

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.7518/2019

Prafulla Purushottam Gadge

Vs.

The Buldhana Urban Co-operative Credit Society, Buldhana.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Dr. Anjan De, Advocate for petitioner.
Mrs. Sonali Saware-Gadhawe, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATED : DECEMBER 20, 2019.

The challenge raised in this writ petition is to the orders passed by the learned Principal District Judge on 05.08.2019 in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the said Act').

According to the petitioner, an award passed on 17.03.2012 is the subject matter of challenge at the instance of the petitioner by filing proceedings of under Section 34 of the said Act. It is the case of the petitioner that a signed copy of the award was not served on him. The application filed under Section 34 of the said Act was therefore within limitation but only by way of precaution, it was prayed that the delay, if any, in filing those proceedings be condoned. The petitioner therefore sought permission in the said proceedings to lead evidence to support the prayer for condonation of delay. Another application praying that the burden to prove service of the signed copy of the award be decided as being on the respondent. The learned Principal District Judge by the impugned orders has held that the initial burden to

prove the assertions made by the petitioner was on him. On that count it was directed that the petitioner should lead evidence first in support of his contentions. Being aggrieved by the said orders as passed in all the applications, the petitioner has challenged the same in this writ petition.

Dr. Anjan De, learned counsel for the petitioner submitted that it was the specific case of the petitioner that he did not receive the signed copy of the award. Since it was the specific case of the respondent that a copy of the award was sent to the petitioner by registered post with acknowledgment, the burden to prove service of the signed copy of the award was on the respondent. That burden could not have been shifted on the petitioner and as a result of the impugned order, the petitioner has been called upon to discharge a negative burden. It was further submitted that unless it was shown that a signed copy of the award was duly served on a party, the limitation to challenge such award would not commence. The learned counsel placed reliance on the decisions in *E-Square Leisure Pvt Ltd. Vs. K.K.Dani Consultants and Engineers Pvt Ltd. 2013 (3) Mh. L.J.24, Benarsi Krishna Committee & Ors. Vs. Karmyogi Shelters Pvt. Ltd. 2012 (9) SCC 496* and *State of Maharashtra and ors. Vs. Ark Builders Pvt. Ltd., 2011 SC 1374*. It was thus submitted that the impugned orders were liable to be set aside.

Mrs. Sonali Saware, learned counsel for the respondent supported the impugned orders. She submitted that the learned Principal District Judge rightly directed the petitioner to lead evidence as it was the case of the petitioner that there was no delay in filing the proceedings under Section 34 of the said Act. It was the case of the respondent that certified copy of the award had been sent by registered post to the parties with acknowledgment. Since it was the petitioner who had come up

with the case that the proceedings were filed within limitation, the burden was rightly placed upon the petitioner. Hence no interference with the impugned order was called for.

On hearing the learned counsel for the parties and after considering their respective submissions, I do not find any reason to interfere with the impugned orders. The petitioner is the applicant in the proceedings filed by him under Section 34 of the said Act. It is his case that those proceedings have been filed within limitation though a signed copy of the award was not served on him. Since it is the petitioner who has invoked the jurisdiction of the Court under Section 34 of the said Act and as it is the petitioner who has sought permission to lead evidence on the delay application by making such request on 28.04.2016, it is not now permissible for him to seek to shift the burden on the respondent. There is no question of any negative fact being directed to be proved by the petitioner. It is open for him to support assertions made by him in his applications by stating the same on oath. Since it is the petitioner who has invoked the jurisdiction of the Court under Section 34 of the said Act, he has been rightly directed to lead evidence in support of his contentions. Whether a copy of the signed award has been served on him or not is a matter to be considered thereafter. Hence at this stage, it is not necessary to examine the ratio of the decisions relied upon by the learned counsel for the petitioner in that regard. It is open for the petitioner to urge said contentions before the Court in the proceedings under Section 34 of the said Act.

In that view of the matter, I do not find that the learned Principal District Judge committed any jurisdictional error while passing the impugned interlocutory orders. It is clarified that the observations made in this order are only for deciding the

challenge as raised. The proceedings be decided on their own merits without being influenced by any observations made therein.

It is informed that the time to decide the proceedings fixed earlier is to expire shortly. Hence that time is accordingly extended by further period of eight weeks in the facts of the case. The writ petition is accordingly dismissed leaving the parties to bear their own costs.

JUDGE

Andurkar.