

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION APPEAL NO. 37 OF 2018
WITH
CIVIL APPLICATION NO. 43 OF 2018**

Sameer Subhash Pednekar ... Appellant/Applicant
vs.

Shriram Transport Finance Company Limited,
Through its Branch office ... Respondent

Mr. Suren Desai, Senior Advocate a/w. Mr. Siddharth A. Mehta for appellant/applicant.

Mr. S. P. Bharti for respondent.

CORAM : MANISH PITALE, J

DATE : 19th APRIL, 2023

P.C. :

1. Heard learned counsel for the parties. By this appeal, filed under Section 37 of the Arbitration and Conciliation Act, 1996, the appellant has challenged judgment and order dated 25th April, 2018, passed by the District Court, Ratnagiri, whereby, the application filed under Section 34 of the said Act, was rejected, solely on the ground that the application was filed beyond the period of limitation, prescribed under Section 34(3) of the said Act. The issue that arises for consideration, in the facts of the present case, is in a very narrow conspectus.

2. The respondent (original claimant) had initiated proceedings before the arbitral tribunal, consisting of a sole arbitrator at Ratnagiri. The learned arbitrator proceeded with the matter and the award dated 30th April, 2013 records that the proceedings went *ex-parte* against the appellant. Findings were rendered in favour of the respondent and the award held that the

respondent was entitled to receive a specific amount alongwith interest, as the appellant had defaulted in payment of installment. This was in the context of a loan taken by the appellant for a commercial vehicle. The said award, at paragraph No.12(d), recorded that the respondent (original claimant) would arrange for sending a copy of the arbitral award to the appellant by registered post acknowledgement due.

3. It is the case of the respondent that the aforesaid direction of the learned arbitrator was complied with and that a copy of the award was indeed forwarded to the appellant by RPAD on the very address that was mentioned in the arbitral proceedings. It was claimed that the postal authorities made attempts to deliver the packet to the appellant twice and then left an intimation for the appellant to collect the packet. But, the appellant failed to do so and after waiting for 12 days, the packet was returned. According to the respondent, this was good service of the arbitral award on the appellant and the period of limitation was triggered against the appellant.

4. On the other hand, the appellant claims that he never received the signed copy of the award, as mandated under the provisions of the said Act and it was only on 27th July, 2014 that the appellant first received a copy of the award, when the same was served upon him, by a bailiff of the Court of Principal District Judge, North Goa, in an execution application filed by the respondents for executing the said award. The application under Section 34 of the said Act, filed on 27th October, 2014, according to the appellant, was within the period of limitation of three months, specified in Section 34(3) of the said Act and therefore, the application ought to have been considered on merits.

5. The District Court took into consideration the aspect of limitation and although a point was also framed pertaining to the grounds on merits, raised against the arbitral award, the impugned judgment and order of the District Court, decided only the issue of limitation and having held against the appellant on that score, held that there was no requirement to consider the contentions raised on merits against the award. In such manner, the application under Section 34 of the said Act stood rejected, only on the ground of limitation.

6. Aggrieved by the impugned judgment and order, the present appeal came to be filed. The respondent appeared through counsel and the matter was taken up for hearing.

7. Mr. Desai, learned senior counsel appearing for the appellant contended that in the present case, the District Court committed a grave error in holding against the appellant, only on the ground of limitation. Attention was invited to Section 31(3) of the said Act, to contend that a signed copy of the arbitral award, ought to have been delivered to the appellant and it was only upon delivery of such signed copy of the award, that the period of limitation would have been triggered. It is further submitted that under the scheme of the Act, service or attempt of service of the signed copy of the award, by third party, including original claimant, could be of no avail, for the reason that the signed copy of the award ought to have been delivered by the learned arbitrator to the appellant. It is submitted that the period of limitation was triggered only when the appellant received the copy of the award on 27th July, 2014. But, this aspect of the matter was not appreciated in correct perspective by the District Court.

8. Learned senior counsel seriously disputed the claims of the respondent that the award was dispatched by RPAD, in compliance with the direction of the learned arbitrator. It was submitted that the claims made on behalf of the respondent, were disputed on facts and the material on record belied the claims made on behalf of the respondent. The learned senior counsel appearing for the appellant relied upon judgment of the Supreme Court, in the case of *Dakshin Haryana Bijli Vitran Nigam Limited v/s. M/s. Navigant Technologies Private Limited* (judgment and order dated 2nd March, 2021, passed in Civil Appeal No.791 of 2021), in support of his contention. On this basis, it was submitted that the impugned order deserves to be set aside. Since there are no findings on merits of the matter, it was submitted that the District Court ought to consider the matter afresh on merits.

