
(2013) 11 DEL CK 0103
In the Delhi High Court
Case No : O.M.P. 377 of 2011

Sr. Divisional Commercial Manager		APPELLANT
	Vs	
M/s. Shriram Food and Fertilizer Industries		RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(3)
Evidence Act, 1872 — Section 114
General Clauses Act, 1897 — Section 27

Citation : (2014) 5 AD 68

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Geetanjali Mohan, for the Appellant; P.K. Bhalla, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J.

IA No. 7829/2011 (condonation of delay)

1. This is an application for condonation of delay in which in the recent past, two detailed orders have been passed by me. The first order was passed on 05.07.2013 and the second order was passed on 06.09.2013. On both occasions, opportunity was given to the petitioner (in short the Railways) to explain by way of affidavits, supported by necessary documentary evidence, as to when exactly a signed copy of the award in issue, was received by the Railways. Pursuant to the last order dated 06.09.2013, an affidavit has been filed on behalf of the Railways by Mr. Vikram Singh, presently posted as Senior Divisional Commercial Manager (Sr. DCM), Northern Railway, DRM Office, New Delhi.

2. Prior to this, there is an affidavit on record of the same person i.e., Mr. Vikram Singh, Sr. DCM, which was sworn on 22.10.2012 (and not on 20.10.2012 as recorded in order dated 05.07.2013). Apart from this affidavit, there are two affidavits of Mr. R.C. Dhiman, who since then, has retired and was at the relevant

time, the Chief Officer Superintendent Commercial, DRM Office, Delhi Division, Northern Railway, New Delhi. He has filed affidavits dated 22.11.2012 and 19.07.2013.

3. Having perused the record placed before me, what emerges is as follows:-

3.1. Admittedly, the award, which is dated 13.10.2010/03.11.2010 was despatched by the learned arbitrator to: the General Manager (GM), Head Quarter (HQ), Sr. DCM and the respondent vide registered post, in respect of which, receipts bearing nos. 5777, 5779 and 5778, respectively, were generated.

3.2. The record would show that postal receipts bearing nos. 5777 and 5779 relate to the GM, HQ and Sr. DCM, Railways, while, the last postal receipt bearing no. 5778, relates to the respondent.

3.3. There is no dispute that the signed copies of the award (each of which are treated as originals) were despatched to the aforementioned three recipients, on 04.11.2010.

3.4. There is also no dispute, in respect of the fact, that the GM, HQ, Railways, received a signed copy of the award on 08.11.2010. Similarly, the respondent, concededly, received a copy of the award, also on, 08.11.2010.

4. The dispute, really is: whether, the Sr. DCM, Railways received the signed copy of the award, on 08.11.2010.

5. It is the stand of the Railways that it received a copy of the award on 25.11.2010 via the respondent, and that, the signed copy of the award, which was despatched by the learned arbitrator on 04.11.2010, was received in the office of the Sr. DCM, Railways, only on, 04.03.2011. For this purpose, the Railways seeks to place reliance on the internal notings, of its, office files and the affidavits of its officers given the time and space between the happening of the event and dates of the affidavits.

5.1. It is also the case of the Railways that the signed copy of the award which was sent by the arbitrator to the GM, HQ was despatched to the office of the Sr. DCM, under a cover of the letter dated 17/18.01.2011.

5.2. The aforementioned fact is pleaded by the Railways, so as to be able to contend that service on its Sr. DCM is appropriate service as the said officer was following the matter before the arbitrator and hence charged with the responsibility to assail the award. This submission is based on the ratio of the judgment of the Supreme Court in the case of Union of India (UOI) Vs. Tecco Trichy Engineers and Contractors, .

5.3. A bare perusal of the letter dated 17/18.01.2011 would show that, the letter has been signed by the Chief Commercial Manager (CCM), on 14.01.2011. It is quite possible that the said letter remained with the CCM till 17/18.01.2011, as that is the date appended on the right hand top corner of the letter.

6. As noted in my order dated 05.07.2013, the letter refers to "paper" pertaining to the arbitration case. I assume therein that the reference is to the award dated 13.10.2010/03.11.2010 as the letter bears a caption adverting to the said dates. This inference is not obviously rebutted by Railways.

7. The Railways, further state that, having received a signed copy of the award, in the office of Sr. DCM (from the office of the GM, HQ under a cover of letter dated 17/18.01.2011), on 24.02.2011, a decision was taken to assail the award.

