

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

<u>WRIT PETITION NO.6091/2022</u>	
<u>PETITIONER</u> <u>(Original JD)</u>	Rahul S/o Omprakash Gandhi, aged about 47 years, Occupation : Business, R/o Shivaji Chowk, Darwah, Tehsil : Darwah, District : Yavatmal.
<u>...Versus...</u>	
<u>RESPONDENT</u> <u>(Original DH)</u>	The Akola Janta Commercial Co-Operative Bank Limited, Pusad Branch, Having office at Thakur Market, Main Road, Pusad, District Yavatmal, Through its Branch Manager.
<u>WITH</u>	
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Mr. Sharad Bhattad, Advocate for petitioner in all petitions Mr. R.L.Khapre, Sr. Advocate assisted by Mr. D.R. Khapre, Advocate for respondent in all petitions	

CORAM : AVINASH G. GHAROTE, J.

DATE : 10/04/2023

1. Heard. Rule. Rule made returnable forthwith with the consent of the learned counsels for the parties. Mr. R.L. Khapre, learned senior counsel with Advocate Mr. D.R. Khapre waive notice on behalf of the respondent on merits.

2. All these petitions raise a common plea and therefore are being decided by this common judgment.

3. The basic proposition canvassed is that the petitioner, who was a party to the award dated 27.01.2015, passed by the Arbitrator (Shri G.N. Diwekar) had not received the signed copy of the award within the meaning of Section 31(5) of the Arbitration and Conciliation Act, 1996 (for short the "A & C Act"), and therefore, in view of the provisions of Section 36 (1) of the A & C Act, the award was not enforceable. It is also contended, that the receipt of the certified copy of the award, which is claimed to have been received by post on 07.03.2015, cannot be considered to be an act in compliance with Section 31(5) of the A & C Act. It is contended, that though the application under Section 34 of the A & C Act, was filed on the basis of the certified copy received on 07.03.2015, that would not deter from the compliance of the requirement of Section 31(5) of the A & C Act, in absence of which the award could not be put to execution, in light of mandate of Section 36(1) of the A & C Act.

3.1. Mr. Bhattad, learned Counsel for the petitioner, in support of the above propositions, places reliance upon the following judgments :-

(a) *Union Of India Vs. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239*, in which it has been held, that the provisions of Section 31(5) of the A & C Act, is not mere formality but is a matter of substance since service of the award upon the party sets into motion several periods of limitation and also brings into effect the termination of the arbitration proceedings under Section 32 (1) of the A & C Act.

(b) *Benarsi Krishna Committee and Others Vs. Karmyogi Shelters Private Limited, (2012) 9 SCC 496*, in which reiterating the above position, it has been held, that service of the award upon the Advocate of the party would not amount to service of the award upon the party.

(c) *State of Maharashtra and Others Vs. Ark Builders Private Limited, (2011) 4 SCC 616*, which reiterates the position, that receipt of the award by the counsel would not amount to receipt of the award by the party.

(d) *Jolly Brothers Pvt. Ltd., Mumbai Vs. Surendra Nath Jolly and others, 2016 (5) Mh.L.J. 250*, again holding that the collection of the award by the counsel for the respondents in pursuance to

receipt of an email from the Arbitrator would not amount to compliance of Section 31(5) of the A & C Act.

(e) *Ramesh Pratap Singh (Dead) And other Vs. Smt. Vimla Singh And Ors., 2011 (1) MPHT 197*, which reiterates the same position.

3.2. It is, therefore, submitted, that the execution proceedings filed by the respondent, are premature and cannot be permitted to be proceeded with. It is also contended, that even the respondent has not received the signed copy of the award, as the execution proceedings have been filed not on the basis of the signed copy of the award but on the basis of the certified copy.

3.3. Learned counsel further submits, that the statement made in the application under Section 34 of the A & C Act to the effect, that the application has been filed within the limitation upon receipt of the signed copy of the award is factually incorrect which would be indicated from the fact that the certified copy of the award was filed along with the said application and not the signed copy.

3.4. It is, therefore, submitted that the execution proceedings have to be held to be infirm, on the above grounds and therefore ought to be held as premature, by setting aside the impugned order and allowing the application filed by the petitioner.