9. On the other hand, Mr. Bharti, learned counsel for the respondent submits that the contentions raised on behalf of the appellant, were based on improper understanding of the provisions of the aforesaid Act. It was submitted that although Section 31(5) of the said Act, requires delivery of a signed copy of the arbitral award on each party and the period of limitation under Section 34(3) of the said Act stands triggered when the award is received by the party, there is no mandate under the said Act that the arbitrator or arbitral tribunal is required to deliver the signed copy of the award. On this basis, it was submitted that when the respondent, in compliance with a specific direction given by the learned arbitrator, had sent a copy of the award by RPAD and the appellant had not taken any steps to collect the packet, despite intimations given by the postal department, it had to be presumed that there was service of the signed copy of the award and the period of limitation stood triggered from the date when the postal department made attempts to serve the appellant and left intimations at the

address of the appellant. Eventually, the packet stood returned by the postal department.

10. It was submitted that the date upon which the appellant has placed reliance can be of no avail, for the reason that the period of limitation under Section 34(3) of the said Act, had already expired, by the time the bailiff served a copy of the award on the appellant, in the execution proceedings. It was submitted that the judgment upon which, the learned senior counsel has placed reliance i.e. **Dakshin Haryana Bijli Vitran Nigam Limited v/s. M/s. Navigant Technologies Private Limited** (*supra*), does not categorically lay down that it is for the arbitrator or the arbitral tribunal to deliver the signed copy of the award on the party and it was emphasized that the issue for consideration in the said case, was completely distinct and it had nothing to do with the contentions raised on behalf of the appellant in the present case, under Section 31(5) of the said Act. On this basis, it was submitted that the appeal deserves to be dismissed.

11. Having heard the learned counsel for the parties, this Court is called upon to decide as to whether the District Court in the present case, was justified in throwing out the application filed on behalf of the appellant, only on the ground of limitation, without considering the merits of the matter.

12. Before embarking upon the analysis of the rival contentions and facts brought to the notice of this Court, it would be appropriate to refer to the provisions of the Act and relevant judgments in that regard.

13. In the light of the rival contentions, Sections 31 and 34(3) of the said Act are relevant and they are quoted hereinbelow:

“31. Form and contents of arbitral award.

- (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.
- (2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.
- (3) The arbitral award shall state the reasons upon which it is based, unless—
 - (a) the parties have agreed that no reasons are to be given, or
 - (b) the award is an arbitral award on agreed terms under section 30.
- (4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.
- (5) After the arbitral award is made, a signed copy shall be delivered to each party.
- (6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.
- (7)
 - (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
 - (b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).]

- (8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.]

34. Application for setting aside arbitral award.

(1)-(2) * * *

- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party 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 applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4)-(6) * * *

14. There can be no doubt about the fact that the period of limitation would stand triggered, under Section 31(5) read with Section 34(3), when a signed copy of the award is received by the party. The learned counsel for the respondent has emphasized upon the fact that Section 31(5) of the Act does not specifically state that the arbitrator or the arbitral tribunal is enjoined to deliver the signed copy of the award. In other words, according to the respondent, delivery of the award or receipt of the same by a party from any source, would lead to the period of limitation being triggered.

15. In this context, judgment of the Supreme Court, in the case of *State of Maharashtra and others v/s. ARK Builders Private Limited* [(2011) 4 SCC 616], assumes significance. In the said case, after referring to the relevant provisions of the said Act, the Supreme Court held as follows:

“12. The appellants are now before this Court by grant of special leave. The two provisions of the Arbitration and Conciliation Act, 1996, relevant to answer the question raised in the case are Sections 31 and 34. Section 31 deals with form and contents of arbitral award; and insofar as relevant for the present provides as follows:

“31. **Form and contents of arbitral award**-(1) An arbitral award shall be made in writing and shall be signed by the members of the Arbitral Tribunal.

(2)-(4) * * *

(5) After the arbitral award is made, a signed copy shall be delivered to each party

(6)-(8) * * *

(emphasis added)

Section 31(1) obliges the members of the Arbitral Tribunal/arbitrator to make the award in writing and to sign it and sub-section (5) then mandates that a signed copy of the award would be delivered to each party. A signed copy of the award would normally be delivered to the party by the arbitrator himself. The High Court clearly overlooked that what was required by law was the delivery of a copy of the award signed by the members of the Arbitral Tribunal/arbitrator and not any copy of the award.”

16. In the above quoted portion, the Supreme Court has observed that a signed copy of the award, would normally be delivered to the party by the arbitrator himself and it was further observed that the High Court had overlooked the requirement of law, which requires delivery of signed copy of the award by the arbitrator or the arbitral tribunal and not any copy of the award. In other words, it was held that receipt of copy of the award from any source, was not sufficient for triggering the limitation period.

