

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 10389 of 2014 (O&M)
Date of decision: 14th February, 2023

M/s Rawks Trading Company

Appellant

Versus

Atul Raheja and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S. K. Bawa, Advocate for the appellant.

AVNEESH JHINGAN, J (Oral):

1. Aggrieved of dismissal of application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'), the appellant is before this court.
2. The brief facts are that the parties entered into a lease deed dated 4.5.2009 for occupation and possession of a shop at Paras Downtown Square at Zirakpur (Punjab). Clause of the lease deed provided for a mechanism of dispute resolution through arbitration. There was a dispute between the parties. The arbitration proceedings culminated into award dated 24.3.2012. The objections under Section 34 of the Act filed by the appellant were dismissed on 11.8.2014 as time barred.
3. Learned counsel for the appellant submits that as per 31(5) of the Act each party shall be delivered the signed copy of the award. The contention is that there is non compliance of Section 31(5) of the Act.
4. It is not disputed before this court that the award is dated 24.3.2012. The appellant was aware of the arbitration proceedings, copy of the award was sent by the arbitrator through registered post on 30.3.2012 and the receipt is available on record. The objections were filed on 31.8.2012.

5. Section 31(5) of the Act provides that copy of the arbitral award shall be delivered to each of the party. Section 34(3) of the Act prescribes limitation of three months from the receipt of arbitral award for filing objections under Section 34 of the Act. Delay upto thirty days beyond the limitation prescribed can be condoned as per proviso to Section 34(3) of the Act. It is trite law that applicability of Section 5 of the Limitation Act is excluded by Section 34(3) of the Act and that delay beyond 30 days after expiry of limitation period cannot be condoned. Reference in this regard is made to ***Union of India v. Ms Popular Constructing Co. AIR 2001 SC 4010 and M/s Consolidated Engg. Enterprises v. Principal Secy. Irrigation Deptt. and others, (2008) 7 SCC 169.***

6. Before proceeding further, it would be relevant to analyse Section 27 of the General Clauses Act, 1897 (for short, '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.”

7. 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 rebuttable presumption of service of a document, if it is posted by registered post, after pre-paying, properly addressing and containing the document.

8. 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 and covers “any other expression used”.

9. 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*.

10. In the case in hand, there is not even an attempt made to rebut the presumption invoked against the appellant. Apart from making bald statement in objections under Section 34 of the Act that the registered post was sent on an incomplete address, no evidence was adduced to support the statement. Even today, no contention is raised as to how the address was incomplete. The pre-requisite of invoking presumption under Section 27 of the GC Act i.e. (i) arbitral award was sent to the appellant through registered post; (ii) postal receipts are available on record; (iii) there was pre-paying of the postage; (iv) letter was on the address of the appellant (v) containing the copy of the award, are fulfilled.

11. The presumption under Section 27 of the GC Act is that copy of the award was served upon the appellant in April, 2012. Having failed to rebut the presumption, the contention that the appellant had not received copy of the award lacks merit.

12. No case is made out for interference in the impugned order.

13. The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

14th February, 2023
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1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No