4. Mr. Khapre, learned senior counsel for the respondent, heavily relies upon the statement of the petitioner in the application under Section 34 of the A & C Act (page 100), in which, according to him, there is a categorical admission regarding the receipt of the signed copy of the award. He further submits, that the statement which is made on oath, clearly binds the petitioner, and therefore, the petitioner cannot be permitted to now resile from the same.

4.1. He further submits, that the certified copy of the award was obtained by the petitioner on 07.03.2015, which is signed by the Arbitrator himself, and that would be a sufficient compliance with the requirement of Section 31 (5) of the A & C Act.

4.2. He further submits, that an earlier objection to the execution of the award raised by the present petitioner under Order XXI Rule 22 of the Code of Civil Procedure, on the same ground of non-receipt of the signed copy of the award, has been rejected by the Executing Court by the order dated 17.06.2017 (page 98), and therefore, it was not permissible for the petitioner, to reiterate the same objection again by filing the similar application, which has been rejected by the impugned order.

4.3. He relies upon:

- (a) *M/s. Hindustan Construction Co. Ltd. Vs. The Union Of India, AIR 1967 SC 526 (para 6 and 7);*
- (b) *National Agricultural Co-operative Marketing Federation of Indian Ltd. Vs. M/s. R. Piyarelall Import and Export Ltd. AIR 2016 Calcutta 160 ;*
- (c) *Anilkumar Jinabhai Patel (Dead) Through Legal Representatives Vs. Pravinchandra Jinabhai Patel And Others, (2018) 15 SCC 178 ;*
- (d) *K. Vasudeva Maniakarar And Ors. Vs. S. Radhakrishnan And Ors. LAWS (MAD) 2020 1 569.*

5. It is not in dispute, that the application under Section 34 of the A & C Act was filed by the petitioner challenging the award dated 27.01.2015 by instituting proceedings under Section 34 of the A & C Act. This application came to be dismissed by the order dated 04.08.2015 for non-payment of the requisite Court fee within time under Order VII Rule 11 (C) of the Code of Civil Procedure (page 115). This was challenged by the petitioner in Writ Petition No.1270/2019 which came to be withdrawn with liberty to file a statutory appeal under Section 37 of the A & C Act, by the order dated 18.07.2022 (page 116). It is an admitted

position, that no appeal thereafter was filed under Section 37 of the A & C Act.

6. The relevant provisions of the Arbitration and Conciliation Act, 1996, in this regard for the sake of ready reference, are quoted as under :-

“SECTION 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) -----.

(3) -----

(4) -----

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

(6) -----.

(7) -----

SECTION 32. Termination of proceedings.

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) -----

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

SECTION 34(1). Application for setting aside arbitral awards.

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(3) An application for setting aside any not be made after three months have elapsed from the date on which the party making the application had received the arbitral award or, if a request

had been made under section 33, from the date on which the 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.

Section 35. Finality of arbitral awards.- -----

Section 36. Enforcement--(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) -----”

7. A perusal of the above provisions would indicate that the delivery of the signed copy of the award is provided for by Section 31(5) of the A & C Act. The Hon’ble Apex Court in ***Tecco Trichy Engineers & Contractors*** (supra) has explained the reasons therefor, thus :-

“7. It is well known that the Ministry of Railways has a very large area of operation covering several divisions, having different divisional heads and various departments within the division, having their own departmental heads. The General Manager of the Railways is at the very apex of the division with the responsibility of taking strategic decisions, laying down policies of the organisation, giving administrative instructions and issuing guidelines in the organisation. He is from elite managerial cadre which runs the entire organisation of his

