

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO. 927 OF 2015

Nuruddin Latif Naik

...Petitioner

vs

Mahindra & Mahindra Financial Services Ltd. & Anr.

...Respondents

Mr.Divesh Chamboowala I/b. Pradip R. Kadam for Petitioner.

Mr.Akshay Chikhale I/b. Priya Crasto for Respondents.

CORAM : S.C.GUPTE, J.

DATE : 20 MARCH 2019

P.C. :

This arbitration petition challenges an award passed by a sole arbitrator under Section 34 of the Arbitration and Conciliation Act, 1996. The challenge is on two grounds. Firstly, it is submitted that the Petitioner did not have notice of appointment of the arbitrator as well as the proceedings. Secondly, it is submitted that the award is practically devoid of reasons.

2 If one has regard to the award, though the award refers to a notice issued to the Petitioner herein, there is no reference to its receipt by the Petitioner. At the stage of the Petitioner's condonation application filed in the present petition by way of a notice of motion, in reply to the notice of motion, the Respondents herein had submitted that the notice of appointment of arbitrator and date of the proceedings was duly served on the Petitioner. An acknowledgement card purportedly signed on behalf of the Petitioner was produced with the reply. In his rejoinder, the Petitioner had disputed the signature. The Petitioner affirmed that the signature did

not belong to him or any of his family members. The signature appears to be in the name of one Haroon. The Petitioner had testified in his affidavit that there was no person by the name of Haroon in his family. Once the Petitioner disputes receipt of notice and the record *prima facie* bears out the Petitioner's case, the onus to show that there was proper notice of appointment of arbitrator as well as of arbitration proceedings is on the Respondents. Leave aside discharging that onus, the Respondents have not even filed a reply to the arbitration petition herein.

3 Learned Counsel for the Respondents states that the reply filed in the motion was a common reply both to the motion and the petition. Be that as it may, after the Petitioner disputed the signature and affirmed that there was no person by the name of Haroon in his family, it was for the Respondents to controvert that position and submit proof in support of their case of receipt of notice by the Petitioner. Since that is not done, the Petitioner has made out his case of not having been given proper notice of appointment of arbitrator and of the arbitral proceedings and of being unable to present his case. The arbitral award accordingly deserves to be set aside.

4 Learned Counsel for the Respondents relies on postal envelopes, which show that some of the further notices issued in the matter were sought to be served but were unclaimed and even returned to the Respondents with the remark "unclaimed". Learned Counsel relies on a judgment of this court in the case of **Jenjon Retail and Services Pvt.Ltd. vs. Lavasa Corporation Ltd.**¹ in support of his case that an unclaimed

1 2016 SCC OnLine Bom 5321

notice amounts to good service. Learned Counsel particularly lays stress on para 27 of that judgment, where the learned judge has observed that unclaimed service amounted to a good service; it amounted to refusal to accept delivery of the arbitral award sent by the arbitrator at the correct address and with a specific intimation posted by the postman to the Petitioner. Whether an unclaimed service in a given case amounts to a good service is a matter of facts. In the case before the court in **Jenjon Retail and Services Pvt.Ltd.**, the party had addressed a letter to the arbitrator alleging that he had come to know of the award but did not have any details as to time, date or month of the award, if any, already passed. By this letter, the party had requested the arbitrator to supply to him an authenticated copy of the award. The arbitrator responded to this communication by stating that the award was duly served and the copy posted to the party had not been received back from the post office. There was an endorsement by the post office on the original envelope containing the arbitration award. An intimation about the postal packet being retained in the post office and calling upon the party to collect the same was duly served by the post office on the party. The court accepted the opponent's case that though such intimation was served by the post department, the petitioner did not claim the packet containing the award from the post office and this amounted to good service. In the present case, there is nothing to suggest that there was any postal intimation sent by the post office to the petitioner that the packet of service was retained by it, calling upon the Petitioner to collect the same. In the premises, it is not possible to accept the Respondent's case that a mere return of the packet with the remark "unclaimed" amounts to a good service.

5 The arbitration petition is accordingly allowed by setting aside the impugned award dated 7 December 2011.

(S.C. GUPTE, J.)