

(2019) 08 DEL CK 0171

In the Delhi High Court

Case No : First Appeal From Order (OS) No. 159 Of 2019

MVR Industry Ltd

APPELLANT

Vs

Tribal Cooperative Marketing Development Federation Of
India Ltd

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 34

Citation : (2019) 6 R.A.J. 76 : (2019) 4 ArbLR 266

Hon'ble Judges : Vipin Sanghi, J;Rajnish Bhatnagar, J

Bench : Division Bench

Advocate : P.I. Jose, N. Ramakrishnan, Kunal Manav, Buddy A. Ranganadhan,
Aditi Sharma

Final Decision : Dismissed

Judgement

Vipin Sanghi, J

Caveat No.834/2019

1. Learned counsel for the respondent No.1/ caveator has appeared.

2. Accordingly, the caveat stands discharged.

C.M. No.37310/2019

3. Exemption allowed, subject to all just exceptions.

4. The application stands disposed of.

FAO(OS) 159/2019 and C.M. No.37311/2019 (to seek condonation of 100 days delay in filing the appeal)

5. We have heard learned counsel for the appellant.

6. The appellant has preferred the present appeal to assail the order dated 25.03.2019 passed by the learned Single Judge in O.M.P. No.379/2009, whereby

the appellant's objections to the arbitral award under Section 34 of the Arbitration & Conciliation Act have been rejected both on the ground of limitation as well as on merits. The impugned order shows that the appellant raised a claim against the respondent arising out of their contract before the Arbitrator. The respondent also raised a counter-claim against the appellant. The appellant-claimant stopped appearing before the learned Arbitrator from 23.09.2004. The record shows that the Arbitrator adjourned the proceedings on several dates, and repeatedly issued notices to the appellant-claimant, but to no avail. The counsel representing the appellant/claimant, Mr. P.I. Jose, Advocate appeared before the Tribunal on 23.09.2004 and stated that he has no instructions to appear on behalf of the appellant and he sought leave to withdraw from the case. However, he appears to have been again engaged by the appellant, since he is representing the appellant in the present appeal.

7. The learned Single Judge has noted the developments which took place in this regard in the impugned order, which are captured in paragraphs 4 to 7. The same read as follows:

"4. The newly appointed arbitrator continued with the proceedings from the stage where the earlier Arbitrator had left the matter. Before the Ld. Arbitrator, MVR appeared through its counsels and led evidence. Last date of appearance on behalf of MVR before the Ld. Arbitrator was 23rd September, 2004. After the said date, since MVR stopped appearing in the matter, Ld. Arbitrator issued repeated notices to MVR. On 9th September, 2004, Ld. Arbitrator records as under:

"Arrears of arbitration fee have again not been cleared by the Claimant MVR Industries. I have, in this regard, received a fax from Mr. Jose Advocate for the Claimant. The learned Counsel of TRIFED states that the proceedings, as far as the Claim of MVR Industries is concerned, should be terminated. Since Mr. Jose is not present today, I would rather like to hear him too on this aspect the matter. Put up on 23rd September, 2004 at 4:00 pm."

5. On 23rd September, 2004, Ld. counsel for MVR made the following statement.

"Statement of Mr. P. I. Jose, Advocate. I have no instructions to appear on behalf of M.V.R. Industries & be allowed to withdraw."

6. In view of the said statement, the Ld. Arbitrator issued notice for appearance to MVR vide registered AD/ post. Original envelopes and speed post receipts are on the arbitral record. Again, on 29th October, 2004 fresh notice was issued to MVR. Original registered AD slips are on record. It was then noticed that the registered cover was received back unserved. Accordingly, fresh notice was issued. On 25th November, 2004, the following order was passed by the Ld. Arbitrator.

"Notices were sent by registered cover at two addresses. One registered cover sent at Anna Salai, Madras address has been received back with the report "left". The other sent at Pondicherry address has not been received back & is taken to

have been served. Since none is present on behalf of MVR Industries, it is proceeded ex-parte. Affidavits by way of evidence be filed by TRIFED within two weeks. Put up on 15/12/04 at 3:00 pm. Intimation of these proceedings be sent to MVR Industries by registered covers at both the addresses."

7. Since one of the registered covers was not received back by the Ld. Arbitrator, the Ld. Arbitrator deemed the notice as having been served and proceeded ex-parte against MVR. Thereafter, the Ld. Arbitrator heard the matter from time to time and on 21st April, 2005, the Ld. Arbitrator reserved the matter for orders. The impugned award was passed on 20th May, 2005. (emphasis supplied)

8. The learned Arbitrator, thus, proceeded ex-parte against the appellant and adjudicated the claims and counter-claims, after service of the notice upon the appellant post the withdrawal of their counsel Mr. P.I Jose from the Arbitral proceedings. The learned Arbitrator awarded a sum of Rs.73,56,17,875.64/- (wrongly typed as Rs.73,56,18,785.64/- in paragraph 10 of the impugned order) in favour of the respondent-claimant, along with the interest at the rate of 15% per annum from the date of the award till realisation. Costs of Rs.6,11,102/- were also awarded in favour of the respondent.

