyaru Industrial Co-op.)
Soc. Ltd. Sun Mill Compound,)
Lower Parel, Mumbai – 400 013.)
And its Factory Address at :)
At Post Village Pimpalwadi,)
Sakharwadi, Taluka Phaltan,)
District Satara – 415 522.)
 - 2). Madhav Laxman Apte,)
Age : Adult, Occupation : Business)
Residing at : 25/A, Woodlands, 67G,)
Deshmukh Marg, Mumbai – 400 026.)
 - 3). Vaman Madhav Apte,)
Age : Adult, Occupation : Business)
Residing at : 25/A, Woodlands, 67G,)
Deshmukh Marg, Mumbai – 400 026.)
- ...Petitioners

....Versus....

The Cosmos Co-operative Bank Limited)
A Society deemed to be registered)
under the Multi State Co-operative)
Societies Act, 2002 having its Registered)
Office at 269/270, Cosmos Heights,)
Shaniwar Peth, Pune – 411 030,)
and having its Regional Office at 36/A,)
Maru Niketan, D.L. Vaidya Road,)
Dadar (West), Mumbai – 400 028.)

...Respondent

Mr.Avinash H. Fatangare for the Petitioners.

Mr.Joel H. Carlos for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 20TH SEPTEMBER, 2019.

ORAL JUDGMENT :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 (for short “the Arbitration Act”), the petitioners have impugned the arbitral award dated 4th June, 2015 and the order dated 16th February, 2017 passed by the learned arbitrator which was passed under section 33 of the Arbitration Act.

2. Mr.Carlos, learned counsel appearing for the respondent raised an issue of limitation in filing the arbitration petition under section 34(3) of the Arbitration Act insofar as the arbitral award dated 4th June, 2015 is concerned.

3. The admitted facts are as under :

The impugned arbitral award was passed on 4th June, 2015. A copy of such arbitral award was served upon the petitioners immediately. On 29th December, 2016, the respondent however made an application for correction of the arbitral award pointing out that in the cause title of the arbitral award date 4th June, 2015, the name of the respondent which appeared as Dr.Writer Food Product Pvt. Ltd. Age – Adult, Occupation – Service ought to have been mentioned as “Dr.Writer Food Product Pvt. Ltd., a company registered under the Company’s Act, 1956”. In the said application, it was further mentioned that the names of the respondent no.2 which was mentioned as Mr.Mahadev Laxman Apte, ought to have been mentioned as “Mr.Madhav Laxman Apte”. The name of the

respondent no.3 which was mentioned as “Mr.Vaman Mahadev Apte” ought to have been mentioned as “Mr.Vaman Madhav Apte”. The name of the respondent no.4 which was mentioned as “Mr.Vivek Kashinath Santh” ought to have been mentioned as “Vivek Kasshinath Sant”. The said application filed on 19th December, 2016 by the respondent was opposed by the petitioners by filing an application. There was also an application for condonation of delay made by the respondent by filing an application for correction of typographical errors in the arbitral award. The application for condonation of delay was also opposed by filing a separate reply by the petitioners in the month of February, 2017. On 16th February, 2017, the learned arbitrator corrected the typographical errors pointed out by the respondent in the arbitral award dated 4th June, 2015 and condoned the delay in filing the application by the respondent.

4. It is the case of the petitioners that the petitioners received a copy of the said order dated 16th February, 2017 on 2nd March, 2017 and thus within a period of three months from the date of receipt of the order, the petitioners filed this arbitration petition on 5th May, 2017 within the time prescribed under section 34(3) of the Arbitration Act.

5. Learned counsel appearing for the petitioners submits that the period of limitation for filing the arbitration application under section 34(3) of the Arbitration Act would commence from the date of

service of the order passed by the learned arbitrator under section 33(1)(a) of the Arbitration Act irrespective of the fact whether the corrections were in the nature of typographical errors or not. In support of this submission learned counsel placed reliance on the judgment of the Supreme Court in case of **Ved Prakash Mithal & Sons vs. Union of India, 2018 SCC OnLine SC 3181** It is submitted that under section 34(3) of the Arbitration Act the date on which the requisition under section 33 of the Arbitration Act has been disposed by the learned arbitrator has to be considered for the purpose of commencement of limitation prescribed under section 34(3) of the Arbitration Act.

6. The submissions made by the learned counsel for the petitioners are countered by the learned counsel for the respondent on the ground that admittedly the petitioners had not filed the arbitration petition under section 34 of the Arbitration Act within three months from the date of service of the signed copy of the arbitral award dated 4th June, 2015 from the learned arbitrator.

7. Learned counsel for the respondent fairly concedes that the application under section 33 of the Arbitration Act was admittedly not filed within 30 days from the date of receipt of the arbitral award dated 4th June, 2015 but was filed only on 29th December, 2016.

8. Learned counsel for the petitioners in rejoinder would submit that the petitioners have impugned not only the original arbitral award dated 4th June, 2015 but also has impugned the order

dated 16th February, 2017 passed by the learned arbitrator under section 33 of the Arbitration Act.

