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AP 708 OF 2014
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

DHANANJAY SINGH

Vs.

L & T FINANCE LTD. & ORS.

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Date: 20th June, 2022.

Appearance:

Mr. Shyamal Chakraborty, Adv.

.....For the petitioner

Ms. Shrayashee Das, Adv.

.....For the Respondents

ORDER

The petitioner has filed the instant application under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award passed by the Ld.

Sole Arbitrator in Arbitration Case No. 435 of 2011 (L&T Finance Ltd. & Ors. – versus- Dhananjay Singh) dt. 09.12.2011.

The respondent entered appearance and had filed an affidavit-in-opposition confined only to the point of limitation to the effect that the Arbitrator has passed an award on 09.12.2011 and copy of the award was duly forwarded by the Ld. Arbitrator vide letter dt. ARB/LT-Dhananjay dt. 09.12.2011 by registered post at the following address:-

*“Mr. Dhananjay Singh,
S/O Late Krishna Nandan Singh,
24, Gaon-Chapra, Town/Village : Rajauli Tota,
Anchal- Rajauli, District- Nawada, Jharkhand.”*

The said award was duly received by the wife of the petitioner namely ‘Babita Singh’ as signature of Babita Singh is appearing in the Acknowledgement Card.

The Ld. Counsel for the respondent submits that the Ld. Sole Arbitrator had sent the award dt. 09.12.2011 to the petitioner in the address which is appearing in cause title of the award.

The Ld. Counsel for the respondent further submits that as the petitioner has not complied with the award passed by the Ld. Sole Arbitrator and accordingly, the respondent had initiated an execution proceeding before this Court being EC No. 159 of 2014 (L&T Finance Ltd. & Ors. –versus- Dhananjay

Singh) and the notice of the said Execution Case was also served to the petitioner on the same address as mentioned above.

The Ld. Counsel for the respondent submits that the petitioner has admitted that the petitioner has received the notice of the Execution Case. The Ld. Counsel for the respondent submits that the notice of the Execution Case was also sent to the petitioner on the same address as mentioned above.

The Ld. Counsel for the respondent submits that the Ld. Sole Arbitrator has passed an award on 09.12.2011 and the petitioner has filed the application under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the impugned award only on 02.05.2014 and as such the application filed by the petitioner barred by limitation.

Per contra, the Ld. Counsel for the petitioner submits that the petitioner came to know about the impugned award dt. 09.12.2011 only on the receipt of the notice of EC No. 159 of 2014 dt. 22.04.2014 on 26.04.2014 and immediately when the petitioner came to know about the impugned award has filed the instant application for setting aside the award dt. 09.12.2011 and thus there is no delay on the part of the petitioner to file the instant application.

The Ld. Counsel for the petitioner further submits that the notice as relied upon by the respondent was sent to the petitioner at Jharkhand, though petitioner is residing at Bihar and District- Nawada is not in the State of

Jharkhand, it is in the State of Bihar and thus the petitioner has not received any copy of the award as alleged by the respondent.

The Ld. Counsel for the petitioner relied upon the copy of the Election Identity Card, Indian Driving License and the copy of A/C Pass Book of Madhya Bihar Gramin Bank issued in favour of the petitioner and submits that in each documents it is mentioned that District-Nawada is situated in Bihar and not at Jharkhand.

The Ld. Counsel for the petitioner further submits that the petitioner had also not received any notice of the arbitration proceedings and as such the petitioner had no opportunity to appear before the Ld. Arbitrator and the Ld. Sole Arbitrator has passed an award ex parte against the petitioner.

The Ld. Counsel for the petitioner submits that the petitioner came to know about the impugned award dt. 09.12.2011 only on 26.04.2014 and immediately well within time, the petitioner has filed the instant application challenging the impugned award.

Heard, the Ld. Counsel for the parties and perused the materials available on record. It transpires from the award that the Ld. Sole Arbitrator had given several opportunity by issuing notices to the petitioner to participate in the arbitration proceeding but the petitioner had not appeared and accordingly the Arbitrator has proceeded with the arbitration proceeding and passed award on 09.12.2011. After the award passed by the Ld. Sole Arbitrator, the Ld. Sole Arbitrator has forwarded the said award to all the

parties to the proceeding by way of forwarding letter dt. 09.12.2011 by registered post with acknowledgement card. It further transpires from the acknowledgement card that the wife of the petitioner namely Babita Singh, who was also one of the respondent in the arbitration proceeding had received the registered letter and put her signature in the Acknowledgement Card of the Postal Department which was sent to her as well as to the petitioner.

The specific case of the petitioner that the petitioner has not received the award as Ld. Sole Arbitrator has forwarded the award at Jharkhand but the Nawada District is at Bihar and thus the said award was not received by the petitioner at Bihar.

It is the case of the petitioner that on receipt of the execution notice only the petitioner came to know about the impugned award. The execution notice dt. 24.02.2014 which admittedly received by the petitioner is also having the same address in which the Ld. Sole Arbitrator has forwarded the award to the petitioner. In view of the same, the submission made by the petitioner that the Nawada District is at Bihar and not at Jharkhand, the award forwarded by Ld. Sole Arbitrator is not received by the petitioner cannot be accepted.

The petitioner relied upon the Registration Certificate of Vehicle No. JH-02P-7031 registered in the name of the petitioner and the said certificate of registration was issued by Jharkhand State. The petitioner has also relied upon the Driving License issued in the name of the petitioner is also issued by the State of Jharkhand. The petitioner had also relied upon Election Identity

Card but in the said Election Identity Card description of State is not mentioned but the address of the petitioner is to that of the address mentioned in the forwarding letter of the Ld. Sole Arbitrator by which the award was forwarded.

Section 34 (3) of the Arbitration and Conciliation Act reveals that:-

“(3) An application for setting aside may not be made after three months have the lapse from the day on which the period 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 application was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within further period of 30 days but not thereafter.”

The Hon’ble Supreme Court in the case of Union of India –versus- Popular Construction Company reported in (2001) 8 SCC 470 held that :-

“8. Had the proviso to Section 34 merely provide for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because “mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5.”

Considering the above facts, this Court finds that the petitioner had received the award dt. 09.12.2011 on 17.01.2012 but has not filed the instant

application within time as prescribed under law and thus this Court is of the view that the application filed by the petitioner under Section 34 of the Arbitration and Conciliation Act challenging the award dt. 09.12.2011 is barred by limitation.

AP 708 of 2014 is thus dismissed.

(KRISHNA RAO, J.)

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