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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 16th October, 2019

+ **FAO 453/2017**

SG ENTERPRISES & ORS. Appellants

Through: Mr. Anurag Pandey, Ms.
 Shyamali Das & Mr. B.P.
 Subba, Advs.

versus

BALLAPUR INDUSTRIES LTD. Respondent

Through: Mr. Surender Kumar Gupta &
 Mr. Sharad Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The first appellant is a partnership firm in which the other two appellants are partners. On 01.07.2009, the firm had entered into a distributorship agreement with the respondent on 01.07.2009. The agreement concededly contains the arbitration clause. A dispute arose which was referred to arbitration, it eventually resulting in an award being passed on 24.12.2012, *ex-parte*, against the appellants and in favour of the respondent (claimant).
2. The above said award dated 24.12.2012 was challenged by objections under Section 34 of Arbitration and Conciliation Act, 1996 presented on 21.06.2017. The objection petition (arbitration no. 611/2017) was dismissed by the court of additional district judge, by order dated 16.09.2017, primarily on the ground that it was barred by

limitation. It is the said order which is under challenge by the appeal at hand.

3. It has been pointed out during the course of hearing that the address of the first appellant firm on the date of the execution of the distributorship agreement (01.07.2009) was 64/10, Station Road, Dhakuria, Kolkata 700031 at which notices had been sent by the sole arbitrator twice, the first being duly returned as served, inspite of which the appellants would not appear and, thus, they being set *ex-parte* by proceedings recorded by the sole arbitrator on 16.10.2012 and thereafter along with copy of the said proceedings and statement of claim and documents sent for the date (25.10.2012) to which the matter was adjourned for *ex-parte* evidence of the claimant.

4. The learned additional district judge, in the impugned order, has noted, after scrutiny of the record of the arbitrator, that the notices had been duly served, as confirmed by the tracking report taken on record. The award, as noted earlier, was passed on 24.12.2012 and in terms of the statutory requirements, a copy thereof was sent, *inter alia*, to the appellants.

5. It is the contention of the appellants that the copy of the award sent by the arbitrator was not delivered, reference being made in this context, and also in the context of the previous notices to change of address due to sale of the property which was declared as the address of the appellants in the distributorship agreement.

6. However, as has been noted by the learned additional district judge in the impugned order, there is an admission on the part of the appellants (in ground 'L' in the objection petition) that the copy of the

award was received by the third appellant, it being claimed that he had failed to inform the others.

7. Reliance is placed on typed copy of a document described as deed of conveyance dated 16.08.2011 whereby the property comprised in premises no. 64/10, Dhakuria Station Road, police station Jadavpur, Kolkata – 700031 was purportedly sold for consideration in favour of third party by the third appellant and another. It is the contention of the appellants that after the said sale of the property, where the first appellant had its office on 16.08.2011, the address of the first appellant stood changed. But then, it is well conceded that there was no intimation of change of address by the appellants to the respondent or, for that matter, to the sole arbitrator at any stage.

8. It has been noted by the additional district judge in the impugned order that the appellants have themselves declared the property no. 64/10, Station Road, Dhakuria, PS Jadavpur, Kolkata - 700031 as the address of the firm in the objection petition which was dismissed on 16.09.2017. It was sought to be explained by the counsel for the appellant that since this was address of the appellant firm indicated in the record of the arbitrator they were obliged, in terms of the practice rules of the court, to mention the same address in the memo of parties. This plea cannot be accepted for the simple reason that if it were the justification for declaration of a wrong address (this assuming the stand of the appellants is factually correct) there should have been some explanation given in the averments which also should have disclosed the correct address. It is pointed out by the learned counsel for the respondent that in the wake of an order

of summoning passed on criminal complaint instituted by the respondent alleging offence under Section 138 of Negotiable Instruments Act, 1881, the appellants had brought a revisional challenge before a competent court in State of West Bengal, copy of the revision petition having been filed by the appellants themselves wherein the same address, as above, was declared to be the address of the appellant firm in 2016. Again, there is no averment in the said revision petition (criminal main no. 97/2016) presented before Sessions Judge at Alipore District 24, Pargnas (South) stating any other address of the appellants.

9. During the course of hearing, the counsel for the appellant also submitted that the appellants were in some difficulty on account of a raid that had been carried out by the sales tax authorities in their office on 10.11.2010. Reliance is placed on a seizure memo bearing the said date, copy whereof has been submitted with the appeal. This plea or fact is of no help to the appellants for the reason the arbitral proceedings had come up before the sole arbitrator on 16.10.2012, two years after the said raid by the sales tax authorities and there is nothing pleaded or shown to justify default on the part of appellants to appear and participate, they having been duly served.

10. The service of the copy of the order whereby award was granted on the third appellant is sufficient service to bring the factum of the award being passed to the knowledge of the appellants. The plea of change of address has been rightly rejected by the additional district judge in the facts and circumstances noted above.

11. The objection petition under Section 34 of Arbitration and Conciliation Act, 1996 presented on 21.06.2017 against that award which was passed on 24.12.2012 was time barred and there is no sufficient cause shown as to how the appellants were prevented from making such an application within the said period or within thirty days thereafter in terms of Section 34 (3).

12. The impugned order dismissing the objection petition under Section 34 Arbitration and Conciliation Act, 1996, thus, is found to be suffering from no error or infirmity.

13. The appeal and the pending application are dismissed.

R.K.GAUBA, J.

OCTOBER 16, 2019

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