

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/42/2025
ASMUDDIN MIA
VS
YES BANK LTD

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 19th March, 2026.

Appearance:

Mr. Debajyoti Basu, Sr. Adv.

Mr. Shamba Chakraborty, Adv. ...for petitioner.

Mr. Sayak Ranjan Ganguly, Adv.

Ms. Srijani Ghosh, Adv.

Ms. Kunja Kanu, Adv.

Ms. Ankita Jha, Adv. ...for respondent.

The Court: This is an application under Section 11 and 12 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act) read with sections 14 and 15 thereof.

The petitioner submits that this is a fit case to record termination of the mandate of the learned arbitrator and for appointment of a substitute arbitrator by referring the dispute in exercise of power under Section 11(6) of the said Act. It is further submitted that the arbitrator was unilaterally appointed and that is a good ground for termination of the mandate.

Mr. Basu, learned senior advocate submits that until and unless the provisions of section 31(5) of the said Act are complied with by the learned arbitrator, the arbitral proceeding does not terminate in terms of section 32 of the said Act. Mr. Basu submits that after the arbitral award was published, a signed copy of the same

should have been delivered to the petitioner. An unsigned copy of the award was delivered. He further submits that the signature of the arbitrator in original, ought to have been reflected in the award.

Reliance has been placed on the decision of the Hon'ble Apex Court in the matter of *P. Radha Bai And Others vs. P. Ashok Kumar And Another*, reported in [2019] 13 SCC 445 in support of the contention that the delivery of the arbitral award to a party will be effective only upon receipt of the same. The delivery of an award under section (5) of section 31 is not a mere formality. It is a matter of substance. Upon such delivery being effected, the proceedings stand terminated. In this case, the petitioner has challenged the nature of delivery of the award on the ground that the award was not properly signed. He further relies on the decision of *Union of India vs. Tecco Trichy Engineers & Contractors*, reported in [2005] 4 SCC 239 on a similar proposition of law. Thus, according to Mr. Basu, when the service of award was not in accordance with law, the proceedings continued and this court in exercise of powers under Sections 14 and 15 of the said Act must terminate the mandate of the learned arbitrator, who was unilaterally appointed and refer the dispute afresh to a substitute arbitrator. Further reliance was placed on a Division Bench judgment of this court in *The State of West Bengal and Anr. Vs. M/s. Motilal AGarwala and Anr*, reported in 2016 SCC OnLine Cal 482 in support of the contention that limitation would start running under Section 34(3) of the said Act, from the date of delivery of the signed copy of the award from the arbitral tribunal. Further, reference was made on a similar proposition of law to the decision of *Dakshin Haryana Bijli Vitran Nigam Limited vs. Navigant Technologies Private Limited*. Reliance was also placed on *Benarsi Krishna Committee And Others vs. Karmyogi Shelters Private Limited*, reported in [2012] 9 SCC 496 in support of the contention that service of the award upon the agent of a party was not proper delivery of the award.

Learned advocate for the respondent submits that a copy of the award was duly served upon the petitioner and the petitioner has annexed a copy of the said award. It is not for this court, at this stage, to adjudicate whether the delivery was proper or not.

Undoubtedly, the copy of the award was served upon the petitioner. The award bears the short signature of the arbitrator on every page. Whether the award was to be signed at a particular place and delivered with the full signature of the arbitrator is not for this referral court to decide. Once the award has been served upon the petitioner, the proceeding terminated. The remedy of the petitioner would be to challenge the award under the grounds available in law. The period of limitation will run from the date the award was received. In the event the petitioner can establish before the proper forum that the limitation had not begun to run, as the delivery was not proper, in that event the benefit will be given to the petitioner. However, once the award has been published and served, the proceeding has terminated. Alleged non compliance of section 31(5) of the said Act on the ground that it did not bear the proper signature of the arbitrator at the proper place, is a matter for adjudication by the appropriate forum. For this court to hold that the proceedings continue and should be terminated under the provisions of sections 14 or 15 of the said Act would be contrary to the statute and beyond jurisdiction.

The decision of *Union of India vs. Tecco Trichy Engineers & Contractors* [supra] does not apply to the facts of the case, inasmuch as, the short question which arose for decision in the appeal before the Hon'ble Apex Court was, what would be the effective date on which the appellant before the Apex Court was delivered with the arbitral award and what would be the date wherefrom the limitation within the meaning of sub-section (3) of section 34 of the Act should be calculated. In paragraph 8 of the decision, there is a passing observation that, only after the stage of section 31

was over that the arbitral proceeding stood terminated. However, the said paragraph is silent with regard to the kind of signature which was mandated by law to be affixed on the award. The ratio of the decision was that, limitation should be calculated from the date the party was served in compliance with section 31(5) of the said Act.

The ratio was followed in *Dakshin Haryana Bijli Vitran Nigam* (supra) and the Apex Court held that period of limitation for challenging the award commenced from the date on which the party making the application received a signed copy of the arbitral award as required under Section 31(5). Whether the delivery of the award in question with a short signature of the arbitrator was a valid delivery or not, cannot be decided in this proceeding. This issue will be adjudicated by the appropriate forum at the appropriate stage.

In *Motilal Agarwal* (supra), a division Bench of this Court held that in case of multi party arbitration and in which an institution manages the entire arbitral proceeding, original signature of all the arbitrators would not be required and it would suffice if one of the arbitrators has signed the award.

Mr. Ganguly, learned advocate for the respondent submits that a copy of the award was duly received by the petitioner as also by the respondent. The left hand bottom of every page of the award would indicate that short signature was made on the award. Under such circumstances only because in the last page signature was affixed at the bottom of the page like all other pages, the arbitral award was not bad in law and delivery under Section 31(5) was effected.

Having considered the rival contentions of the parties, this Court is of the view that once the award was published and served upon the petitioner, the proceedings terminated. Whether the delivery of the award was proper or not and consequently what would be the period of limitation to challenge such award is not to be decided in this proceeding and will be decided at the appropriate stage in accordance with law.

Accordingly, the application is dismissed.

(SHAMPA SARKAR, J.)

Pkd/TR