7.1. Consequently, on 18.03.2011, a counsel was nominated. A petition u/s 34 of the Arbitration and Conciliation Act, 1996 (in short the Act) was drafted, and after being duly vetted, the instant petition was filed on, 18.04.2011.

8. Based on these events, Ms. Mohan, who appears for the Railways says that the petition filed u/s 34 of the Act, is within the time, prescribed u/s 34(3) of the Act.

9. Ms. Mohan says that though the signed copy of the award, dispatched by the learned arbitrator to the Sr. DCM's office, was received in that office, on 04.03.2011, even if, limitation is counted form 17/18.01.2011, that is, the date, when the signed copy of the award was despatched from the office of the GM, HQ to the Sr. DCM's office, the institution of the petition u/s 34 of the Act, would be within the time.

10. As against this, Mr. Bhalla, who appears for the respondent says that the record demonstrates to the contrary. It is his submission that having regard to the fact that two out of the three recipients admittedly received the signed copy of the award dispatched by the learned arbitrator, on 08.11.2010, then on a balance of probabilities, unless there is evidence to the contrary, it would have to be presumed that the Sr. DCM's office received the signed copy of the award vide postal receipt no. 5779, on 08.11.2010.

10.1. In order to buttress his submission, he relies upon the certificate issued by the postal authorities, which reads as follows:-

Regd. letter vide no. 5779 was delivered to the addressee on dated 08.11.2010 as per this office record. The photocopy of relevant record is attached below...

11. It is Mr. Bhalla's contention that, it is not the Railways' submission, as it cannot be, that the communication was not addressed to the Sr. DCM.

12. To drive home his point, Mr. Bhalla also brought to my notice a photocopy of the letter dated 02.11.2011, issued by the Railways, based on a RTI application, filed on, 30.09.2011; which seems to suggest that the Sr. DCM, received the signed copy of the award on 19.01.2011. It is also his contention that Mr. Vikram Singh, Sr. DCM, who has sworn the affidavit dated 22.10.2012, actually joined the office of the Sr. DCM on 09.05.2012.

12.1. Unfortunately, these letters have not been formally filed in court, backed by an affidavit, and therefore, the Railways has had no opportunity to examine

the veracity of these communications.

13. Nevertheless, Mr. Bhalla says that if, only his contention vis-a-vis postal receipts is taken into consideration, even then, admittedly the institution of the petition u/s 34 of the Act is time barred, as it is beyond the period prescribed u/s 34(3) of the Act.

14. It is, therefore, Mr. Bhalla's contention that this court has no power to condone the limitation beyond the period of three months and 30 days stipulated in Section 34(3) of the Act. It is Mr. Bhalla's say that even the leeway of 30 days can be made available only if the Railways, in a given case, is able to show "sufficient cause" to condone delay beyond the 3 months period, provided u/s 34(3) of the Act.

15. I have heard the learned counsel for the parties. As indicated before, the matter has been deliberated upon in detail on previous two dates. My observations, on each occasion, have been recorded in detail. As alluded to above, there are several gaps in the explanation advanced by the Railways. There is no cogent explanation given as to why the signed copy of the award, which was received in the office of the GM, HQ on 08.11.2010 was not transmitted to the office of the Sr. DCM till 17/18.01.2011. Apart from the fact that departmental proceedings having been initiated against certain officers, and that too after lacunae was pointed by this court, the reasons for delay are not explained.

15.1 The Railways has been unable to show documents wherein, the inward receipt of the signed copy of award in the office of the GM, HQ, stood recorded. Had it not been for the postal receipt, this fact possibly, would not have been admitted.

15.2 Even so, the record shows that the signed copy of the award received in the office of GM, HQ was transmitted to office of CCM. He obviously had it with him on 14.01.2011, if not before. Here again nothing is placed on record by the Railways which would demonstrate movement from GM, HQ's office to CCM's office. The paper trail is completely missing. As indicated above, the letter dated 17/18.01.2011, was actually signed by the CCM on 14.01.2011.

15.3 The letter dated 17/18.01.2011 does not inspire much confidence for the reason it carries a subject reference, which reads, as follows:-"letter No. 2006/ Arbitration/2 dated 13.10.2010/03.11.2010". It is in response to the said letter, that the CCM has sent a "paper". While it cannot be said with certainty that the "paper", is the signed copy of the award which his office purportedly, received from GM, HQ's office and transmitted to Sr. DCM, I have decided to give Railways, the benefit of doubt, as indicated above.

