

(2003) 08 DEL CK 0028
In the Delhi High Court
Case No : FAO No. 401 of 1998

Sona Finance Pvt. Ltd.

APPELLANT

Vs

Triupati Paper Mills Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 25-08-2003

Acts Referred:

Arbitration Act, 1940 — Section 33

State Financial Corporations Act, 1951 — Section 29

Citation : (2003) 3 ARBLR 307 : (2003) 106 DLT 653 : (2003) 71 DRJ 584 :
(2003) 4 RAJ 719

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : D.K. Gupta and Rajesh Kumar, for the Appellant; G.D. Chopra, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.—ADMIT.

2. The appellant has filed this appeal challenging the judgment of the learned Additional District Judge whereby the objections filed by the respondent u/s 33 of the Arbitration Act, 1940 were allowed and the award of the Arbitrator was set aside.

3. The case set up by the appellant was that pursuant to the request of the respondents, the appellant had granted a loan of Rs.2 lakhs to respondent no.1 for purchase of a truck and a hire-purchase agreement was entered into between the parties on 3.7.2001. While respondent no.1 had purchased the truck on hire-purchase, respondent no.2 had alleged to have stood surety for respondent no.1 for regular payment of Installments of the hire-purchase amount. It was alleged that pursuant to the loan having been granted, the respondent no.1 executed the hire-purchase agreement and a guarantee bond was executed by respondent no.2. The Installments of hire-purchase having allegedly not been paid in terms of the agreement between the parties, the appellant invoked the Arbitration

clause contained in the hire-purchase agreement and Arbitrator was appointed to settle the disputes between the parties. The Arbitrator issued notices to the respondents, however, the respondents were alleged to have not been served and on the basis of the reports on the registered covers that despite visiting several times, the respondents did not meet the Postman, the Arbitrator considered it to be sufficient service upon the respondents and proceeded ex-parte against them. After recording evidence of the appellant, the Arbitrator made and published his award. The award was filed in Court and a notice of the filing of the same was given to the respondent. On receipt of the notice from the Court, respondents filed an application u/s 33 of the Arbitration Act stating inter alias that there was no Arbitration Agreement between the parties and the matter, Therefore, could not be referred to the Arbitrator. It was also stated by the respondents that they were not served with the notice from the Arbitrator and consequently the award having been made by the Arbitrator without giving notice to the respondents was liable to be set aside. The appellants filed reply to the objections of the respondent u/s 33 of the Arbitration Act and denied the allegations made in the application. On the basis of the pleadings of the parties, the Court framed the following issues:-

"1. Whether the proceedings before the Arbitrator and as well as before this Court are nullity in view of provisions of Section 29(v) of the State Financial Corporation Act as alleged, if so its effect. OPP

2. Whether the award is liable to be set aside on the grounds taken by the defendant; OPP

3. Whether there was an agreement dated 3.7.1991? OPP

4. Whether there existed any arbitration agreement between the parties pertaining to the dispute referred? OPP

5. Relief."

Evidence in support of the objections was led by means of an affidavit and the witnesses were also cross-examined before the Trial Court. The Trial Court after hearing the parties set aside the award after holding that the respondents were not properly served by the Arbitrator and consequently they could not have been proceeded ex-parte. It was also held by the learned Trial Court that there was no Arbitration Agreement between the parties and consequently the matter could not have been referred to the Arbitrator. The impugned order allowing the objections of the respondent and setting aside of the award has now been challenged by way of the present appeal.

I have heard learned counsel for the parties and have also gone through the Trial Court record and I do not find any merit in the present appeal. A perusal of the AD covers sent to the respondents by the Arbitrator clearly show that the respondents had not met the Postman who had gone to deliver the notices to them. In case despite repeated efforts, the respondents were not served, the

appellant could have made an application before the Arbitrator or before the Court for service of the respondents by publication. That having not been done, in my opinion, the learned Trial Court has rightly held that the nothings on the registered covers that the addressee did not meet despite repeated visits could not amount to service upon the respondents. It is contended by learned counsel for the appellant that the notices were also sent to the respondents by UPC and the same, Therefore, ought to have been taken to be proper service upon the respondents. Service by certificate of posting is unknown to law. Service in terms of the provisions of the CPC has to be effected in the manner prescribed in the Code. In case service could not be effected in the ordinary manner the party is at liberty to move to the Court for service of a particular party by publication or any other manner as may be directed by the Court. That having not been done, the appellant cannot contend that service by certificate of posting was proper service. Respondents having not been properly served, in my opinion, the arbitrator could not proceed ex-parte against the respondents and the award is liable to be set aside on this ground alone. Since the award is liable to be set aside only on the ground that respondents were not properly served and they could not have been proceeded ex-parte by the Arbitrator, I have not considered the other grounds on which the award has been set aside. There are no merits in the appeal and the same is, accordingly, dismissed.