



A.No.2696 of 2022
in Arb.O.P.(Com.Div.)D.No.73075 of 2021

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M.SUNDAR, J.

Captioned main Arb.O.P. has been presented in this Court on 18.08.2021 assailing a arbitral award dated 21.02.2018 bearing reference No.ARC/IIFL/VL/4108/2017 [hereinafter 'impugned award' for the sake of brevity and convenience].

2. To be noted, non-compliance with Section 31(5) of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity] i.e., not delivering a signed copy of the award to the parties is one of the grounds of challenge qua impugned award in captioned Arb.O.P.

3. Registry has raised objections regarding limitation and captioned matter was listed under cause list caption 'FOR MAINTAINABILITY' before this Court. Maintainability question was answered by me in and by proceedings dated 08.06.2022 and a scanned reproduction of the same is as follows :



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M.SUNDARAJ

Captioned matter is a petition under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity] and it has been filed by three respondents before an 'Arbitral Tribunal' ['AT' for the sake of brevity] assailing an arbitral award dated 21.02.2018. 'Arbitral award dated 21.02.2018 bearing reference ARC/IIFL/VL/4108/2017' shall hereinafter be referred to as 'impugned award' for the sake of brevity, convenience and clarity.

2. Captioned Arb.OP has been presented in this Court on 18.08.2021. Registry has listed the matter before this Court under the caption 'FOR MAINTAINABILITY' as Registry has entertained doubts as to whether presentation is within three months and thirty days qua sub-section (3) of Section 34 of A and C Act and proviso thereof.



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3. When the aforementioned objection was raised, learned counsel for petitioner, in the course of removal of objection had made it clear that a signed copy of the impugned award was not served on the petitioners herein (respondents before AT). In other words, there is no compliance qua Section 31(5) of A and C Act is the stated position of the petitioners in the captioned matter.

4. Be that as it may, for the purposes of limitation, it is petitioner's case that they came to know about the impugned award only on receipt of notice from an Execution Court in Vadodara, State of Gujarat. In paragraph 15 of the captioned petition it has been mentioned that the petitioners received notice from the executing Court on 03.01.2020. This means that 03.01.2020 should be taken as the reckoning date.

5. In this regard, before proceeding further, it is to be noted that Registry has taken 21.02.2018 (date of the impugned award) as the reckoning date. This is plainly incorrect owing to the language in which sub-section (3)

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of Section 34 is couched as the reckoning date is the date of receipt of the award by the party presenting the application under Section 34 and not the date of the impugned award. Therefore, I proceed by taking 03.01.2020 as the reckoning date. This means, three months elapsed on 03.05.2020, which falls on a Sunday. In any event, this Court was closed for Summer Vacation the whole of May 2020 and this Court re-opened only on 01.06.2020. In the normal course, to come within three months, the petitioner should have presented the petition on 01.06.2020. However, the petitioner has another 30 days leeway by way of COD [Condonation of Delay] vide proviso to Section 34(3). It is not necessary to go into those aspects of the matter as Ms.S.Varsha of M/s.Varam Legal (Law Firm), who is before this Court, points out that the petitioner has the benefit of *suo motu* order of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 owing to the Coronavirus pandemic and consent lockdown (collectively referred to as 'Covid 19') which none could portend or presage. Learned counsel submits that exclusion of limitation owing to *suo motu* order of Hon'ble Supreme Court is from 15.03.2020 to 28.02.2022. In this view of the matter, presentation on 18.08.2021 is within time.

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6. *Prima facie* I am satisfied that the presentation is within time subject of course to receipt of records from AT as AT has not responded to Court notice though the same has been duly served on the learned counsel prior to 06.05.2022 in the light of predecessor Hon'ble Judge requisitioning records of the AT.

7. It is made clear that Section 31(5) argument and limitation are left open for contest post numbering of captioned matter also. Owing to the trajectory that has been captured supra. Registry to process the captioned matter further, assign a number and list for admission, if otherwise in order.

08.06.2022

Note : Underlining made by this Court is for the sake of ease of reference and for highlighting.

4. To be noted, prior to aforementioned 08.06.2022 order, Hon'ble predecessor Judge in and by proceedings dated 11.01.2022 had requisitioned records from AT and I have also directed the Registry to send a reminder. It is in this context that the aforementioned underlined portion of paragraph No.6 of the proceedings dated 08.06.2022 came to be made.

5. This Court is informed that the position is no different today. In



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other words AT has not responded until this day.

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6. Therefore, in the light of the peculiar facts and circumstances of the case and the trajectory which this matter has taken (particularly records of AT being requisitioned and absolute silence from AT) captioned application with dispense with prayer is ordered as prayed for, reading 'original arbitral award dated 21.02.2018' in the prayer as 'signed copy of arbitral award dated 21.02.2018' which is to be delivered to each of the parties as mandated in Section 31(5) of A and C Act. In other words, dispense with prayer is acceded to. There shall be no order as to costs.

7. Registry to proceed with processing of Arb.O.P.(Com.Div.)D.No.73075 of 2021, assign a number and list it in Admission Board if otherwise in order and other objections (if any) are duly removed by the counsel for applicants.

19.07.2022

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