



2023:DHC:8889-DE



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 8th December, 2023

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FAO (COMM) 77/2023

SH. RAM NIWAS YADAV

..... Appellant

Through: Mr. Bipin Kumar Jha and Ms.
Komal Jha, Advs.

versus

M/S SHRIRAM TRANSPORT FINANCE

COMPANY LTD AND ANR. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (Oral)

1. None appears on behalf of Respondent No. 1 despite service of notice.
2. None had appeared on behalf of Respondent No. 1 on the previous hearing as well, that is, hearing held on 04.10.2023, and the hearing of present appeal was deferred in the interest of justice. This Court was also informed that respondent No. 2 (the sole arbitrator) had expired. In any view, respondent no.2 is not a necessary party in proceedings to set aside an arbitral award. The appellant does not seek any relief against respondent no.2. Accordingly, respondent no. 2 is deleted from the array of respondents. Consequently, it is not necessary to bring his legal heirs on record.



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3. We do not consider it apposite to defer the hearing of the present appeal any further.

4. The appellant has filed the present appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (hereafter '**A&C Act**'), impugning an order dated 19.09.2022 (hereafter '**the impugned order**'), passed by the learned Commercial Court (learned District Judge, Commercial Court, North-East District, Karkardooma Courts, Delhi), whereby the application filed by the appellant under Section 34 of the A&C Act, impugning an arbitral award dated 11.08.2014 (hereafter '**impugned award**'), was rejected.

5. The learned Commercial Court had rejected the appellant's application [OMP (Comm) No. 05/2021] on the ground that the said application was filed beyond the period stipulated under Section 34(3) of the A&C Act and that the Court did not have any jurisdiction as the seat of arbitration was at Tis Hazari Courts, Delhi.

6. The impugned award was rendered *ex parte*. It is also important to note that it was made by the sole arbitrator, who was unilaterally appointed by respondent No. 1. According to the appellant, the sole arbitrator was appointed without any consent or concurrence of the appellant.

7. The impugned award indicates that the learned Arbitral Tribunal had sent notice to the appellant by registered post acknowledgment due, but had not received back the acknowledgment card. Therefore, the learned Arbitral Tribunal had concluded that the appellant was



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neither served nor unserved. Since there was no other address of the appellant available with the learned Arbitral Tribunal, it proceeded to render the award on the basis that the appellant was served by dispatch of the notice at his last known address.

8. It is pointed out by the appellant that his address mentioned in the impugned award is incorrect as it reflects that the appellant's residence is located in Gali – 4, Ankurpur, New Delhi-110094, however, the appellant's residence is located at Block – F, Ankur Enclave, Delhi.

9. Respondent No. 1 had invoked the arbitration for recovery of a loan advanced in favour of the appellant to purchase a vehicle. The Registration Certificate of the said vehicle also correctly reflects the appellant's address as F-77, Gali No. 4, Block – F, Ankur Enclave, Delhi.

10. The appellant states that respondent no.1 had dispossessed the appellant of the vehicle financed by it on the ground that the appellant had failed to perform his repayment obligations.

11. As noted above, the impugned award was passed *ex parte* and according to the appellant, without any notice to him. The appellant claims that he received summons on 15.02.2020, issued in the proceedings for enforcement of the impugned award, directing the appellant to appear on 19.02.2020.

12. The appellant appeared in the said proceedings on 19.02.2020, and became aware that an *ex parte* award had been passed six years



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earlier on 14.02.2014 awarding a sum of ₹3,96,190/- along with interest @ 12% per annum, from the date of the said award till the date of realisation. The appellant claims that he had inspected the case file and discovered that the arbitral proceedings were conducted without proper notice to him.

13. The appellant filed an application under Section 34 of the A&C Act on 12.07.2021 [OMP (Comm) No. 05/2021] to set aside the impugned award, along with an application for condonation of delay.

14. The learned Commercial Court held that the appellant's application under Section 34 of the A&C Act was belated as it was filed after a delay of almost one year and ten months of the appellant becoming aware of the impugned award. The learned Court held that the said delay was unjustified.

15. It is material to note that the Hon'ble Supreme Court had, in ***Suo Motu Writ Petition (Civil) No. 3 of 2020 in Re: Cognizance for Extension of Limitation***, passed orders extending the period of limitation including for filing an application under Section 34 of the A&C Act. In terms of the said orders, if the period of limitation is reckoned from 19.02.2020 – the date when the appellant became aware of the impugned award – the appellant's application under Section 34 of the A&C Act would be within the period of limitation, as prescribed under Section 34(3) of the A&C Act. The learned Commercial Court had, thus, fallen in error in rejecting the appellant's application on the ground of limitation.



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16. The learned Commercial Court had also held that it did not have territorial jurisdiction to entertain the application filed by the appellant under Section 34 of the A&C Act. This conclusion is premised on the basis that the arbitral proceedings were conducted by the learned sole arbitrator in Tis Hazari Court Complex; therefore, the place of arbitration was at the Tis Hazari Courts, Delhi.

17. The impugned award does not indicate that the learned Arbitral Tribunal had determined the place of arbitration. Further Clause 15.1 of the Loan cum Hypothecation Agreement expressly provides that Delhi courts shall alone have exclusive jurisdiction in respect of any matter, claim or dispute arising out of or in any way related to the said agreement. It does not specify any particular district of Delhi to be the seat of arbitration.

18. The assumption that the learned Commercial Court does not have any jurisdiction on the basis that the arbitral proceedings were conducted at Tis Hazari Court Complex is, thus, erroneous. The location of the office in Tis Hazari Court Complex where arbitral proceedings are held cannot be the sole basis of determining the jurisdiction of the learned Commercial Court in respect of the said arbitration.

19. It is apparent that the impugned award was rendered without notice to the appellant as the notices were sent to the appellant by registered post acknowledgment due, but the acknowledgment card was not received back. As noted above, the address of the appellant as



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reflected in the arbitral record is also incorrect. Thus, it is assumed that the notice would have been sent to an incorrect address.

20. In the circumstances, we find merit in the appellant's contention that the arbitral proceedings were conducted without giving any opportunity to the appellant to contest the same.

21. In view of the above, the present appeal is allowed and the impugned order dated 19.09.2022 and the impugned award dated 11.08.2014, are set aside.

22. The pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 8, 2023 / 'KDK'