division with different departments, having different departmental heads. The day-to-day management and operations of different departments rests with different departmental heads. The departmental head is directly connected and concerned with the departmental functioning and is alone expected to know the progress of the matter pending before the Arbitral Tribunal concerning his department. He is the person who knows exactly where the shoe pinches, whether the arbitral award is adverse to the department's interest. The departmental head would naturally be in a position to know whether the arbitrator has committed a mistake in understanding the department's line of submissions and the grounds available to challenge the award. He is aware of the factual aspect of the case and also the factual and legal aspects of the questions involved in the arbitration proceedings. It is also a known fact and the Court can take judicial notice of it that there are several arbitration proceedings pending consideration concerning affairs of the Railways before arbitration. The General Manager, with executive workload of the entire division cannot be expected to know all the niceties of the case pending before the Arbitral Tribunal or for that matter the arbitral award itself and to take a decision as to whether the arbitral award deserves challenge, without proper assistance of the departmental head. The General Manager, being the head of the division, at best is only expected to take final decision whether the arbitral award is to be challenged or not on the basis of the advice and the material placed before him by the person concerned with arbitration proceedings. Taking a final decision would be possible only if the subject-matter of challenge, namely, the arbitral award is known to the departmental head, who is directly concerned with the subject-matter as well as arbitral proceedings. In large organisations like the Railways, "party" as referred to in Section 2(h) read with Section 34(3) of the Act has to be construed to be a person directly connected with and involved in the proceedings and who is in control of the proceedings before the arbitrator.

8. The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be "received" by the

party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.

9. In the context of a huge organisation like the Railways, the copy of the award has to be received by the person who has knowledge of the proceedings and who would be the best person to understand and appreciate the arbitral award and also to take a decision in the matter of moving an application under sub-section (1) or (5) of Section 33 or under sub-section (1) of Section 34.

10. In the present case, the Chief Engineer had signed the agreement on behalf of the Union of India entered into with the respondent. In the arbitral proceedings the Chief Engineer represented the Union of India and the notices, during proceedings of the arbitration, were served on the Chief Engineer. Even the arbitral award clearly mentions that the Union of India is represented by the Deputy Chief Engineer/Gauge Conversion, Chennai. The Chief Engineer is directly concerned with the arbitration, as the subject-matter of arbitration relates to the department of the Chief Engineer and he has direct knowledge of the arbitral proceedings and the question involved before the arbitrator. The General Manager of the Railways has only referred the matter for arbitration as required under the contract. He cannot be said to be aware of the question involved in the arbitration nor the factual aspect in detail, on the basis of which the Arbitral Tribunal had decided the issue before it, unless they are all brought to his notice by the officer dealing with that arbitration and who is in charge of those proceedings. Therefore, in our opinion, service of the arbitral award on the General Manager by way of receipt in his inwards office cannot be taken to be sufficient notice so as to activate the

department to take appropriate steps in respect of and in regard to the award passed by the arbitrators to constitute the starting point of limitation for the purposes of Section 34(3) of the Act. The service of notice on the Chief Engineer on 19-3-2001 would be the starting point of limitation to challenge the award in the Court.”

In view of the above position, it was held that service of the award to the General Manager by way of receipt in his inwards office cannot be taken to be sufficient notice so as to activate the Department to take appropriate steps in respect of and in regard to the award passed by the Arbitrators to constitute starting point of limitation for the purposes of Section 34(3) of the A & C Act. It was held that the date of service of notice upon the Chief Engineer would be the starting point of limitation for challenging the award.

7.1 In ***Ark Builders*** (supra) the following question was framed by the Hon’ble Apex Court for consideration :-

“Whether the period of limitation for making an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter “the Act”) for setting aside an arbitral award is to be reckoned from the date a copy of the award is received by the objector by any means and from any source, or it would start running from the date a signed copy of the award is delivered to him by the arbitrator? This is the short question that arises for consideration in this appeal .”

and noticing the expression ‘--- party making that application had received the arbitral award ---’, as contained in Section 34(3) read with Section 31(5) of the A & C Act, it was held that the limitation under Section 34(3) would start when the signed copy of the award duly signed by the Arbitral Tribunal, was delivered and not when the copy of the award was received from any other source, in this case a signed copy of the award submitted by the claimant to the respondent, seeking payment in terms of the award, the respondent before the Tribunal, admittedly having not received the award. ***Tecco Trichy Engineers & Contractors*** (supra) was noticed and relied upon.