9. The appellant preferred the objection under Section 34 of the Arbitration and Conciliation Act only on 20.05.2009 i.e. after four years of the passing of the award by the learned Arbitrator on 20.05.2005. The appellant/ objector claimed that the appellant had no notice of the arbitral award being made, which was passed ex-parte. The appellant claimed that it learnt of the arbitral award only on 28.04.2009, when the said fact was mentioned in the proceedings before the Xth, Additional Principal Special Judge for CBI cases, Chennai by the learned counsel appearing for the CBI. The appellant claimed that immediately thereafter on 06.05.2009, the appellant through their counsel requested the learned Arbitrator to furnish a copy of the award together with the proceedings and it was only thereafter that certified copy of the arbitral award had been received by the appellant on 09.05.2009. The arbitral proceedings had still not been received.

10. The learned Single Judge has discussed the aspect of limitation in filing of objection petition in paragraphs 18 and 19, which read as follows:

"18. Dealing first with the issue of limitation, this Court has seen the original arbitral record. MVR was the claimant in the case before the Arbitrator and TRIFED had filed counter claims. Evidence was also led on behalf of MVR. Witnesses had been cross-examined. MVR was, thus, fully conscious of the arbitral proceedings, which were pending. The address given by the claimant in its claim petition was 5th Floor, Rayala Towers-3, 781, Anna Salai, Chennai. Submission by Ld. counsel for MVR, that in 1999 the address had changed, is of no avail because MVR had participated in the arbitral proceedings right till 2004, without seeking any amendment in the memo of parties or without placing on record any new address. Thus, insofar as the change of address is concerned, MVR had a duty to inform the Ld. Arbitrator for making an amendment in the

memo of parties and to place its latest address on record. Having failed to do so, the Ld. Arbitrator had no option but to take the address on record as the correct address.

19. Moreover, a perusal of the arbitral record also shows that the Ld. Arbitrator had issued notices repeatedly to MVR. First notice was issued to Mr. P. I. Jose, Ld. counsel for MVR, who had made a submission that he did not have instructions and, accordingly, withdrew himself from the proceedings. Thereafter, the notice for appearance had been issued to MVR on, at least, three occasions. The said notice had been served at two different addresses - MVR Industries Limited, Anna Salai, Chennai and MVR Industries Limited, 112, Vellala Street, Pondicherry. Ld. Counsel for MVR admits that the Pondicherry address is the new address of the company from 1999. Ld. Arbitrator, after repeated notices, proceeded with MVR ex-parte as recorded in the order dated 25th November, 2004. The original registered post receipts, envelopes, AD cards, etc. which were received back, are on record, which clearly show the efforts that the Ld. Arbitrator put, in serving MVR. Finally, the award was also communicated to MVR at the Anna Salai, Chennai and Vellala Street, Pondicherry address. As far as these two addresses are concerned, the AD cards have been received back on record without envelopes. Thus, the award was, clearly, served upon MVR vide letter dated 20th May, 2005. The company thus had, complete knowledge of the arbitral award since the same was served as per Section 3 at the last known address, which was available with the Ld. Arbitrator. The present petition has been filed on 20th May, 2009 and is, clearly, barred by limitation." (emphasis supplied)

11. The submission of learned counsel for the appellant is that the appellant was facing difficulties in relation to its affairs and, therefore, could not continue to appear in the arbitral proceedings. The submission is that the registered notices issued to the appellant by the Ld. Arbitrator, including the arbitral award at its addresses, were returned unserved. Thus, the appellant did not have notice of either - the withdrawal by the appellant's counsel, or the ex-parte proceedings held by the Arbitrator. The appellant was also not aware of the ex-parte arbitral award passed by the learned Arbitrator for the aforesaid reason.

12. We do not find any merit in this submission of the learned counsel for the appellant. Pertinently, it is not the appellant's case that the notices sent by the learned Arbitrator, as well as by the Court, were not directed at the correct address. In fact, the record shows that on few occasions, notices which were sent at the addresses of the appellant were served inasmuch, as, the registered cover was not returned and only the AD card was returned. There is a presumption in law with regard to service when the post is sent under the Registered Cover at the correct address, and the same is not returned. Pertinently, it is not the appellant's case that the appellant had shifted address. That being the position, we are of the view that the learned Single Judge has rightly concluded that the appellant had been served both by the learned

Arbitrator before proceeding ex-parte, as well as at the time of the passing of the award.

13. In view of the aforesaid, we need not dwell into the merits of the impugned order insofar, as it deals with the arbitral award on merits. However, we may only observe that on that aspect as well, we find that the learned Single Judge has discussed the arbitral award in order to ensure that no grave injustice is caused to the appellant.

14. We may also observe that there is inordinate delay of 100 days in filing the present appeal, which has not been satisfactorily explained. This delay is reflective of the appellant's past conduct in showing scant regard to the arbitral proceedings. Accordingly, the present appeal is dismissed on limitations, as well as on merits.