

(2015) 06 MP CK 0054

In the Madhya Pradesh High Court

Case No : Review Petition No. 51 of 2015

M.P. Madhya Kshetra Vidyut Vitran Company Ltd.

APPELLANT

Vs

Schaltech Automation P. Ltd.

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6)
Civil Procedure Code, 1908 (CPC) — Order 5 Rule 5, Order 5 Rule 5, Order 5 Rule 9,
Order 5 Rule 9(5)

Citation : (2015) 3 MPLJ 435

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : Shobhitaditya, for the Appellant; Rajesh Pancholi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Aradhe, J—This petition has been filed seeking review of the order dated 2-12-2014 passed by this Court in Arbitration Case No. 8/2014. On admitted facts, the question which arises for consideration is whether the order dated 2-12-2014 suffers from procedural illegality which goes to the root of the matter. The facts, giving rise to filing of the review petition, briefly stated, are that the respondent had filed an application under section 11(6) of the Arbitration and Conciliation Act, 1996 (in short "the Act"), inter alia, on the ground that the respondent is a company incorporated under the provisions of the Companies Act, 1956 and was awarded a contract for survey, erection, testing commissioning and quality assurance of all items including all other associated works on turnkey basis to bring down the AT & C losses in area of Rajgarh, Sehore and Vidisha circle. The respondent served a notice on the petitioner on 20-12-2013 requiring it to appoint an arbitrator which was duly received by the petitioner on 25-12-2013. However, the petitioner failed to respond the aforesaid notice.

2. The respondent, thereafter, filed an application under section 11(6) of the Act on 25-2-2014. The notice was issued to the petitioner on 7-3-2014. However, neither envelop nor the acknowledgment was received back. Therefore, the office treated the petitioner to have been served. This Court vide order dated 2-12-2014 allowed the application preferred by the respondent and appointed Mr. R.B.S. Baghel, District and Sessions Judge (retired) as arbitrator to adjudicate the dispute between the parties.

3. The counsel for the petitioner, at the outset, fairly submitted that there is no provision of review of an order passed in exercise of power under section 11(6) of the Act. It is further submitted that even in the absence of a specific provision, in the facts of the case an application for review can be entertained since the order under review suffers from procedural illegality as the petitioner was not served with the notice of the proceeding and the office has grossly erred in treating the petitioner to have been served in view of the provision of Rule 13 Chapter 15 of the High Court of Madhya Pradesh Rules, 2008 inasmuch as the aforesaid rule applies to the writ petitions only, in support of aforesaid submissions reliance has been placed on the decisions of the Supreme Court in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, AIR 1981 SC 606 : (1981) 42 FLR 88 : (1981) 1 LLJ 327 : (1981) 2 SCR 341 : (1981) 1 SLJ 510 : (1981) 13 UJ 42 and *Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Another*, AIR 2005 SC 1782 : (2005) 105 FLR 416 : (2005) 2 LLJ 271 : (2005) 13 SCC 777 : (2006) SCC(L&S) 1635 : (2005) 2 SCR 888 : (2005) 2 SLJ 338 .

4. On the other hand, learned counsel for the respondent submitted that Rule 9(5) of Chapter 15 of the High Court of Madhya Pradesh Rules, 2008 provides that provisions of Order V of the Code of Civil Procedure shall apply to service of process in all proceedings of this Court. Learned counsel for the respondent has invited the attention of this Court to proviso to sub-rule (5) of Rule 9 of Order 5 of the Code of Civil Procedure and submitted that Office has rightly treated the petitioner to have been served.

5. I have considered the respective submissions made by learned counsel for the parties. The expression "review" is used in two senses: (1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every court or Tribunal. The principle that the power to review must be conferred by statute either specially or by necessary implication is inapplicable to decisions of Judicial Tribunal which is supposed to do complete justice to the parties before it. [See: *S. Nagaraj and Others Vs. State of Karnataka and Another*, (1993) 4 JT 27 : (1994) 1 LLJ 851 : (1993) 3 SCALE 548 : (1993) 4 SCC 595 Supp : (1993) 2

SCR 1 Supp : (1994) 1 SLJ 61]. Thus, even in the absence of any specific provision for review in an Act, the power of procedural review can be invoked in a case where the Court commits procedural illegality, i.e., decides a case without notice to other party or decides the case under mistaken impression that other party has been served.

6. In this context, the sole question that arises for consideration in the instant review petition is whether the Office has rightly treated the petitioner to have been served. Rule 13 Chapter 15 of the High Court of Madhya Pradesh Rules, 2008 provides that presumption of service of notice shall be drawn in respect of the writ petition. However, Rule 9(5) of Chapter 15 of the aforesaid Rules provides that provisions of Order 5 of the Code of Civil Procedure shall apply to service of process in all proceedings of this Court. Proviso to sub-rule (5) of Order 5, Rule 9 of the Code of Civil Procedure reads as under:

"Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons."

7. From perusal of the proviso to Order 5, Rule 9(5) of the Code of Civil Procedure which is applicable to this proceeding it is apparent that if acknowledgment is not received within thirty days from the date of issuance of summons, a presumption can be drawn. In the instant case, the notice was issued to the petitioner on 25-3-2014. However, the acknowledgment was not received within thirty days. Therefore, the Office has rightly drawn presumption of service of notice on the petitioner. No ground on which procedural review is permissible, as laid down by the Supreme Court in *Grindlays Bank Ltd. (supra)* and *Kapra Mazdoor Ekta Union (supra)*, is made out in the fact situation of the case. For the aforementioned reasons, the review petition fails and is hereby dismissed.