17. In the case of **Dakshin Haryana Bijli Vitran Nigam Limited v/s. M/s. Navigant Technologies Private Limited** (*supra*), the Supreme Court, while analyzing the rival submissions in the said case, *inter alia*, observed as follows:

“(ix) Sub-section (1) of Section 31 read with sub-section (4) makes it clear that the Act contemplates a single date on which the arbitral award is passed i.e. the date on which the signed copy of the award is delivered to the parties. Section 31 (5) enjoins upon the arbitrator / tribunal to provide the signed copy of the arbitral award to the parties. The receipt of a signed copy of the award is the date from which the period of limitation for filing objections u/S. 34 would commence.”

18. In this context, the learned counsel for the respondent submitted that the issue for consideration before the Supreme Court, in the said case, was as to whether the period of limitation for filing a petition under Section 34 would commence on date on which the draft award was circulated to the parties or the date on which the signed copy of the award was provided. On this basis, it was submitted that the said issue had nothing to do with the observation quoted hereinabove. This Court is of the opinion that even if the above-quoted portion of the judgment of the Supreme Court is treated as obiter dicta, it is binding on this Court. This Court is of the opinion that the above-quoted portion cannot be categorized as a passing observation made by the Supreme Court.

19. On a proper reading of the above-quoted paragraphs from the judgments of the Supreme Court, in the cases of **State of Maharashtra and others v/s. ARK Builders Private Limited** (*supra*) and **Dakshin Haryana Bijli Vitran Nigam Limited v/s. M/s. Navigant Technologies Private Limited** (*supra*), this Court is of the opinion that in the present case, the appellant has been able to demonstrate that the period of limitation could not be stated to have been triggered, when the respondent claimed that the postal authorities had made attempts to serve the packet allegedly containing the signed copy of the award, on the appellant. In fact, this Court finds direction

given in paragraph No.12(d) of the arbitral award, to be in violation of the requirement of the Act. The learned arbitrator could not have delegated the function of serving or delivering the signed copy of the award on the appellant, to the respondent (original claimant). Even if it was to be presumed that the attempts made by the postal officials could be said to be amounting to service of the copy of the award, it would still be from another source and not from the learned arbitrator. As per the aforementioned judgments of the Supreme Court, this would still not qualify as the point in time, when limitation would stand triggered.

20. This Court is of the opinion that applying the said position of law, even the service of the copy of the award by the bailiff to the appellant, on 27th July, 2014, could also not have triggered the period of limitation. There is nothing to indicate that the copy of the award served alongwith the notice, issued by the executing Court through the bailiff, was indeed an award that was signed by the learned arbitrator. Therefore, it could still be contended that receipt of the copy of the award on 27th July, 2014, did not trigger the period of limitation.

21. Be that as it may, on 27th October, 2014, the appellant had filed the application under Section 34 of the said Act, to challenge the arbitral award. There is no serious dispute about the fact that if the date 27th July, 2014 is considered as the date triggering period of limitation, the application under Section 34 of the said Act was filed within three months, as prescribed under Section 34(3) of the said Act.

22. Perusal of the judgment and order of the District Court shows that the said Court completely misguided itself in analyzing the provisions of the said

Act and applying the position of law, in the facts of the present case. Much emphasis was placed on the attempts purportedly made by the postal authorities to serve the packet sent by RPAD to the appellant. The point in time the period of limitation stood triggered was not demonstrated and analyzed in the correct perspective by the District Court, leading to erroneous findings. The District Court could not have rejected the application filed on behalf of the appellant, only on the ground of limitation under Section 34(3) of the said Act.

23. The District Court, having rejected the application, only on the ground of limitation, did not consider the submissions on merits against the award, raised on behalf of the appellant. The appellant was deprived of an opportunity to challenge the award on merits and therefore, this Court is of the opinion that the matter ought to be remanded to the District Court for consideration on merits.

24. In view of the above, the appeal is partly allowed. The impugned judgment and order of the District Court is quashed and set aside. The matter is remanded to the District Court, Ratnagiri, for consideration of the application filed under Section 34 of the said Act, on behalf of the appellant, on merits.

25. The parties shall appear before the District Court, Ratnagiri on 2nd May, 2023.

26. Considering the fact that the arbitral award was pronounced as far back as on 30th April, 2013, it would be appropriate that the District Court considers and disposes of the application of the appellant, as expeditiously as

possible and in any case, within a period of six months from 2nd May, 2023.

25. The appeal stands disposed of in above terms. Pending applications, if any, also stand disposed of.

26. There shall be no order as to costs.

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(MANISH PITALE, J)

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