
(2008) 11 DEL CK 0159
In the Delhi High Court
Case No : FAO (OS) No. 478 of 2007

SRGP Industries Ltd.

APPELLANT

Vs

Currie and Brown (India) Ltd.

RESPONDENT

Date of Decision : 04-11-2008

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2008) 11 DEL CK 0159

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : Arun Kathpalia, Garima Prashad and Neha Goyal, for the Appellant;
Neeraj Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—The present appeal has been filed for setting aside the order dated 2nd November, 2007 passed in an application under Order 9 Rule 13 CPC being IA No. 12521/2007 in Arbitration Application No. 250/2007.

2. Learned Single Judge by virtue of the impugned order refused to recall his earlier order, dated 22nd October, 2007, by which he had disposed of the Section 11 Petition filed by the Respondent, by appointing an Arbitrator. The *raison d'être* behind the impugned order is that the Appellant had refused to accept service of summons and even though service was effected by pasting of summons on 22nd August, 2007, none had appeared for the Appellant before Court on 22nd October, 2007.

3. Learned Counsel for Appellant, Mr. Kathpalia, has contended that the non-appearance before the learned Single Judge was inadvertent and was owing to a wrong noting of date by its Counsel. Learned Counsel stated that the Appellant had received the Section 11 Petition by courier but as no summons were annexed with the same, the Appellant was not aware of the next date of hearing. Mr. Kathpalia further contended that as the Appellant has its office in Kanpur, it

immediately sent a copy of the said application to its Counsel at Delhi with instructions to find out status of the case and prepare an urgent reply. It was the Counsel for the Appellant who somehow by mistake noted the next date of hearing as 23rd October, 2007 instead of 22nd October, 2007. An extract of the daily diary of learned Counsel for Appellant has been filed in which the date of hearing has been noted as 23rd October, 2007. Learned Counsel for the Appellant has further argued that this Court has no territorial jurisdiction to entertain and adjudicate the Petition u/s 11 of the Arbitration and Conciliation Act, 1996 as only the Courts at Kanpur have territorial jurisdiction. In this connection, he referred to Clause 11 of the Consultancy Agreement executed between the parties.

4. On perusal of the record, we find that notice had been issued to the Appellant in the Section 11 Petition on 13th July, 2008. In the said Petition the Respondent had averred that this Court has territorial jurisdiction inasmuch as the agreement between the parties has been executed in New Delhi. The report of the Process Server was that the concerned official of the Appellant had refused to accept summons and therefore, the same were pasted on 27th August, 2007. The Respondent's Clerk had also filed an affidavit stating that a copy of the notice had been sent by courier. When a query was put to learned Counsel for Appellant as to why the official of the Appellant had refused to accept summons, learned Counsel stated that as the Managing Director of the Appellant company was not available, service was not accepted.

5. We are of the view that service of summons would become difficult if not impossible in case it were to be held that summons could only be received by a Managing Director of a company. Since the Appellant has deliberately refused service of summons, it certainly is not entitled to any sympathy or equitable consideration from this Court. We are further of the opinion that the Appellant's Counsel was neither negligent nor has she committed a mistake as it is not a case of wrong noting of date but a case of refusal of service of summons for which alone the Appellant has to be faulted with. In any event, in view of Process Server's report that summons had been pasted, we are of the view that the Appellant could derive no assistance from the wrong noting of the date by the Appellant's Counsel as there was no prior hearing in which Appellant's counsel had appeared. Service by courier was only an additional methodology of service employed by the Respondent. They were not legally bound to do so. The plea of lack of territorial jurisdiction has been considered by the learned Single Judge in its original order dated 22nd October, 2007 by relying on the Clause 12 which provides for arbitration at Delhi.

6. Since the learned Single Judge by virtue of the impugned order has only appointed an Arbitrator, we are of the view that no prejudice has been caused to the Appellant. In fact, the conduct of the Appellant in the present proceedings shows that its intent was only to delay and protract the present proceedings.

7. Consequently, the present appeal being devoid of merits is dismissed but with

no order as to costs.