REASONS & CONCLUSION :

9. It is clear beyond reasonable doubt that the signed copy of the arbitral award dated 4th June, 2015 was immediately served upon the petitioners by the learned arbitrator. It is also not in dispute by the petitioners that the application for correction was made on 29th December, 2016 under section 33 of the Arbitration Act was made much beyond the period of 30 days from the date of service of the signed copy of the arbitral award dated 4th June, 2015. Under section 33(1)(a) of the Arbitration Act, an application for correction of an award and the interpretation of the award or for additional award has to be made within 30 days from the date of receipt of the arbitral award unless another period of time has been agreed upon by the parties.

10. It is not the case of the petitioners that the petitioners have agreed for another period of time for making such an application for correction and interpretation of award. The application for condonation was made by the respondent which was vehemently opposed by the petitioners. It is thus clear that there was no agreement between the parties for another period of time other than the period of 30 days prescribed under section 33(1) of the Arbitration Act. In my view, there is no power of condonation of delay

granted to the Arbitral Tribunal under section 33(1) of the Arbitration Act for making such application for correction and interpretation of the award or for additional award unless both the parties agree for another period of time for making such application for correction and interpretation of the arbitral award.

11. The question that arises for consideration of this Court is that if no application under section 33 of the Arbitration Act was made by the respondent within a period of 30 days from the date of service of the signed copy of the arbitral award dated 4th June, 2015 and if such application was admittedly made on 29th December, 2016 after 16 months which was much beyond the period of 30 days from the service of the signed copy of the arbitral award, whether such application was maintainable under section 33 (1)(a) of the Arbitration Act or not and whether the period taken in disposing of such application would extend time for filing an application under section 34(1) of the Arbitration Act challenging the original award.

12. In my view, since there was no power to condone the delay in making an application under section 33(1)(a) of the Arbitration Act, the application filed by the respondent under section 33 of the Arbitration Act for correction of the order dated 29th December, 2016 itself was not maintainable in law. Since the said application itself was not maintainable in law, there was no fresh period of limitation for challenging the original award under section 34(3) of the Arbitration Act. The petitioners were not required to wait

for the respondent to make an application under section 33 of the Arbitration Act beyond the period of 30 days and in this case for 16 months and to wait for the out come of such application which was filed beyond the period of limitation under section 33(1) of the Arbitration Act. The time thus provided for filing an application under section 34(3) of the Arbitration Act is not extended till such belated application was filed by the respondent beyond the period of limitation and till such application was disposed of by the learned arbitrator under section 33(4) of the Arbitration Act.

13. In my view, on the date of filing of an application under section 33 of the Arbitration Act by the respondent on 16th February, 2017, the remedy of the petitioners to challenge the original award dated 4th June, 2015 had already become time barred.

14. Insofar as the judgment of the Supreme Court relied upon by the learned counsel for the petitioners in case of **Ved Prakash Mithal & Sons** (supra) is concerned, there is no dispute about the proposition of law laid down by the Supreme Court in the said judgment. In the said judgment however, the facts were totally different. The application for correction under section 33(1) of the Arbitration Act was made within a period of 30 days from the date of service of the signed copy of the arbitral award. The application under section 34 of the Arbitration Act was filed by the petitioner within a period of three months from the date of service of the signed copy of the order under section 33 of the Arbitration Act passed by

the learned arbitrator. In these circumstances, the Supreme Court held that the under section 34(3) of the Arbitration Act the date on which the request under section 33 of the Arbitration Act has been disposed of has to be considered for the purpose of a period of limitation under section 34 of the Arbitration Act. The said judgment is clearly distinguishable in the facts of this case.

15. The Supreme Court in case of **State of Arunachal Pradesh vs. Damani Construction Co. (2007) 10 SCC 742** has construed section 33 of the Arbitration Act and has held that if the application under section 33 of the Arbitration Act itself was totally misconceived, that merely because such application was received by the learned arbitrator and he gave reply to such application, such reply cannot be taken as starting point of limitation from the date of reply given by the learned arbitrator. The principles laid down by the Supreme Court in the said judgment applies to the facts of this case. In my view, since the application filed by the respondent under section 33 of the Arbitration Act itself was not maintainable and was beyond the period of limitation, pendency of such belated application beyond the period of limitation would not extend the period for filing the arbitration petition under section 34(3) of the Arbitration Act for impugning the original award dated 4th June, 2015.

16. Insofar as the submission of the learned counsel for the petitioners that the petitioners have impugned the order dated 16th February, 2017 passed by the learned arbitrator under section 33 of

the Arbitration Act within time is concerned, in my view since the limitation for impugning the arbitral award dated 4th June, 2015 itself has expired, simplicitor impugning the order dated 16th February, 2017 under section 33(1) of the Arbitration Act within the period of limitation would be no no consequence. There is thus no substance in this submission made by the learned counsel for the petitioner. The arbitration petition is dismissed for the aforesaid reasons. There shall be no order as to costs.

(R.D. DHANUKA, J.)