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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 208/2018 & CM APPL. 19121/2018.**

PREETI SHARMA & ORS. ..Appellants
Through: Mr.M.L Garg, Advocate.

Versus

M/S MEGMA HOUSING FINANCE & ANR. ..Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

JUDGMENT
13.02.2019

VINOD GOEL, J. (Oral)

FAO 208/2018

1. The appellants have filed this appeal under section 37 of the Arbitration and Conciliation Act, 1996 ('ACA') against the Judgment dated 20.11.2018 passed by the Ld. Additional District Judge (Central), Pilot Court, Tis Hazari, Delhi (ADJ) dismissing their petition under section 34 against the arbitral award dated 07.10.2011.
2. The facts leading up to the filing of the present Appeal are that the appellants had availed of a loan from the respondent No.1 in the year 2007 and as on 31.08.2011, a sum of Rs.25,57,166/- was outstanding against them.

3. The respondent issued a legal notice to the appellants and then referred the dispute to the Arbitrator as per the arbitration clause. Vide letter dated 03.08.2011, the Arbitrator fixed 30.08.2011 as the date of hearing. The notice was sent to the appellants by registered AD post and also by hand.

4. The appellants chose not to appear on 30.08.2011. One more opportunity was given to them to appear before the Arbitrator and another notice was issued for 28.09.2011, but again the appellants remained absent. The Arbitrator proceeded ex-parte against the appellants and the impugned award was passed on 07.10.2011.

5. Mr. Garg contends that the appellants came to know about the arbitral award for the first time in the month of October, 2015 when the notice of execution was received from the Delhi High Court in the Execution Petition no.345/15 and Execution Appl. (OS) No.768/2015.

6. He further contends that the appellants could not appear before the Arbitrator as on inspection of the file they found that the notice for the arbitration was sent at the wrong address i.e. 1/9315-C, West Roshan Nagar, Shahdara instead of 1/9315-C, West Rohtash Nagar, Shahdara.

7. I have heard the Ld. Counsel for the appellants.

8. The limited issue that arises for adjudication in this Appeal is whether the explanation for the delay in filing the application challenging the arbitral award is sustainable in law.

9. A party aggrieved by the award of an Arbitral Tribunal may challenge the same under section 34 of the 'ACA'. Section 34(3)

provides the limitation period within which such an application can be filed. Section 34(3) reads as under:

“34. Application for setting aside arbitral award.—

...

(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.”

10. Under section 31(5) of the 'ACA', a signed copy of the award is to be delivered to the parties. It is not the case of the appellant that they did not receive the arbitral award. However, the grievance of the appellant has been that the arbitrator sent the notice of proceedings at West Roshan Nagar instead of West Rohtash Nagar. The Ld. ADJ by the impugned order had noticed that the Appellants had not raised any objection to the three Acknowledgment Due cards (AD) indicating service of notice. The appellants did not challenge that Ms. Kanta Rani who had signed the AD is not their family member. The Ld. ADJ further noticed that in the area of Shahdara – 110032 there is only one Rohtash Nagar and the person delivering the notice would have the knowledge as to where he was heading for i.e. Rohtash Nagar and not Roshan Nagar.

11. The appellants have also not been able to explain as to why they chose to remain silent after receiving of copy of award in October 2015 in the Execution Proceedings before this Court and did not file an application under section 34 of the 'ACA'.

12. The Hon'ble Supreme Court in **P. Radha Bai v P. Ashok Kumar 2018 SCC OnLine SC 1678** while explaining the scope of Section 34 held as under:

“39. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.

(Emphasis Supplied)

13. In light of the decision in *P.Radha Bai's case* (supra) the statutory period of 90 days for filing an application under Section 34 can be extended for a period of 30 days only and not thereafter. Even if the copy of award was made available to the appellants in October, 2015, the petition under section 34 having been filed on 13.07.2017 is apparently barred by time.

14. Therefore, in the facts and circumstances of the case, this Court finds no reason to interfere with the order dated 20.01.2018. The

Appeal along with the C.M No. 19121/18 is dismissed with no order as to costs.

(VINOD GOEL)
JUDGE

FEBRUARY 13, 2019

