

ORDER SHEET

AO-COM/6/2024
WITH
AP/741/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
(COMMERCIAL DIVISION)

KOTAK MAHINDRA BANK LIMITED
VERSUS
ASHOK KUMAR CHAUDHARY ALIAS
ASHOK KUMAR RAM SABADH CHAUDHURY AND ANR.

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE PARTHA SARATHI SEN

Date : 12th February, 2025.

Appearance:

Mr. Swatarup Banerjee, Adv.

Mr. Ritoban Sarkar, Adv.

Ms. Shrayashee Das, Adv.

Mr. Rohan Kumar Thakur, Adv.

Mr. Tridibesh Dasgupta, Adv.

...for the appellant

Mr. Debraj Sahu, Adv.

Ms. Sormi Dutta, Adv.

...for the defendant

1. In an application for setting aside of the award, an initial objection was raised by the appellant with regard to the maintainability of the said application on the ground that the time to challenge the award had expired.
2. The learned Single Judge on considering Section 3 and Section 31 of the Arbitration and Conciliation Act, 1996 was of the view that in the event of any doubt being created with regard to the

service of the award upon the award-debtor and in view of the stringent provisions regarding the period within which an award can be challenged, the Court would require strict compliance of delivery of a signed copy of the award by the Arbitral Tribunal and since the appellant in the instant case has failed to conclusively establish service of the award upon the respondents, thereby triggering off the period of the limitation, the initial objection as to the maintainability of the said application was overruled.

3. The learned Single Judge has also drawn a distinction between Section 3 and Section 31 of the Arbitration and Conciliation Act, 1996 to hold that Section 3 concerns service of notices by the parties whereas Section 31 imposes a duty upon the Arbitrator to deliver a signed copy of the award. The learned Single Judge was of the view that delivery of the award by the arbitral tribunal is not conclusively established.
4. Mr. Swatarup Banerjee, learned counsel appearing on behalf of the award-holder has submitted that the learned Single Judge has failed to take into consideration a Division Bench judgment in *Magma Fincorp Limited vs. Ashok Kumar & Ors.* reported in (2018) 1 CHN 391 where this issue has been conclusively decided. However, it is fairly submitted that the order under challenge is not an appellable order.
5. The application for setting aside of the award is yet to be decided.

6. The appellant shall be at liberty to raise this issue after the disposal of the application under Section 34 of the Arbitration and Conciliation Act, 1996.
7. We are not inclined to interfere with the order as we are for the view that the said order is not appellable under Section 37 of the Arbitration and Conciliation Act, 1996.
8. With the aforesaid observation, AO-COM/6/2024 is disposed of.

(SOUMEN SEN, J.)

(PARTHA SARATHI SEN, J.)