15.4 This, perhaps, may have saved the Railways from being non-suited on the ground of limitation but for the fact that there is evidence on record which scuppers the theory advanced that the Sr. DCM received the signed copy of the

award from two sources, on two different dates; each of which if taken into account will bring the petition filed u/s 34 of the Act within limitation.

15.5 The first source adverted to is the GM, HQ's office. The second source is the learned arbitrator.

15.6 The first source is dependent on the letter dated 17/18.01.2011 of the CCM. The second source is dependent on the dispatch made by the learned arbitrator, as far back as on 04.11.2010. For the reason adverted to above, the evidence adduced qua the first source does not inspire confidence, though I have given the Railways the benefit of doubt. If, however, I am able to come to the conclusion that in so far as the second source is concerned, the signed copy of the award was received much earlier, that is, on 08.11.2010 and not on 04.03.2011, as claimed, the benefit of doubt given qua the first source would not help the cause of the Railways.

15.7 Therefore, what has to be seen is the evidence on record qua the second source of dispatch, which is the arbitrator himself.

15.8 In so far as the second source is concerned, what clinches the case for the respondent, is the noting on the copy of the award filed by the Railways, with the Section 34 petition and the postal certificate issued in that behalf.

15.9 Both these documents were referred to, in my order dated 06.09.2013. Nothing has been brought on record since then, by the Railways which would cast a doubt on the evidentiary value of the said material available on record.

16 As noted in my order of 06.09.2013; the copy of the award filed alongwith the petition u/s 34 of the Act, bears notings to the following effect:-

R-5779/Sr. DCM and Recd 8/11 (sic S-8/11)

16.1 Ms. Mohan, has verified the position as to whether the original award received in the office of Sr. DCM, (which was dispatched by the learned arbitrator), bears the said annotation. Ms. Mohan has confirmed the said position.

16.2 Besides this, as noted above, the postal receipt supports this fact. An extract of the postal receipt is set out in paragraph 11.1 above.

16.3 With the aforesaid evidence on record, that is, the postal receipt and the postal certificate, none of which is in challenge before me, a presumption of service of a signed copy of award on Sr. DCM, on 08.11.2010, can safely be drawn u/s 27 of the General Clauses Act, 1897 (in short G.C. Act) read with Section 114 illustration (f) of the Indian Evidence Act, 1872 (in short I.E. Act).

16.4 Once it is shown that document sought to be served on the opposite party was sent by properly addressing, pre-paying and posting by registered post to the said party i.e., addressee, then the presumption provided of due service u/s 27 of the G.C. Act read with Section 114 illustration (f) of the I.E. Act gets triggered [see Harcharan Singh Vs. Smt. Shivrani and Others,]. Exception to this

perhaps would be if the Railways in this case would have brought on record credible material to demonstrate that presumption of service in law is not valid. In such a situation, the onus would have shifted back on the respondent who claims that service of a signed copy of the award was made on the Sr. DCM on 08.11.2010. No such credible material has been brought on record in the facts of the present case.

17. In these circumstances, limitation, in my view, can only commence from 08.11.2010, even if it is assumed that the Sr. DCM was the person, who had to be served with a signed copy of the award as he was charged with the responsibility to take the decision, as to whether or not a petition u/s 34 of the Act, had to be filed. If that date is taken into account, then, it is an admitted position that the institution of the petition is beyond the period of three months and thirty days provided u/s 34(3) of the Act.

18. Before I conclude, I must note that, Ms. Mohan attempted to touch upon the merits of the case, though quite fleetingly. This attempt was thwarted by me, on account of a singular reason, which is, when examining the issue of limitation any discussion on merits can only obfuscate the debate. Intervention of limitation bars the remedy. It bears no reflection on the rights of parties, which is why it is often referred to as the statute of repose. Decidedly, the court has no power to condone the delay where initial filing is beyond the period prescribed u/s 34(3) of the Act. [See Union of India Vs. M/s Popular Construction Co.,]. Accordingly, the application is dismissed.

O.M.P. 377/2011

In view of the order passed in IA No. 7829/2011, the captioned petition would have to be dismissed. It is ordered accordingly.