

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 961 OF 2019 (FILING)

Lino A. Falcao

...Petitioner

Versus

SBI Cards and Payment Services
Pvt. Ltd., Thr. Its POA,
Fatema S. Kalyanwala

...Respondent

Mr. Kaif Noorani, Advocate for the Petitioner.

Mr. Cassian Crasto, Advocate for the Respondent.

CORAM: MANISH PITALE, J

DATED: 14th September 2021

P.C.

1. By this Writ Petition, the Petitioner has challenged order dated 18.09.2019 passed by the Court of Principal District Judge, North Goa, Panaji, whereby the said Court has held that an arbitral award is executable against the Petitioner and the application for execution of the award has been allowed.

2. The arbitral proceedings appear to have been initiated at the behest of the Respondent claiming that there were certain amounts due from the Petitioner towards payment of credit card bill.

3. There is no dispute about the fact that the said arbitral proceedings continued ex-parte against the Petitioner, although it was claimed by the Petitioner that he was never served with notice as regards the arbitral proceedings. Be that as it may, it appears that the arbitral award dated 25.02.2012 was pronounced by the

sole Arbitrator, execution of which was sought by the Respondent.

4. A perusal of the impugned order shows that the only ground raised on behalf of the Petitioner while claiming that the award was inexecutable was that he was never served in the arbitral proceedings. The Executing Court found that such an objection could not be raised to claim that the award was inexecutable and, accordingly, rejected the said objection.

5. In the Writ Petition, it has been stated for the first time that the arbitral award was never served on the Petitioner. It has been specifically stated that even till date, a signed copy of the arbitral award has not been served on the Petitioner as required under Section 31(5) of the Arbitration and Conciliation Act, 1996, (the said Act). On this basis, it is submitted that the period of limitation of filing an application under Section 34 of the said Act is yet to commence and, consequently, enforcement and execution of such an award under Section 36 cannot be contemplated in the facts and circumstances of the present case. On this basis, it is submitted that the impugned order deserves to be set aside.

6. Mr. Noorani, the learned Counsel appearing for the Petitioner, has relied upon Section 31(5) read with Sections 34 and 36 of the aforesaid Act to reiterate that the enforcement or execution proceedings, in the facts and circumstances of the present case, could not be undertaken because the Petitioner has not been served with a signed copy of the arbitral award. Reliance is placed on the judgment of the Hon'ble Supreme

Court in the case of **State of Maharashtra & Ors. vs. M/s. Ark Builders Pvt. Ltd.**¹, to contend that the period of limitation prescribed under Section 34 of the aforesaid Act, would start only when a signed copy of the arbitral award is shown to be served upon the Petitioner. On this basis, it is submitted that the Writ Petition deserves to be allowed.

7. On the other hand, Mr. Crasto, the learned Counsel appearing for the Respondents, submitted that the only issue raised before the Executing Court was alleged non-service of notice on the Petitioner in the arbitral proceedings and, no such point regarding failure of service of signed copy of the award was ever raised on behalf of the Petitioner. The learned counsel for the Respondent further sought to demonstrate on the basis of documents filed along with a reply that a copy of the award was served on the Petitioner.

8. This Court has considered the contents of the impugned order passed by the Court of Principal District Judge. It is found that the only objection raised on behalf of the Petitioner pertains to alleged non-service of notice in the arbitral proceedings and that such proceedings allegedly continuing behind his back. There is no issue raised on behalf of the Petitioner as regards absence of service of signed copy of arbitral award on him and the consequential contention raised on behalf of the Petitioner by referring to Sections 31(5), 34 and 36 of the said Act. Therefore, on the only point raised before the said Court, it cannot be said that an error was committed while rejecting the objection raised on behalf of the Petitioner.

¹ (2011) 4 SCC 616

9. Nonetheless, in the Writ Petition, the aforesaid issue is specifically raised and it is stated that even till date, a signed copy of the arbitral award is not served on the Petitioner, thereby indicating that the period of limitation as specified in Section 34 of the said Act has not kicked in and there is no question of enforceability of such an award under Section 36 of the said Act. The Respondent has sought to dispute the said contention raised on behalf of the Petitioner on facts, by referring to certain documents filed along with the reply. This Court is of the opinion that the said issue raised on behalf of the Petitioner goes to the very root of the matter concerning the very enforceability of the arbitral award. But, any finding on such an issue can be rendered only after the rival parties are granted opportunity to lead evidence in that context, which can appropriately be done before the Executing Court and not before this Court in writ jurisdiction.

10. Therefore, while holding that no error can be attributed to the impugned order, this Court is of the opinion that liberty deserves to be granted to the Petitioner to raise the issue highlighted in the present Writ Petition before the Executing Court, which can be decided by the Executing Court on its own merits. But, such an issue and objection to enforceability and execution can be raised before the Executing Court, only in a proceeding initiated by the respondent for execution of the award. For this technical reason, the impugned order will have to be set aside. As a consequence, the application for execution of the award filed by the respondent will have to be taken up by the Executing Court again, to consider the said issue in respect of which the petitioner is being granted liberty.

11. Accordingly, Writ Petition is disposed of as follows:

- (a) The impugned order is set aside and the Executing Court is directed to take up the application filed by the respondent for consideration.
- (b) The Petitioner is granted liberty to approach the Executing Court to raise the aforesaid issue relied upon in the present Writ Petition as regards non-service of a signed copy of the Arbitral Award on the Petitioner and the contentions raised in that context under Sections 31(5), 34 and 36 of the aforesaid Act.
- (c) The Executing Court shall consider the said issue about which liberty is being granted by this Court on its own merits and after giving opportunity to the parties, to lead evidence, if required.
- (d) The Petitioner shall move a fresh objection raising the aforesaid issue within a period of two weeks from today.
- (e) The Executing Court shall decide such objection within six weeks thereafter.

12. In view of the directions given herein above, the interim relief operating in favour of the Petitioner during the pendency of the present Writ Petition, shall continue to operate till the Executing Court decides the aforesaid objection to be raised on behalf of the Petitioner and for a further period of two weeks thereafter, in case an adverse order is passed against the Petitioner.

MANISH PITALE, J.

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