7.2. In ***Benarsi Krishna Committee*** (supra) was a case in which the signed copy of the arbitral award was served upon the agent of a party, (i.e. Advocate of the party) and considering the definition of ‘party’ as occurring in Section 2(h), r/w Section 31(5) and 34 (3) of the A & C Act, it was held that the time as contemplated under Section 34(3) would start running from the date when the signed copy of the award was obtained by the party.

7.3. ***Jolly Brothers Pvt. Ltd.*** (supra) was a case in which the signed copy of the award was collected by the representative of the

Advocate of the party, in pursuance to an e-mail from the Arbitrator, and not upon the party and therefore it was held that the time as provided in Section 34(3) of the A & C Act, would commence to run from the date service of the award on the party, as contemplated by Section 31(3) of the A & C Act.

7.4. **Ramesh Pratap Singh** (supra) reiterates the above position, that the time as contemplated in Section 34(3) of the A & C Act, has to be counted when the signed copy of the award is delivered to the party.

8. In **M/s Hindustan Construction Co. Ltd.** (supra) which was under the old Arbitration Act, while considering the expression 'signed copy of the award', within the meaning of Section 14(2) of the Arbitration Act, 1940, in the context that what was filed was a certified copy of the award, it was held as under :-

“8. We accept these observations and are of the opinion that so long as there is the signature of the arbitrator or umpire on the copy of the award filed in court and it shows that the person signing authenticated the accuracy or correctness of the copy of the document would be a signed copy of the award. It would in such circumstances be immaterial whether the arbitrator or umpire put down the words “certified to be true copy” before signing the copy of the award. If anything, the addition of these words (namely, certified to be true copy) would be the clearest indication of the authentication of the copy as a true copy of the award, which is what Section 14(2) requires, so long as the authentication is under the signature of the arbitrator or the umpire himself. In the present case, the

document was sent by the umpire along with a letter forwarding it to the court. In the letter it was stated that he was sending the award only signed and certified by him. Then turning to the document we find that it begins with the words “now I hereby reproduce a true copy of the said award which is as follows” and this is signed by Sri Dildar Hussain, the umpire. Then follows the copy of the award, at the end we find the words “certified as correct copy of the award dated 27th May, 1961”. Underneath appears the signature of Sri Dildar Hussain, the umpire. Clearly therefore the document filed is a true or accurate and full reproduction of the original award and it bears the signature of the umpire, Sri Dildar Hussain, and thus is a signed copy of the award. The fact that the umpire wrote the words “certified as correct copy of the award dated the 27th May, 1961” above his signatures does not in our opinion make any difference and the document is still a signed copy of the award. If anything, these words show that document filed is a true copy of the award and as it bears the signature of the umpire, it is a signed copy thereof. It may be added that the words “now I hereby reproduce a true copy of the said award which is as follows” which appear at the beginning of the document and which are signed by the umpire Sri Dildar Hussain also in our opinion are sufficient to show that what was produced in court was a signed copy of the award as required by Section 14(2).”

8.1. In ***National Agricultural Cooperative Marketing Federation of India Ltd.*** (supra) the learned Division Bench of the Calcutta High Court while considering the language of Section 31(5) of the A & C Act, held as under :-

“25. There can be no doubt that the arbitral award would necessarily have to be signed by all the arbitrators or at least by the majority of the members of the arbitral tribunal. However, in our view, it was not the intention of legislature that all the copies of the award, dispatched to the respective parties would

have to be separately signed by the Learned arbitrators. A certified photocopy of the original award along with the signatures of the members of the Arbitral Tribunal would suffice.

26. Had it been the legislative intent that all copies of the award required to be furnished to the respective parties to a multi party arbitration, should actually be signed by members of the arbitral tribunal themselves and/or in other words, each of the copies should contain the original signatures of the arbitrators, Parliament would, perhaps, not have used the expression 'signed copy of the award' but used the expression 'a copy of the award, duly signed by the arbitrators', in Section 31(5) of the 1996 Act.

33. We hold that the copy of the award and the copy of the corrigendum sent by the Registrar of the Indian Council of Arbitration to the appellant, were signed copies of the award in that they were photo copies of the original award along with the photocopied signatures of the arbitrator, and duly certified by the Indian Council of Arbitrators."

