

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION APPEAL NO. 2 OF 2024

Padmashree Dr. Vitthalrao Vikhe	}	
Patil Sahakari Sakhar Karkhana Ltd.	}	
& Anr.	}	Appellants
versus		
The Cosmos Co-operative Bank Ltd.	}	
& Ors.	}	Respondents

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Mr. Rohaan Cama with Mr. Amit a. Patil i/b.
Parinam Law Associates for appellants.

Mr. S. S. Panchpor with Ms. N. S. Mahadik,
Ms. P. A. Borhade and Mr. Aashay Rabade i/b.
Ms. Radhika Panchpor for respondent no. 1.

**CORAM: ALOK ARADHE, CJ. &
M. S. KARNIK, J.**

DATE: MARCH 27, 2025

ORDER: (Per Chief Justice)

- 1.** Heard learned counsel for the parties.
- 2.** Admit. With consent of learned counsel for the parties, heard finally.
- 3.** In this appeal under section 37 of the Arbitration and Conciliation Act, 1996 (the Act of 1996), the appellants have assailed the order dated 5th May 2022, by which the District Judge-2, Pune has refused to condone the delay in filing the objection under section 34 of the Act of 1996.

4. Facts giving rise to filing of the appeal, briefly stated, are that an *ex-parte* arbitral award was passed on 26th July 2013 against the appellants, by which they were directed to make payment of the sum of Rs.8,67,00,647.18 together with interest to respondent no. 1. According to the appellants, the copy of the award was never served on them as mandated under section 31(5) of the Act of 1996. Respondent no. 1 filed an application on 5th March 2014 seeking execution of the award before the District Judge, Pune. The appellants received notice of the aforesaid execution proceedings on 29th June 2015 and they sought time to engage the counsel.

5. The appellants, thereafter, by a communication dated 28th October 2015, requested the Arbitral Tribunal to supply them with copies of the arbitral award. However, the copies of the arbitral award was not supplied to the appellants. Thereupon, the appellants filed a petition under section 34 of the Act of 1996 on 3rd December 2016 on the basis of the operative portion of the award, which was extracted by the respondent no. 1 in the execution application. The appellants, by way of abundant caution, filed an application seeking condonation of delay, wherein, in para 12, it was asserted that there was no delay in filing the application as the signed copy of the award was not served on the appellants.

6. Respondent no. 1 filed a reply to the aforesaid application and filed an application on 17th March 2021 seeking leave to produce certain documents, one of which was the postal track receipt claiming service of the award on the appellants.

7. Learned District Judge, Pune, by the impugned order dated 5th May 2022, rejected the application seeking condonation of

delay on the ground that in view of the proviso to section 34(3) of the Act of 1996, the Court only can condone the delay upto a period of 30 days. Learned District Judge, therefore, in view of the proviso to section 34(3) of the Act of 1996, rejected the application preferred by the appellants for condonation of delay. Hence this appeal.

8. Learned counsel for the appellants submitted that the District Judge ought to have appreciated that the time of limitation to file an application under section 34 of the Act of 1996 commences from the date when a duly signed copy of the award is served on the appellants. It is further submitted that there must be a positive proof that the postal receipt evidences actual receipt and delivery of the award and not merely dispatch of the award. It is further submitted that the postal evidence must show that what was contained in the postal dispatch receipt was in fact the arbitral award. Learned counsel for the appellants has invited the attention of this Court to the postal track receipt and submitted that the address of the appellant no.2 mentioned therein is incorrect.

9. In support of the aforesaid submissions, learned counsel for the appellants has relied upon a Supreme Court judgement in the case of ***State of Maharashtra and Ors. vs. ARK Builders Private Limited***¹ and a Division Bench judgement of this Court in the case of ***JSC Ispat Pvt. Ltd. And Ors. vs. HDB Financial Services Ltd.***².

10. On the other hand, learned counsel for the respondent no.1 has invited the attention of this Court to the postal track

¹ (2011) 4 SCC 616

² 2018 SCC ONLine Bom 538

receipt and submitted that two envelopes were dispatched to the appellants and they were duly served. He further submitted that in peculiar facts and circumstances of the case, the respondent no. 1 be granted liberty to lead evidence to show that duly signed copy of the award was served on the appellants.

11. We have considered the submissions made by both sides and have perused the record.

12. Section 31(5) of the Act of 1996 mandates that after an arbitral award is made, a signed copy thereof shall be delivered to each party. In the case of ***Union of India vs. Tecco Trichy Engineers & Contractors***³ the Supreme Court has held that the limitation to file an application under section 34 of the Act of 1996 commences to run from the date when a signed copy of the award has been served on a party. From a perusal of the postal track receipt, it is evident that the address of appellant no. 2 is mentioned incorrectly as she resides in Beed, whereas in the postal track receipt, she is shown to be resident of District Pune.

13. In our opinion, in the instant case, the issue whether or not a signed copy of the award has been served on the appellants could not have been decided by the District Judge, Pune without conducting a summary inquiry. From mere postal track receipt, no inference can be drawn that a signed copy of the award has been duly served on the appellants.

14. In the facts and circumstances of the case, we, therefore, set aside the impugned order dated 5th May 2022 passed by the District Judge-2, Pune. Needless to state that the District Judge

³ (2005) 4 SCC 239

shall grant an opportunity to the parties to adduce evidence by way of an affidavit and shall conduct a summary inquiry to ascertain whether or not a signed copy of the award was served on the appellants and shall deal with the application filed by the appellants under section 5 of the Limitation Act, 1963 accordingly.

15. In the result, the appeal is disposed of.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)