
(2018) 02 CAL CK 0028
In the Calcutta High Court
Case No : 18 of 2018

KAPIRUDDIN MONDAL & ANR.

APPELLANT

Vs

MAGMA FINCORP LIMITED

RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

[Arbitration and Conciliation Act, 1996](#), [Section 34](#) - Application for setting aside arbitral award

Citation : (2018) 02 CAL CK 0028

Hon'ble Judges : Sanjib Banerjee, Sabyasachi Bhattacharyya

Bench : Division Bench

Advocate : Soumya Ray, Suman Banerjee, Paritosh Sinha, Kaushik Chatterjee, K. K. Pandey, Debayan Ghosh

Judgement

1. The appeal arises out of an order dated November 14, 2017 by which a hopelessly belated petition under Section 34 of the Arbitration and Conciliation Act, 1996 filed in 2017 in respect of an award of December 11, 2013 was dismissed on the ground of delay.

2. It is recorded in the order impugned that after the publication of the award, the financier applied for execution and the appellants herein filed an application, GA No.1779 of 2015, for recalling the orders passed in the execution proceedings and in such recalling application, the appellants disclosed a covering letter dated December 11, 2013 issued by the arbitrator through which a copy of the arbitral award was apparently forwarded to the appellants.

3. The respondent has produced a copy of the application pertaining to GA No.1779 of 2015. Paragraph 4 of such application is set out: "On 11th December, 2013 Sri Shondiep Ghosh, Learned Advocate and Sole Arbitrator passed an award in favour of the respondent upon adjudication of the said dispute. In the said award the respondent was declared as the sole owner of the said vehicle together with its accessories. It was also awarded that the respondent is entitled to possession of the said vehicle. In the said award your petitioners were

directed to pay a sum of 13,00,327/- to the respondent together with an interest thereupon @24% per annum from the date of passing of the award till realization thereof. It was further awarded that your petitioner will be entitled to possession of the said assets in the event the amount awarded, as mentioned aforesaid, is duly paid by your petitioners to the respondent. In the said award the Ld. Arbitrator was further pleased to impose a cost of the reference to the tune of Rs.10,000/- upon your petitioners."

4. Such paragraph, the contents whereof are verified as true to the knowledge of the first appellant, expresses no reservation as to the receipt of the award by the appellants. Indeed, the averments in the relevant paragraph admit the passing of the award. It is elementary that an award is not made or published till certified copies thereof are made over to the parties.

5. Once it was admitted in 2015 that the award had been passed and no grievance was expressed as to the receipt of the award, the appellants could not have challenged the award thereafter, far less two years after filing of such application, particularly, in the context of the time fixed under Section 34 of the Arbitration and Conciliation Act, 1996 in such regard.

6. The Court of the first instance refused to accept the case made out by the petitioner and such order does not call for any interference.

7. APO No.18 of 2018 and GA No.233 of 2018 are dismissed with costs.