

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 2576 of 2019 (O&M)

Date of decision: 27th March, 2023

Avinash Jain

Appellant

Versus

The Punjab Agro Food Grain Corporation Ltd. and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ishan Gupta, Advocate for the appellant.
Mr. Somesh Gupta, Advocate for respondent No. 1.

AVNEESH JHINGAN, J (Oral):

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is filed aggrieved of dismissal of objections under Section 34 of the Act as time barred.

2. The brief facts are that the appellant on 17.11.2009 was allotted the work of milling of paddy for the crop year 2009-10. The appellant failed to deliver the rice within the stipulated time. At the instance of the respondent No. 1 (hereinafter referred to as 'the respondent') arbitration proceedings were initiated which culminated in award dated 10.10.2012. The objections filed under Section 34 of the Act on 23.3.2016 were dismissed as time barred hence, the present appeal.

3. The appellant had filed CWP No. 23989 of 2011 and interim protection was granted that during the pendency of the arbitration proceedings the recovery shall not be effected. The writ petition was disposed of on 26.2.2013 with liberty to the petitioner (appellant herein) to raise all the pleas in arbitration and further arbitrator was directed to decide the matter within six months.

4. Learned counsel for the appellant submits that the appellant was not aware of the arbitration proceedings. It is further argued that copy

of the award was not sent on a correct address by the arbitrator. There was non-compliance of Section 31(5) of the Act, no signed copy of the award was delivered to the appellant and registered letter was received back by arbitrator.

5. Learned counsel for the respondent refutes the contentions and submits that the appellant was aware of the arbitration proceedings. He further submits that in pursuance to the notice by arbitrator, the appellant had sent a request for adjournment. It is argued that the arbitral award was sent through registered post on the address given on the letterhead used by the appellant for seeking adjournment. Reliance is placed upon Section 27 of the General Clauses Act, 1897 (for short, 'GC Act') as also on the decision of the Supreme Court in ***Vishwabandhu v. Sri Krishna and another, 2022(1) Apex Court Judgments (SC) 271.***

6. Heard learned counsel for the parties and perused the record.

7. The appellant was aware of the arbitration proceedings, he chose not to appear. The stand of the appellant that he was not aware of the arbitration proceedings is falsified from the fact that the appellant had moved an application seeking adjournment in the arbitration proceedings. Moreover, in writ petition the stand taken by the petitioner was that the arbitration proceedings and writ can go on as parallel proceedings. No steps were taken by the appellant after disposal of the writ petition, he remained silent for more than three years and as an after-thought had filed the objections under Section 34 of the Act on 23.3.2016.

8. The stand taken by the appellant in proceedings under Section 34 of the Act was that he gained knowledge of the ex-parte award in the year 2014 in execution proceedings. He stated that he applied for copy of the award on 22.12.2014 but the copy was not supplied. At the same time, it was pleaded that in pursuance to letter dated 8.3.2016, the copy was supplied on 18.3.2016. The court concerned rightly concluded that two stands taken by the appellant were contradictory.

9. It is not disputed that copy of the award was sent to the appellant on 15.10.2012 through registered post and the letter was received back with the endorsement "receiver did not meet in the office".

10. From the perusal of the record, the contention of learned

counsel for the appellant that the registered letter was not sent on the correct address falls on the face of it. The letter was sent on the address mentioned on the letter-head used by the appellant for seeking adjournment.

11. Before proceeding further, it would be relevant to analyse Section 27 of the GC Act. Section 27 is reproduced below:

“27. Meaning of service by post.-Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

12. Section 27 of the GC Act deals with service by post. The term 'any other expression' used in the section widens the ambit of the Section. There is presumption of service of a document, if it is posted by registered post, after pre-paying, properly addressing and containing the document.

13. The term used in Section 31(5) of the Act is “delivered” and Section 34(3) of the Act uses the word “received”. Both “delivered” and “received” would be covered in the terms used in Section 27 of the GC Act as it is widely worded.

14. There is no quarrel on the proposition that presumption of service of the document is rebuttable. The onus lies upon the party denying receipt of a document. Reference in this regard is made to the decisions of the Supreme Court in ***Sunil Kumar Sambhudayal Gupta and others v. State of Maharashtra, 2011(2) SCC (Crl.) 375*** and ***Parimal v. Veena @ Bharti, 2011(3) SCC 545***.

15. The decision of the Supreme Court in ***Vishwabandhu's (supra)*** relied upon by learned counsel for the respondent supports the case of the respondent that even if the letter is returned with endorsement 'not available in the office' there is presumed service. The relevant para is

reproduced below:

*“19. The summons issued by registered post was received back with postal endorsement of refusal, as would be clear from the order dated 19.02.1997. Sub-Rule (5) of Order V Rule 9 of the Code states inter alia that if the defendant or his agent had refused to take delivery of the postal article containing the summons, the court issuing the summons shall declare that the summons had been duly served on the defendant. The order dated 19.02.1997 was thus completely in conformity with the legal requirements. In a slightly different context, while considering the effect of [Section 27](#) of the General Clauses Act, 1897, a Bench of three Judges of this Court in **C.C. Alavi Haji v. Palapetty Muhammed and another**, AIR 2007 SC (Supp) 1705 made following observations:-*

“14. [Section 27](#) gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement “refused” or “not available in the house” or “house locked” or “shop

closed” or “addressee not in station”, due service
has to be presumed.”

[Emphasis supplied]

16. It would not be out of place to mention that apart from making a bald statement that the letter was sent on wrong address, there is no attempt made to rebut the presumption invoked under Section 27 of the GC Act. Neither there is anything on record nor it is the case of the appellant that change of address if any, was communicated to the respondent or to the arbitrator.
17. From the above discussion, it clearly depicts that the appellant from the beginning was delaying the proceedings. He remained silent for four years after passing of the award and three years after disposal of the writ petition. It would be appropriate to mention that as per the appellant he gained knowledge of passing of the award in 2014. This court while disposing the writ petition granted liberty to the petitioner to raise all the pleas taken in the writ petition before the arbitrator, yet no steps were taken thereafter by the appellant.
18. There is another aspect to be considered in this matter that the appellant gained knowledge of passing of ex-parte award in 2014 and thereafter waited till 8.3.2016 to apply for copy of award. A concocted story to cover the delay in filing objections under Section 34 of the Act is put forth. There is un-rebutted presumption of due service of the award against the appellant.
19. No case is made out for interference in the impugned order.
20. The appeal is dismissed.
21. Since the main appeal has been dismissed, pending application, if any, is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

27th March, 2023
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No