

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**FAO No. 4522 of 2018 (O&M)  
Date of decision: 23<sup>rd</sup> January, 2023**

Parveen Diwan

Petitioner

Versus

Punjab Agro Industries Corporation & another

Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. K. S. Gill, Advocate for the appellant.  
Mr. Anupam Singla, Advocate for respondent No. 1.

\*\*\*\*

**AVNEESH JHINGAN, J (Oral):**

1. Aggrieved of dismissal of application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') as time barred, the appellant is before this court.
2. The brief facts are that the appellant and respondent No. 1 entered into a Financial Collaboration agreement dated 29.3.2011. Clause 32 of the agreement provided mechanism for dispute resolution through arbitration.
3. There were disputes between the parties and arbitrator was appointed. After service through publication, an ex-parte award dated 8.4.2011 was passed. On receiving notice of execution in September, 2015, the appellant applied for copy of the award which was delivered on 9.11.2015. On 18.11.2015 the objections under Section 34 of the Act was filed accompanied by application for condoning delay of four years and 132 days.
4. 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 and

period of limitation to file application is to be counted from 9.11.2015.

5. Learned counsel for the respondent No. 1 submits that after perusing the record, it was recorded in the impugned order that the arbitrator had sent copy of award through registered post to the appellant on 9.4.2011.

6. 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.***

7. The appellant has not disputed (i) that the arbitral award was sent to the appellant on 9.4.2011 through registered post, (ii) the postal receipts are available on the record, (iii) that the copy of award was sent on the address given in the agreement. (iv) there was no other address on record and (v) as per clauses of agreement in case of change of address, the appellant had to inform the respondent.

8. 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 not disputed that the award was sent to the appellant through registered post on the proper address i.e. the address given by the appellant in the agreement. It is not the case set up that any change of address in consonance with the clauses of the agreement was intimated to the arbitrator or to the respondent.

9. Before proceeding to decide the date of initiation of limitation, 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.”*

10. 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.

11. 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”.

12. 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***.

13. In the case in hand, there is not even an attempt made to rebut the presumption invoked against the appellant. 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 given in the agreement and no intimation was given by the appellant as required by the terms and clauses of the agreement of intimating change of address and (v) containing the copy of the award are fulfilled.

14. The presumption under Section 27 of the GC Act is that copy of the award was served upon the appellant in the year 2011. Having failed to rebut the presumption, the contention that limitation shall be counted

FAO No. 4522 of 2018 (O&M) [4]

from 9.11.2015 the date when the appellant received copy of the award after applying for it, lacks merit.

- 15. No case is made out for interference in the impugned order.
- 16. The appeal is dismissed.

[AVNEESH JHINGAN]  
JUDGE

23<sup>rd</sup> January, 2023  
mk

- |                               |   |     |
|-------------------------------|---|-----|
| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable         | : | Yes |