

(2015) 11 BOM CK 0048

In the Bombay High Court

Case No : Appeal Lodging No. 472 of 2014 in Arbitration Petition No. 996 of 2014, Notice of Motion Lodging Nos. 1757 and 2441 of 2014 in Appeal Lodging No. 472 of 2014, Appeal Lodging No. 473 of 2014 in Arbitration Petition No. 998 of 2014, Notice of Motion Lodging

Apex Encon Projects Pvt. Ltd. and Others APPELLANT

Vs

L & T Finance Ltd. and Others RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1)(h), 3(1)(a), 31(5), 34
Evidence Act, 1872 — Section 114
General Clauses Act, 1897 — Section 27

Citation : (2015) 11 BOM CK 0048

Hon'ble Judges : V.M. Kanade and Revati Mohite Dere, JJ.

Bench : Division Bench

Advocate : Yogendra Singh i/b Auris Legal, for the Appellant; D.D. Madon, Senior Counsel, S.I. Joshi, Anand Poojari and Nikita Pawar I/b S.I. Joshi and Co., for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—The appellants have filed these appeals against the judgment and order dated 16th July, 2014 passed by the learned Single Judge. By the said order, which was a common order passed in four arbitration petitions, the learned Single Judge was pleased to come to the conclusion that the petitions which are filed by the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 ("the said Act"), were barred by limitation and on that ground, the arbitration petitions were dismissed. The appellants being aggrieved by the said order have preferred these appeals.

2. It is the contention of the appellants that arbitral award dated 21st March, 2013 was not served in accordance with the provisions of Section 31(5) of the said Act, on 1st April, 2013, as alleged by the respondents and it is, therefore, contended that the limitation for filing applications/petitions under Section 34

should not be counted from 1st April, 2013 and the finding given by the learned Single Judge that the petitions were barred by limitation, therefore, is liable to be set aside.

3. The contention of the appellants is that they had not been served with the signed copy of the award and it was contended that the copy was served on the registered office at Vishakhapatnam and not the corporate office at New Delhi. The factual position in respect of all these appeals is that the award in appeal (Lodging) No. 472 of 2014 was served at Vishakhapatnam Office by RPAD, however, no acknowledgment of the registered letter which was sent to Delhi Office of appellant No. 2, was received back by the respondents and therefore according to the appellants, there was no proof of service by RPAD at the Delhi address. The same is the case with the service of award in respect of the other three appeals. The contention of the appellants is that the award which was served at the registered office at Vishakhapatnam showed that endorsement was made by the security guard of appellant No. 1. It was submitted that the security guard was not the party within the meaning of Section 2(1)(h) of the said Act, and therefore, there was no proper service as per the provisions of Section 31(5) of the said Act.

4. The learned Counsel appearing on behalf of the appellants therefore made twofold submission, viz;

(i) that there was no proper delivery of the arbitral award as provided in Section 31(5) of the said Act, and reliance was placed on the judgment of the Apex Court in the case of Union of India (UOI) Vs. Tecco Trichy Engineers and Contractors, ; The State of Maharashtra and Others Vs. Ark Builders Pvt. Ltd., ; Benarsi Krishna Committee and Others Vs. Karmyogi Shelters Pvt. Ltd., ; and

(ii) that the delivery of the arbitral award was made on a different address of the appellant No. 1 and not on its specific office and authorised persons who could give receipt/acknowledgment of correspondence. It was submitted that if the delivery of the award was not made on the recipient i.e. the party to the arbitration agreement, then the presumption under Section 114 of the Evidence Act would not be attracted. Reliance was placed on three judgments; Harchand Singh Vs. Reliable Agro Engineering Services (Pvt.) Ltd., ; Lalmani Ramnath Tiwari Vs. Bhimrao Govind Pawar, ; Meghji Kanji Patel Vs. Kundanman Chamanlal Mehtani, . It was contended that the averments made by the appellants in the rejoinder were neither denied nor explained.

5. The learned Counsel appearing on behalf of the appellants also invited our attention to the impugned order passed by the learned Single Judge. He submitted that the submissions made by the appellants and the judgments on which reliance was placed by him were not properly taken into consideration by the learned Single Judge.

6. The service of the award was effected by registered post. The postal slips of

service upon the corporate office as also the registered office of the respondents were produced by the respondents. The postal slips show that the acknowledgment of service at the corporate office have not been received by the respondents though the postal acknowledgment in respect of service at the registered office was received. It is contended by the learned Counsel appearing on behalf of the appellants that the endorsement on the said postal acknowledgment was made by the security guard and therefore it was not proper service. Section 51 of the Companies Act lays down the provisions regarding service of documents on a company. It reads as under :

"51. Service of documents on company.-A document may be served on a company or an officer thereof by sending it to the company or officer at the registered office of the company by post under a certificate of posting or by registered post, or by leaving it at its registered office:

Provided that where the securities are held in a depository. The records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs."

7. Service of documents, therefore, has to be made by sending it to the company or officer of the registered office of the company by post under a Certificate of Posting or by registered post. It is not in dispute that the office at Vishakhapatnam is registered office of the company. The award was sent by registered post and there is an acknowledgment of receipt of the said document. Section 3(1)(a) of the Arbitration & Conciliation Act, 1966 lays down as under :

"3. Receipt of written communications.-(1) Unless otherwise agreed by the parties,-

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b)..... "

8. The communication made to the appellants at his place of business, therefore, is sufficient for proving receipt of written communication. The learned Single Judge therefore relying on Section 51 of the Companies Act, 1956 and 3(1)(a) of the Arbitration & Conciliation Act has, in our view, correctly held that the award was served properly as per the provision of law and therefore since it was duly served at the registered office, it was deemed to be served upon the Corporate Office.

9. The learned Single Judge has also relied upon the provisions of Section 27 of the General Clauses Act, 1897. The said provision reads as under :

"27. Meaning of service by post.-Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or

"send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Section 27 of the General Clauses Act, therefore, raises a presumption of service before document is served by post.

10. The learned Single Judge, therefore, in our view, has rightly recorded a finding of fact that the packets sent by registered post are properly addressed to the corporate office of the appellants. A perusal of the said provision reveals that a presumption is raised about proper service if it is properly addressed and sent by registered post after pre-payment upon the correct address of the addressee.

11. The learned Single Judge has considered each and every judgment that was relied upon by the learned Counsel appearing on behalf of the appellants and has, in our view, rightly distinguished the ratio of the judgments on which reliance was placed by the appellants and observed that the ratio of the said judgments will not apply to the facts of the case. We, therefore, do not propose to again deal with the same judgments which are again cited before us, since all these judgments and the submissions made by the Counsel for the appellants were considered at length by the learned Single Judge. We are, therefore of the view that there is no illegality committed by the learned Single Judge in dismissing the Arbitration Petitions on the ground of limitation.

12. The Apex Court in the case of Wander Ltd. and Another Vs. Antox India P. Ltd., has observed in para 14 of the Judgment as under :

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in The Printers (Mysore) Private Ltd. Vs. Pothan Joseph, .

"..... These principles are well established, but as has been observed by

Viscount Simon in *Charles Osenton & Co. v. Jhanaton* [1942 AC 130] ".the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case."

The appellate judgment does not seem to defer to this principle."

13. Keeping in view the ratio of the above Judgment, it will not be possible for us to interfere with the well reasoned order passed by the learned Single Judge. All appeals, therefore, are dismissed.

14. In view of the above order, Notices of Motion also stand disposed of.

15. At this stage, learned Counsel appearing on behalf of the appellants seeks stay of execution. The request is declined.