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Ct. 18
08.12.2021

**C.O. No. 2323 of 2019
(Via Video Conference)**

**Smt. Sabita Roy & Ors.
Vs.
Indranil Ballav & Ors.**

Mr. Pradip Kumar Dutta,
Mr. C. K. Dutta,
Ms. Krishna Mullick ... For the petitioners.

Mr. Indranil Ballav.... ..Opposite party no.1 in person.

The revisional application under Article 227 of the Constitution of India is directed against the Order No. 80 dated May 27, 2019 passed by the 3rd Court of learned Additional District Judge at Alipore, District – 24 Parganas (South) in Title Suit No. 03 of 2014.

The opposite party no. 1 has filed an application under Section 34 (2) of the Arbitration and Conciliation Act, 1996 for setting aside of the award dated July 31, 1997.

The said application has been registered before the learned Trial Judge being Title Suit No. 11 of 2007.

The opposite party no. 1 by his said application has challenged the said award, inter alia, on the grounds that no notice of arbitration proceeding was served upon him.

The learned Trial Judge by the order impugned has decided to address the said issue upon taking evidence at the time of trial of the said proceeding.

Mr. Pradip Kumar Dutta, learned senior counsel appearing on behalf of the petitioners, relying on the decision of the Hon'ble Supreme Court in the case of *Emkay Global Financial Services Limited vs. Girdhar Sondhi*, reported in **(2018) 9 Supreme Court Case 49** submits that in view of the summary nature of a proceeding under Section 34 of the said Act of 1996, the procedure which the learned Trial Judge is contemplating to adopt in disposing the said application is wholly unwarranted.

The opposite party no. 1 appearing in person disputes the existence of any arbitral agreement between him and the petitioners.

Having heard Mr. Dutta and the opposite party no. 1 in person and on going through the materials-on-record, it appears that the procedure proposed to be adopted by the learned Trial Judge in deciding the said application under Section 34(2) of the said Act of 1996 runs counter to the object sought to be achieved by the said provision of the said Act.

It would suffice to quote **Paragraph 21** of the aforementioned decision of the Hon'ble Supreme Court relied on by Mr. Dutta to indicate the jurisdictional error committed by the learned Trial Judge in passing the order impugned:-

“21. It will thus be seen that speedy resolution of arbitral disputes has been the reason for enacting the 1996 Act, and continues to be the reason for adding amendments to the said Act to strengthen the aforesaid object. Quite obviously, if issues are to be framed and oral evidence taken in a summary proceeding under Section 34, this object will be defeated. It is also on the cards that if Bill No. 100 of 2018 is passed, then evidence at the stage of a Section 34 application will be dispensed with altogether. Given the current state of the law, we are of the view that the two early Delhi High Court judgments, cited by us hereinabove, correctly reflect the position in law as to furnishing proof under Section 34(2)(a). So does the Calcutta High Court judgment. We may hasten to add that if the procedure followed by the Punjab and Haryana High Court judgment is to be adhered to, the time-limit of one year would only be observed in most cases in the breach. We therefore overrule the said decision. We are constrained to observe that Fiza Developers was a step in the right direction as its ultimate ratio is that issues need not be struck at the stage of hearing a Section 34 application, which is a summary procedure. However, this judgment must now be read in the light of the amendment made in Sections 34(5) and 34(6). So read, we clarify the legal position by stating that an application for setting aside an arbitral award will not ordinarily require anything beyond the record that was before the arbitrator. However, if there are matters not contained in such record, and are relevant to the determination of issues arising under Section 34(2)(a), they may be

brought to the notice of the Court by way of affidavits filed by both parties. Cross-examination of persons swearing to the affidavits should not be allowed unless absolutely necessary, as the truth will emerge on a reading of the affidavits filed by both parties. We, therefore, set aside the judgment of the Delhi High Court and reinstate that of the learned Additional District Judge dated 22-9-2016. The appeal is accordingly allowed with no order as to costs."

The order impugned, for the aforesaid reason, is not sustainable and is accordingly set aside.

C.O. 2323 of 2019 is thus allowed without any order as to costs.

The learned Trial Judge is requested to dispose of the objection expeditiously in accordance with law without granting any unnecessary adjournment to either of the parties.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)