

(1983) 10 BOM CK 0042

In the Bombay High Court

Case No : Arbitration Petition No. 42 of 1983

Nafees Begum and Others

APPELLANT

Vs

Hikmatullah Mohamed Safi and Others

RESPONDENT

Date of Decision : 07-10-1983

Acts Referred:

Arbitration Act, 1940 — Section 14(1)
Limitation Act, 1963 — Article 119, 119(9)

Citation : AIR 1984 Bom 62

Hon'ble Judges : Sujata V. Manhar, J

Bench : Single Bench

Advocate : A. Gandhi, for the Appellant; J.D. Dwarkadas, for the Respondent

Judgement

1. This is a petition under S. 14 of the Arbitration Act under which the petitioners have prayed that the arbitrators be directed to file the award dated 4th October, 1976 in court. The petitioners and the respondents 2 and 3 are heirs of one MOhamed Jan Chowdhari Abdul Kayum who died on 7th May, 1976. Mohamed Jan Chowdhari was carrying on business in partnership with the 1st respondent. After the death of Mohamed Jan the 1st petitioner who was the window of Mohamed Jan on behalf of herself and the heirs of Mohamed Jan who wer then minors. Preferred the disputes between them and the 1st respondent to arbitration. The arbitrators made their award on 4th October, 1976 which is Exhibit "A" to the petition. It seems that at the time when the award was made thumb impression of the 1st petitioner (who had referred the dispute to arbitration on behalf of the heirs and legal representatives of Mohamed Jan) as well as the 1st respondent were taken on the award. What requires to be determined is whether this amounts to the arbitrators giving to the petitioners a notice in writing of the making and signing of the award under S. 14 sub-sec. (1) of the Arbitration Act of 1940. If this amounts to a notice in writing as contemplated under S. 14(1), then under the provisions of Art. 119 (a) of the Limitation Act of 1963, the petitioners were required to file an application for filing the award in court within 30 days of the date of service of the notice of the

making of the award. Since this period of 30 days of the date of service of the notice of the making of the award. Since this period of 30 days has expired long back, the present petition would become time-barred. If on the other hand, the 1st petitioner being shown the award and her putting of thumb impression on the award does not amount to a notice in writing under S. 14(1), the period of limitation under Art. 119 (a) has not begun to run so far, and the petitioners are entitled to maintain the petition.

2. Under S. 14 sub-sec (1) of the Arbitration Act it is provided as follows:-

"14 (1). When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award."

* *

3. The starting point of limitation period therefore, for a petition of the present type is the service of notice under S. 14 of the Arbitration Act. In the case of P. Ramulu v. N. Appalaswami reported in AIR 1957 And Pra 11 the learned Judge was required to construe the provisions of Art. 178 of the Limitation Act, 1908 which are in pari materia with the provisions of Art. 119 (a) of the Limitation Act, 1963. In that case it was submitted tht the conditions prescribed under S. 14(1) should be construed as fulfilled because the award was read out by the arbitrators to the parties concerned and the latter's signatures were also obtained in token thereof, before the award was signed by the arbitrators. The learned single Judge held that this would not be a sufficient compliance with S. 14 because under that section notice is one of making and signing of the award. It means that the notice should be served on the parties concerned after the award is signed by the arbitrators and the notice should also contain the particulars referred to in the section. Making the contents of the award known to the parties before signing it, would not amount to such notice. He also held that the fact that the award came to the knowledge of the parties was not sufficient to dispense with the necessity of service of a notice in order to invoke the penalty of dismissal of the petition under Article 178 of the Limitation Act, 1908.

