



\$~47

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. (COMM) 106/2022, I.A. 3245/2022 & I.A. 20670-20672/2023

PRAMILA YADAV & ANR.Petitioners

Through: Mr. Prafulla Kumar Behra and Ms. Heena, Advocate, with petitioner No. 2 in person.

versus

VINOD SHARMA & ANR.Respondents

Through: Ms. Anusuya Salwan, Mr. Bankim Garg, Ms. Nikita Salwan and Mr. Rachit Wadhwa, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **13.08.2024**

I.A. 3246/2022 (condonation of delay)

1. This application has been filed by the petitioners for condonation of delay of 1309 days in filing the captioned petition under Section 34 of the Arbitration and Conciliation Act, 1996 ["the Act"].
2. The impugned award was passed on 26.02.2018 and corrected on 20.03.2018. According to this application, the award was never served upon the petitioners, and they acquired knowledge of the award only when execution proceedings were served upon them on 09.11.2021. They then filed the petition on 21.01.2022, within the period of three months under Section 34(3) of the Act.

O.M.P. (COMM) 106/2022

Page 1 of 4



3. By an order dated 09.02.2023, the learned Arbitrator was requested to place the electronic copy of the arbitral record before the Court and also inform the Court, on affidavit, with regard to service of the award upon the petitioners.

4. The learned Arbitrator has filed an affidavit dated 12.05.2023, in which it is stated that the matter was first referred to arbitration of Mr. Sanjoy Bhaumik, Advocate. Upon his resignation as the arbitrator on 23.01.2018, Ms. Veena Tanwar, the arbitrator who has delivered the impugned award, was appointed. She further states that she entered into reference by notice dated 26.01.2018, and that all notices and orders were transmitted to the parties by email. She published the award on 26.02.2018, and sent the original award to the parties through speed post. It appears, from the annexures to the affidavit, that attempts to serve the award upon the present petitioners [respondent No.1 and 2 in the arbitral proceedings] by speed post, was unsuccessful and was returned by the postal department with the remark that the addressee was not available despite repeated efforts. She, therefore, transmitted the award to both the petitioners by email. A copy of the said email dated 14.03.2018 has been annexed to the affidavit. It is addressed to “pramila8284@gmail.com” and “yadavmanoj44@gmail.com”.

5. Mr. Prafulla Kumar Behra, learned counsel for the petitioners, submits that the email address of petitioner No. 2 is incorrect in the aforesaid email issued by the learned Arbitrator. The email address of petitioner No.1 is accepted to be correct. It may be noted that petitioner No.1 and petitioner No. 2 are husband and wife.

6. The arbitral record discloses that the learned Arbitrator had



transmitted the award by speed post to the present petitioners at the same residential address which appears in the memo of parties of this petition. However, the petitioners were apparently not available at the said addresses, despite repeated attempts to serve the award upon them by the postal authorities.

7. The email addresses, by which the award was served upon the petitioners on 14.03.2018, also appears in the arbitral record at several places. It is undisputed that the present petitioners were represented before the erstwhile arbitrator, Mr. Sanjoy Bhaumik, by Mr. Behra, who appears on their behalf even today. He states, at the bar, that he did appear on behalf of the petitioners before the erstwhile arbitrator, but was instructed not to appear after the reconstitution of the arbitral tribunal. Be that as it may, the subsequently appointed learned Arbitrator did also address a copy of the notice of her appointment, to the parties at the very same email address, and to Mr. Behra at “lawsmajesty@gmail.com”, which is admittedly his email address. He has neither informed the learned Arbitrator that he does not represent the petitioners, nor corrected the email addresses upon which the communications were being sent to the petitioners herein.

8. In fact, Ms. Anusuya Salwan, learned counsel for the respondents, has drawn my attention to an email dated 06.12.2017, addressed by Mr. Behra to the erstwhile arbitrator, Mr. Sanjoy Bhaumik, which is copied to the petitioners herein at the very same email addresses upon which the award was served on them. This email is also part of the arbitral record [at page No. 87 of “Claimant’s Submission”] filed by the learned Arbitrator *vide* Diary No. 863061/2023.



9. In these circumstances, I am unable to accept that the award was not served upon the petitioners until the execution proceedings had commenced. I find that it was served upon them, at the latest, on 14.03.2018. The maximum condonable period, under Section 34(3) of the Act, read with the proviso thereto, would therefore lapse by 14.07.2018.

10. The present petition, having been filed only on 21.01.2022, the delay in filing falls beyond the maximum period of 30 days for condonation of delay, as held by Supreme Court in *Union of India v. Popular Construction Co.* [(2001) 8 SCC 470]. This Court, therefore, has no jurisdiction to condone the delay.

11. The application for condonation of delay is, therefore, rejected.

O.M.P. (COMM) 106/2022, I.A. 3245/2022 & I.A. 20670-20672/2023

1. As a consequence of the order passed in I.A. 3246/2022, the petition, under Section 34 of the Act, is dismissed as barred by delay, and all other pending applications also stand disposed of.

2. Mr. Behra submits that the impugned award, in any event, is a nullity, as the learned Arbitrator who has delivered the impugned award, was appointed unilaterally by the respondents. It is open to the parties to raise their respective contentions in this regard, before the executing Court, if they are so advised, in accordance with law.

PRATEEK JALAN, J

AUGUST 13, 2024
SS/