OCD-26

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/209/2023

HAFIJUR SARDAR
VS
TATA CAPITAL FINANCIAL SERVICES LIMITED AND ANR.

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 18th September, 2023.

Appearance:
Mr. Lalratan Mondal, Adv.
Mr. Biswarup Biswas, Adv.
Mr. Mojnu Sk., Adv.
Mr. Lutful Haque, Adv.
... for the petitioner.

Mr. Avishek Guha, Adv.
Ms. Debarati Das, Adv.
Ms. Ritika Pal, Adv.
... for the respondent.

The Court: Supplementary affidavit filed is taken on record.

The only question before the Court is whether the present application filed for setting aside of the award dated 21st September, 2020 is filed under Section 34(3) of The Arbitration and Conciliation Act, 1996 read with the proviso.

The award is of 21st September, 2020. The delivery consignment report shows that the item was delivered on the two petitioners individually on 22nd October, 2020 at 09.54.36 hours.

Learned Counsel appearing for the petitioner however takes a point that the delivery was effected at the wrong address which should be evident according to the Counsel, from the PIN number in the documents provided by petitioners to the respondent. Counsel relies on the Aadhar card issued to the petitioner no.1 on 15th September, 2014 to urge that the PIN number reflected therein is different from the PIN number in the address shown in the documents relied on by the respondent.

Contrary to the submissions made on behalf of the petitioners, the loan agreement executed between the parties indicates the PIN No. 743412 for both the petitioners. The agreement has been signed by the petitioners. Even if this fact is not taken into account, the supplementary affidavit of the respondent encloses photocopies of the documents furnished by petitioners including the identity card issued by the Election Commission of India, the e-tax payment and the front page of the passbook, all of which mention the PIN No. 743412. The Aadhar card which the petitioners say was issued after these documents in 2014 loses relevance since the documents forming part of the supplementary affidavit of the respondent particularly the passbook shows that the documents were issued on 21st April, 2017.

The track reports also show that the item was delivered to R. Khatun who happens to be the second respondent and is the wife of the petitioner.

The present application was filed on 10th April, 2023. On all counts, the petitioners have missed the statutory time period under Section 34(3) read with the proviso which provides for a mandatory outer limit of 120 days. Even if the Court were to discount the leave requirement under the proviso, the present application is way out of the time period provided under the 1996 Act.

AP/209/2023 is accordingly dismissed.

There shall be no order as to costs.

(MOUSHUMI BHATTACHARYA, J.)

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