4. This judgment along with some other similar judgments came up for consideration before the Supreme Court in the case of Parasramka Commercial Company Vs. Union of India (UOI), . In that case, after the award was made and signed by the arbitra ors, the arbitrators sent a copy of the award to the parties. According to the arbitrators this copy of the award was accompanied by a covering letter giving notice of the making of the award. But the appellants denied having received such a covering letter. The Supreme Court held that sending of the copy of the award to the appellants amounted to a notice in writing of the making and signing of the award as contemplated under S. 14(1) of the Arbitration Act. Reterring to the various cases cited before him which included the abvoe Andhra Pradesh case, Mr. Hidayatullah, C.J. observed : "It is

not necessary to go into the reasoning which made the learned Judges in these cases to lay down that there must be proper notice in writing of the making of the award. That follows in fact from the words of S. 14 of the Arbitration Act What will be considered a sufficient notice in writing of the making and signing of the award is a question of fact It seems to us that we cannot limit the words "notice in writing" to only a letter. Notice may take several forms. It must to be sufficient, be in writing and must intimate quite clearly that the award has been made and signed. In the present case, a copy of the award signed by the arbitrator was sent to the company. It appears to us that the company had sufficient notice that the award had been made and signed". It was therefore, held that this amounts to a notice as contemplated under S. 14 sub-sec. (1) of the Arbitration Act of 1940.

5. In view of this decision it has to be seen whether the facts and circumstances in the present case are such as would bring the case within the ambit of the observations of the Supreme Court in the case *Parasramka Commercial Company Vs. Union of India (UOI)*, or within the ambit of the decision in AIR 1957 And Pra 11.

6. The 1st petitioner in her affidavit in rejoinder has stated that she was not present at the time of making and signing of the said award and that her thumb impression was obtained on the said award when the arbitrators came to her place of residence with the award. She has denied that the award was handed over to her at any time. If what she has stated is correct, then the present case would have a distinct similarity with the case *Parasramka Commercial Company Vs. Union of India (UOI)*, because in the present case the arbitrators made and signed their award and thereafter came to the 1st petitioner's house, showed her the award and took her thumb impression on the said award. Whether the award is physically presented to the 1st petitioner or whether a copy of the award is sent by post would be immaterial. In view of the broad connotation given to the phrase "notice in writing" by the Supreme Court in the case of *Parasramka Commercial Company Vs. Union of India (UOI)*, presenting the signed award to the party and taking her thumb impression on it as a token of such receipt, would amount to "a notice in writing"; because a writing is presented to the party clearly showing that the award is made and signed. In the present case there is also no doubt, in view of the correspondence which is annexed to the petition as well as to the affidavits, that the petitioners were fully aware throughout of the award and its contents and they have also accepted benefit under the award. Therefore on the facts as disclosed by the petitioners themselves, a notice in writing under S. 14(1) of the Arbitration Act can be said to have been given to them. At least soon after the award was made.

7. According to the 1st respondent, the 1st petitioner was present at the time when the award was made and signed by the arbitrators, and her thumb impression was taken on the award immediately after the award was made and signed by the arbitrators. Even if this is taken to be the correct position, the ratio

of the decision in the case of P. Ramulu v. N. Appalaswami reported in AIR 1957 And Pra 11 will not apply because in the case before the Andhra Pradesh High Court, the contents of the award were read out or made known to the parties before the award was actually signed. It seems that in that case the award was read out by the arbitrators to the parties concerned and their signatures were also obtained in token thereof before the award was actually signed. It seems that in that case the award was read out by the arbitrators to the parties concerned and their signatures were also obtained in token thereof before the arbitrators actually signed the award and the court then held that this could not be construed as sufficient compliance with S. 14 of the Arbitration Act. In the present case, apart from the affidavits of the parties, from the copy of the award also which is annexed as Exhibit "A" to the petition, it is apparent that the thumb impression of the 1st petitioner and the 1st respondent has been taken on the award after the award has been signed by the arbitrators because the thumb impressions appear at the foot of the award below the signatures of the arbitrators. In these circumstances, in view of the construction put on "the notice in writing" in S. 14(1) of the Arbitration Act, on the facts of the present case, the petitioners had notice in writing of the award either on the day when the award was made or soon thereafter. The petitioners have also throughout been aware of the said award and they have received some benefits under the said award-though there is a controversy as to whether all the terms of the award have been carried out or not. In these circumstances, a period of 30 days prescribed under Art. 119 (a) of the Limitation Act has expired long since. The present petition is, therefore, barred by the law of limitation and accordingly the same is dismissed. In the circumstances of the case there will be no order as to costs.

8. Petition dismissed.