

(2023) 05 DEL CK 0389

In the Delhi High Court

Case No : First Appeal From Order (COMM) No. 118 Of 2023, Civil Miscellaneous Application No. 29480-29481 Of 2023

Ashok Kumar Mehra

APPELLANT

Vs

M/S Toyota Financial Services India Limited

RESPONDENT

Date of Decision : 29-05-2023

Acts Referred:

Commercial Courts Act, 2015 — Section 13(1)

Arbitration and Conciliation Act, 1996 — Section 34, 34(3), 37

Citation : (2023) 05 DEL CK 0389

Hon'ble Judges : Manmohan, J;Saurabh Banerjee, J

Bench : Division Bench

Advocate : Mimansak Bhardwaj Sunny Chhonkar

Final Decision : Dismissed

Judgement

Saurabh Banerjee, J

1. The appellant by virtue of the present appeal under Section 13(1) of The Commercial Courts Act, 2015 and Section 37 of The Arbitration & Conciliation Act, 1996 (as amended from time to time) [Hereinafter referred to as "A&C Act"] seeks to impugn the order dated 3rd March, 2023 passed in OMP(COMM) 85/2020 titled Ashok Kumar Mehra vs. M/s Toyota Financial Services India Ltd. by the learned District Judge (Commercial Court)-01, Patiala House Court, New Delhi [Hereinafter referred to as "learned District Court"] whereby his application under Section 34(3) of the A&C Act seeking condonation of delay in filing the objections under Section 34 of the A&C Act as also the objections under Section 34 of the A&C Act were dismissed as being barred by limitation.

2. The facts reveal that the appellant-borrower, after approaching respondent for grant of certain credit facilities for purchasing a vehicle, executed a Loan-cum-Hypothecation Agreement dated 19th January, 2015 with it. Thereafter, certain disputes and differences arose inter-se the parties leading to initiation of arbitral proceedings by the respondent against the appellant before the learned Sole

Arbitrator. Non-appearance of the appellant before the learned Sole Arbitrator despite service led to the culmination of the arbitral proceedings with the passing of an ex-parte speaking Arbitral Award dated 3rd October, 2017 [Hereinafter referred to as "Arbitral Award"] whereby the learned Sole Arbitrator awarded a sum of Rs.6,35,829/- alongwith interest at the rate of 18% per annum with effect from 16th March, 2017 till the date of said payment to the respondent and directed the appellant to hand over the vehicle if it was still in his possession with certain directions qua it to the respondent and lastly awarded a cost of Rs.10,000/- towards the cost and expenses of arbitral proceedings to be paid to the respondent.

3. The appellant then filed his objections under Section 34 of the A&C Act before the learned District Court only on 19th October, 2020, after more than three years from the date of the passing of the Arbitral Award, along with an application seeking condonation of delay on the ground that he was neither aware of initiation of any arbitral proceedings nor of the passing of the Arbitral Award and that he came to know of the Arbitral Award for the first time upon receipt of summons in the execution petition filed by the respondent to appear before the Executing Court on 8th October, 2018. It was then contended that thereafter he engaged the services of one Mr. Kuljeet Singh Sachdeva, Advocate [Hereinafter referred to as "Advocate"] for taking appropriate action to challenge the Arbitral Award by paying him a professional fees of Rs.10,000/-. It was further contended that though the earlier Advocate obtained his necessary signatures and the appellant was following up with him, it was only in August 2020 that he came to know that no steps to challenge the Arbitral Award had yet been taken by the earlier Advocate. Resultantly, the appellant, after lodging an undated complaint with the Bar Council of Delhi, allegedly on 18th August, 2020, engaged a new Advocate for filing his objections under Section 34 of the A&C Act before the learned District Court.

4. The learned District Court dismissed the objections under Section 34 of the A&C Act as being barred by limitation after holding that the appellant was unable to give any explanation for his delay in approaching the learned District Court after passing of the Arbitral Award. It was also held that even if the limitation was to commence from the date of knowledge of the appellant i.e., 8 th October, 2018, even then the statutory period of limitation prescribed under Section 34 of the A&C Act as also the extended statutory period under Section 34(3) of the A&C Act were long over. The learned District Court further found that the appellant was unable to substantiate anything qua submission of his complaint against the earlier Advocate before the Bar Council of Delhi and held the same to be a bald pleading beyond the period of limitation provided under Section 34(3) of the A&C Act. The learned District Court lastly held that the fact that appellant had not pursued the aforesaid complaint reflected that it was made with some mala fide intention in order to create a ground for seeking condonation of delay.

5. Thus by virtue of the present appeal, the appellant, once again seeks to urge

the same grounds alongwith other grounds to challenge the Arbitral Award. However, prior to entering into the scope of those grounds, the appellant at this stage has to first overcome the hurdle of maintainability of his objections under Section 34 of the A&C Act before the learned District Court in view of the delay in filing the same. Be that as it may, the learned counsel for the appellant before this Court has mainly contended that the learned District Court should have adopted a liberal and justice oriented approach while dealing with an application for condonation of delay in filing objections under Section 34 of the A&C Act.

6. The record before this Court reveals that, admittedly, though the appellant has averred of paying Rs. 10,000/- to his earlier Advocate in cash, however, neither there was any proof of the same nor particulars of when it was paid. Furthermore, it is hard to believe that the appellant remained unserved when the arbitral proceedings were going on or when the Arbitral Award was passed by the learned Sole Arbitrator or thereafter as it was never the case of the appellant that there was a change of address or that he had ever shifted from the address given by him in the Loan-cum-Hypothecation Agreement or the subsequent proceedings. The record also reveals that, admittedly, the appellant never responded to the letter dated 24th August, 2020 sent by the Bar Council of Delhi whereby he was specifically called upon to file the complaint with certain documents in the prescribed manner despite due receipt thereof. The fact that the appellant casually strode over the same reflects that he was not actually interested in following up with his complaint against the earlier Advocate and leads to the conclusion that he made the said complaint only with a view to somehow fill up the lacuna of lost time.

7. Considering all of the above, this Court finds that there has been a protracted delay in approaching the Court by the appellant with no plausible explanation for such delay.

8. The aforesaid, coupled with the factum that a Court is bound by the Statute as it is guided by what is laid down therein leads to the indomitable conclusion that objections of the appellant under Section 34(3) of the A&C Act being highly belated without any cogent reasons are liable to be dismissed on the ground of being barred by limitation. Even otherwise, statutorily also, admittedly, there is no extension possible barring the period prescribed in Section 34(3) of the A&C Act for filing objections under Section 34 of the A&C Act, more so, whence the appellant himself did not adhere to the statutory timelines prescribed therein. Thus, in the present scenario, neither any provision of law nor this Court can come to the aid of the appellant by adopting a liberal and/ or a justice oriented approach while dealing with an application for condonation of delay in filing objections under Section 34 of the A&C Act.

9. Consequently, as the appellant has failed to overcome the hurdle of maintainability of his objections under Section 34 of the A&C Act before the learned District Court in view of the delay in filing them, there is no requirement for this Court to deal with the other grounds raised by the appellant.

10. Thus, in view of the factual matrix and settled legal position involved, this Court is in complete concurrence with the findings, reasonings and conclusion drawn by the learned District Court in its impugned order, calling for no interference therewith. Accordingly, the present appeal, alongwith the pending applications, being without any merit, is dismissed in limine.