8.2. **K. Vasudeva Maniakarar** (supra) also holds the position that non-serving of the copy of the award, does not make the award invalid and the purpose of service of the award copy is only to enable the parties to challenge the award and for computing the limitation under Section 34(3) of the A & C Act.

8.3 **Anilkumar Jinabhai Patel** (supra) holds that when in the arbitration proceedings the parties are represented by the family head/common power of attorney holder, who received the award on their behalf, he being the person directly connected with and in

control of the proceedings, it was not necessary that all the parties were required to be served individually with the copy of the award.

9. The entire object and purport of Section 31(5) of the A & C Act, when it states that a signed copy of the award shall be delivered to each party, appears to be, that the party to the award should be made known the nature, effect and import of the award, so that each party, may then take a decision whether to challenge the award further by instituting appropriate proceedings under Section 34 of the A & C Act, before the Court, or in case there are any inaccuracies, corrections, interpretations or need for an additional award therein, to get it corrected by filing an application under Section 33 of the A & C Act, before the Arbitrator. This also so, for the reason that both Section 33(1) and 34(3) of the A & C Act, provide for limitations of time in this regard to approach either the Arbitral Tribunal or the Court for the said purpose and therefore the delivery of the award as contemplated in Section 31(5) has the effect of setting in motion these time periods, within which the remedies available are to be availed of by the party. It is in this context it has to be understood that the signed copy of the award has to be delivered to the 'party', as defined in Section 2(h) of the A

& C Act, so that a decision can be taken by the 'party' regarding the future course of action to be adopted, within the time frame as stipulated by the provisions of the Statute. The delivery of the signed copy of the award, is therefore information, brought to the notice and knowledge of each party, as to the contents of the award, so as to make the 'party', aware that the limitation to raise a challenge, has started to run, which knowledge/information is equally available to the 'party', when it receives the certified copy of the award signed by the Arbitrator. The purpose of the provision, of imparting knowledge to the 'party', as to the contents of the award, is achieved whether a signed copy is delivered or the certified copy of the signed award is obtained by the 'party'. In either case knowledge/information as to the contents of the award stands attributed to the 'party', and the time as provided in Section 33(1) and 34(3) of the A & C Act, begins to run therefrom. The situation is quite different when the award is not delivered to the 'party', or obtained by the 'party', but is delivered or obtained to/by the counsel or agent of the 'party' as the knowledge of the 'party', as defined in Section 2(1) (h) of the A & C Act, is what is contemplated by Section 31(5), as in that circumstances a plea can successfully be

raised by the 'party', of non-compliance with the requirement of Section 31(1) which would entitle it to claim that the time for challenging the award under Section 34(3) or for correction/interpretation/modification of the award or passing of an additional award did not begin to run.

9.1. All the judgments cited by Mr. Bhattad, learned counsel for the petitioner, contemplate the requirement of Section 31(5) vis-a-vis the time as prescribed in Section 34(3) for challenging of the award. In fact, the factual position in *Anilkumar Jinabhai Patel* (supra) is quite similar to the factual position as extant in the present matter.

10. Section 32 (1) of the A & C Act pressed into service by Mr. Bhattad, learned counsel for the petitioner, merely contemplates that the arbitration proceedings stand terminated by the final arbitral award, or by an order of the Arbitral Tribunal under sub-section (2) thereof. It does not contemplate that the arbitral proceedings stand terminated, only upon delivery of the arbitral award, as contemplated by Section 31(5) and therefore nothing turn around the language of Section 32(1) insofar as the present issue is concerned.

11. Section 36 (1) of the A & C Act, provides that when the time for making an application to set aside the arbitral award under Section 34 has expired, then subject to Section 36(2) the award shall be enforced as a decree under the Code of Civil Procedure. The contention of Mr. Bhattad, learned counsel for the petitioner, is that since the signed copy of the award was not delivered to the petitioner, in terms of Section 31(5) of the A & C Act, the time for making the application for setting aside the arbitral award had not expired and the execution proceedings were therefore infirm, is in my considered opinion taking a too literal and narrow view of the language of Section 31(5) of the A & C Act, which would defeat the very purpose and object of the Act itself, as once a 'party', is held to have received/obtained the signed copy of the award, maybe a certified copy, as indicated above the information regarding the contents of the award stands attributed to the party, and therefore the time, would begin to run for raising a challenge to the award. Once that time has expired, it cannot be permitted to be said that though a certified signed copy was obtained by the 'party', from the Arbitrator, still the time under Section 31(1) or 34(3) of the A & C Act, did not run and expire, as a signed copy of the award, in terms

