
(2010) 05 DEL CK 0259
In the Delhi High Court
Case No : F.A.O. (OS) 578 of 2009

Karmyogi Shelters Pvt. Ltd.

APPELLANT

Vs

Benarsi Krishna Committee and Others

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Arbitration Act, 1940 — Section 14(2)
Arbitration and Conciliation Act, 1996 — Section 2, 31(5), 34, 34(3)
Delhi Rent Control Act, 1958 — Section 25B

Citation : AIR 2010 Delhi 156 : (2010) 3 CompLJ 738

Hon'ble Judges : Vikramajit Sen, J;A.K. Pathak, J

Bench : Division Bench

Advocate : Sudhir Nandrajog, Ashwath Sitaraman and Ashutosh Shahi, for the Appellant; N.N. Aggarwal and Rohit Gandhi, for the Respondent

Judgement

Vikramajit Sen, J.—This Appeal assails the Order of the Learned Single Judge passed on August 28, 2009 holding that the signed copy of the Award had been delivered to the Petitioner on 13th May, 2009, as required by Section 31(5) and Section 34(3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "A & C Act"). It had further been held that inasmuch as the Petition u/s 34 of the "A & C Act" had been filed on 3.2.2005, it was barred by time and hence liable to be dismissed. It is not in the pail of controversy that the Award had been made available to the counsel for the Appellant, and had not been directly served on the Appellant.

2. A detailed discussion is not called for since the matter is covered on all fours by a Judgment of a Division Bench of this Court titled National Projects Constructions Corporaton Limited Vs. Bundela Bandhu Constructions Company, No further controversy remains in view of the pronouncement in Union of India (UOI) Vs. Tecco Trichy Engineers and Contractors, , which has been duly considered and applied in Bundela Bandhu. Both these cases have been cited by the Appellant before the Learned Single Judge, who has articulated the view that the ratio cannot be made applicable to Private Limited Companies. In Bundela

Bandhu, the Division Bench had kept in prospective similar provisions as contained in Order XXXVII of the Code of Civil Procedure, 1908 and Section 25B of the Delhi Rent Control Act, 1958. Noting those Provisions especially concerning the time period, it had been held that service of an Award should be made on the concerned party. To this, we may add the pronouncement which have withstood almost one century of scrutiny namely *Nazir Ahmed v. King Emperor* AIR 1936 PL 253, which is to the effect that if an action has to be taken in a particular manner it must be in that manner only, else will be held not to have been done at all. Wisdom of this pronouncement is manifestly clear in the facts presented in the present case. The same abiding reasoning in respect of strict compliance with procedural requirement of a statute warranting strict interpretation is applied by the Hon'ble Supreme Court in *Ramchandra Keshav Adke v. Govind Joti Chavre* (1975) 1 SCC 915; *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, and *Deep Chand Vs. The State of Rajasthan*, . So much judicial time has been wasted in entertaining arguments which would have been unnecessary, had the Award been served on the party concerned, namely, the Appellant. In view of Section 2(h) of the "A & C Act", there is no justifiable reason to depart from succinct and precise definition of the word "party", which means a party to an arbitration agreement. Facially, these words cannot take within their sweep an "agent" of the party which is incompetent to take the requisite action envisaged under the statute. Learned Counsel for the Respondent has drawn our attention to *Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others*, which dealt with Section 14(2) of the Arbitration Act, 1940. The reasoning and views contained therein cannot be extrapolated to the "A & C Act" inasmuch as the condonation of delay in filing the Objections filed under the earlier and repealed Act could be prayed for before the Court on an open end basis instead of a precise period of 30 days prescribed under the "A & C Act". For the same reason, *East India Hotels Ltd. Vs. Agra Development Authority*, and *Secretary to Government of Karnataka and another Vs. V. Harishbabu*, are of no assistance in the present case. We are unable to appreciate the manner in which *Amit Malik v. Kamlesh Malik* 129 (2006) DLT 510, can advance the case of the Respondent. The Division Bench had declined to accept the hypo technical objection namely that the copy of the Award actually served on the Objector was not of the Award which was registered. We are in respectful agreement with that view which does not in any way require us to depart from what has been held in *Bundela Bandhu*. Reliance has also been placed by the Appellant on *Union of India Vs. M/s Popular Construction Co.*, , which is a decision of a Two-Judge Bench. Inasmuch as the decision in *Techno Trechy* is of a Three-Judge Bench, it will have to be followed. Moreover, *Popular Construction* in substance deals with limitation for filing Objections to an Award and the departure from the earlier 1940 Act which allowed delay to be condoned. The conclusion voiced by the Division Bench in *D.M. Jawahar Merican v. Engineers India Ltd.* 2009 (4) AD Delhi 161, falls in the mould of *Amit Malik* and is not germane to the issue before us, namely, the need to serve the "party" as defined in Section 2(h) of the "A & C Act". *M. Anasuya*

Devi and Another Vs. M. Manik Reddy and Others, , concerns stamping of Arbitration Awards and is of no relevance to the dispute before us.

3. In these circumstances, the view of the Learned Single Judge that service of the Award on the Advocate of the Appellant was sufficient compliance with the statutory necessity postulated by the "A & C Act" cannot be sustained and is set aside. The result is that the Objections would have to be heard and decided on merits. The matter is accordingly remanded to the Learned Single Judge for this purpose. There shall be no Order as to Costs.