of Section 31(5) was not delivered to the 'party'. It is a settled position of law, that where the literal meaning of a provision, entails in doing violence to the meaning, intent and purpose of the Act, it would call for a purposeful and constructive meaning to be given to the language of the provision.

12. This is more so for the reason that Section 36 of the A & C Act, as it earlier stood, was substituted by Act.3 of 2016, w.e.f. 23.10.2015, whereby even the filing of an application under Section 34 of the A & C Act, did not prohibit the filing of an application for enforcement of the award as contemplated by Section 36(1) of the A & C Act, and such enforcement could only be stalled, in case the requirement of Section 36(2) stood granted by the Court executing the award, upon satisfaction of the parameters as set forth in Section 36(3) of the A & C Act, to the satisfaction of the Court executing the award, for reasons to be recorded in writing. This would indicate that even filing of an application under Section 34(3) of the A & C Act, within the time frame as contemplated therein, does not have the effect of stalling the enforcement of the award by invoking Section 36(1) of the A & C Act.

13. The application under Section 34 of the A & C Act, was filed by the petitioner on 8.6.2015, in which, the following statement is made :

“ Subject matter of this application is award passed in Arbitration case No.ARB/AJCCB/01/2012 of the above named disputant before the Arbitral Tribunal presided over by Adv. G.N. Divekar, Yeotmal, of dated 27.01.2015, and this application is presented within the period of limitation from the date of receiving of the signed copies of the award.”

This would clearly indicate an admission on part of the petitioner that the signed copy of the award was received by the petitioner on the basis of which the application under Section 34(1) of the A & C Act, was being filed by the petitioner. The above statement is made on oath as the application under Section 34 of the A & C Act, in which it is contained is duly sworn before the Notary Public and there is no reason whatsoever to doubt its authenticity.

14. Even presuming the contrary contention of the petitioner that he had not received the signed copy of the award from the Arbitrator, however, in the instant case it is not disputed that the petitioner had obtained the certified copy of the signed award from the Arbitrator on 7.3.2015, whereupon the application under Section 34 of the A & C Act, came to be filed by the petitioner,

on 8.6.2015 (page 99), which came to be rejected on account of the petitioner, not paying the requisite court fee, by the order dated 4.8.2015, challenge to which before this Court in a writ petition was withdrawn to file an appeal under Section 37 of the A & C Act, which was never done, as a result of which, the rejection of the application under Section 34 as filed by the petitioner attained finality. Now to contend that the enforcement proceedings under Section 36 (1) of the A & C Act, were infirm on the ground that a signed copy of the award, within the meaning of Section 31(5) of the A & C Act, was not supplied, to the petitioner, in my considered opinion, is a plea which would not be available to the petitioner, as the information/knowledge of the passing of the award and its contents, stood received by the petitioner upon receipt of the certified signed copy of the award from the Arbitrator, on 7.3.2015.

15. It is also material to note that a similar plea was raised earlier by the petitioner before the Court enforcing the award, contending that due to the non-receipt of the signed copy of the award the same had not attained finality and therefore its enforcement was not permissible. This contention was rejected by the Court enforcing the award by the order dated 17.6.2017, by a

common order below Ex.13, 14 & 15, which being the position, another application on the same ground in a different wording cannot be permitted.

16. Thus, in view of the above discussion, I, do not find any merit in the contention that the award, is unenforceable on account of the plea that the signed copy of the award was not received by the petitioner and therefore in view of Section 31(5) read with Section 36(1) of the A & C Act, the enforcement proceedings were infirm. The same is rejected and the writ petitions are dismissed. Rule stands discharged. No order as to costs. The civil applications also stand disposed of in terms of the above judgment.

(AVINASH G. GHAROTE, J.)

S.D. Bhimte