

(2017) 05 DEL CK 0192

In the Delhi High Court

Case No : 259 of 2017, 260 of 2017 & 261 of 2017

VARSANI CONSTRUCTION COMPANY AND ANR.

APPELLANT

Vs

RELIGARE FINVEST LIMITED

RESPONDENT

Date of Decision : 30-05-2017

Acts Referred:

[Arbitration and Conciliation Act, 1996](#), [Section 37](#) - Appealable orders

Citation : (2017) 05 DEL CK 0192

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Jaspal Singh, Omar Hoda, Namrah Nasir, Ajay Uppal

Final Decision : Dismissed

Judgement

1. These appeals under Section 37 of the Arbitration and Conciliation Act, 1996 are filed by the appellants against the impugned judgment of the court below dated 26.12.2016 which has dismissed the objections under Section 34 of the Arbitration and Conciliation Act filed by the appellants/objectors.

2. Arbitration proceedings were initiated by the respondent/lender for recovery of a sum of Rs.57,53,064.65 along with interest. In these arbitration proceedings, it has been found as a matter of fact on record by the court below that the appellants/petitioners were duly served but the appellants/petitioners failed to appear in the arbitration proceedings. The court below has arrived at a finding that notices which were sent to the appellants/petitioners by the registered

post were at the admitted addresses of the appellants/petitioners, and therefore, there is deemed service of the arbitration proceedings. The court below has also referred to the fact that even the earlier recall-cum-demand notice dated 30.8.2013 sent to the appellants/petitioners, the same was received back with a note of 'refusal'. The court below also notes that addresses of the appellants/petitioners mentioned in the postal envelopes, whether the addresses were those as mentioned in the demand notice or notices issued in the arbitration proceedings including the notice to proceed ex-parte, are the same addresses of the appellants/petitioners as mentioned in their petition under Section 34 of the Arbitration and Conciliation Act . More importantly, the court below has come to a finding of fact that the Award dated 20.12.2013 was sent to the appellants/petitioners by way of registered post and the appellants/petitioners were duly served of the Award on 28.12.2013 as there were found two AD cards bearing the stamp of the appellant no.1/petitioner no.1 and the signatures of two other persons on the AD cards, lying in the arbitral record. The court below has held that the appellants/petitioners have not denied the official stamp of the appellant no.1/petitioner no.1 or the signatures on the AD cards. The aforesaid aspects have been dealt with exhaustively by the court below in paras 6 to 8 of the impugned judgment and which paras read as under:-

"6. The counsel for the petitioners has argued that the petitioners were not served with the notice of commencement of arbitration as well as notice of arbitration proceedings by the Ld. Arbitrator. But the perusal of arbitral record has revealed that the notices were sent to the petitioners by way of post at the following stages:- (i) When loan recall-cum-demand notice dated 30.08.2013 was sent by the Claimant on 31.08.2013; (ii) When notice dated 24.09.2013 of arbitration proceedings was sent by the Sole Arbitrator on 28.09.2013;

(iii) When notice dated 06.11.2013 of intention of proceed ex parte was sent by the Sole Arbitrator on 07.11.2013; and when the copy of Award dated 20.12.2013 was sent to the petitioners by the Sole Arbitrator on 23.12.2013. 7. The envelopes containing loan Recall-cum-Demand Notice dated 30.08.2013,

sent to both the petitioners, were received back with the report "refused". It is settled law that there is presumption of service of notice under Sec.114 of Evidence Act and Section 27 of General Clause Act when there is report of ? refusal? written by the postman. (Harcharan Singh Vs. Shiv Rani, (1981) 2 SCC 535). The notice dated 24.09.2013 of arbitration proceedings and notice dated 06.11.2013 of intention to proceed ex-parte were sent by the Sole Arbitrator to both the petitioners by way of registered post. The postal receipts of the same have been placed on arbitral record. Though there is no AD card placed on record but it has been held by Hon?ble Supreme Court in Basant Singh Vs. Roman Catholic Mission, (2002) 7 SCC 531 that where the summons are properly addressed, prepaid and duly sent by registered post with acknowledgment due, notwithstanding the fact that the acknowledgement having been lost or mislaid, the Court shall presume that notice is duly served. In the said case, the Hon?ble Supreme Court had drawn the presumption of service under Sec.27 of General Clauses Act notwithstanding the loss of AD Card or its non-return for any reason. In the present case, the petitioners have not denied the correctness of their addresses mentioned on the above-said notices. Rather it is pertinent to mention here that the addresses of petitioners as mentioned in the present petition under Sec. 34 of the Act are the same addresses where the above- said notices were sent. Since, the notices were sent to the petitioners by way of post at their correct addresses and none of the envelopes were received back unserved, so in view of the above-said case-law, the Ld. Arbitrator had rightly drawn the presumption of services and proceeded ex-parte against the present petitioners. Though the legal presumption of service laid down in Sec.114 of Indian Evidence Act and Sec. 27 of General Clauses Act is rebuttable, but the petitioners have failed to rebut the same. They have simply stated that they were not served. But they have not denied the correctness of their addresses. So in the absence of any rebuttal, it stands established that the petitioners were duly served with the notices of the arbitral proceedings, sent by the Ld. Arbitrator. Accordingly, the ground of petitioners of ?being not served? with the notice of arbitration proceedings by the Ld. Arbitrator is rejected. 8. The counsel for the Claimant has vehemently argued that the present petition deserves dismissal as the same is time barred. The Arbitral Award was passed on 20.12.2013 whereas the present petition U/Sec.34 of the Act was filed on 24.11.2015. But the counsel for petitioners has argued that the petition is not time barred as the copy of Award was never served upon the petitioners by the Ld. Arbitrator and that they came to know about the Award only in October, 2015 when notice of Executing Court was received by them. But the perusal of arbitral record has revealed that the Award was sent to both the petitioners by the Ld. Arbitrator by way of post on 23.12.2013 and both the petitioners were duly served with the same on 28.12.2013. Two AD cards bearing stamp of petitioner no.1 and signatures of two persons are lying on arbitral record. The petitioners have neither denied the official stamp of the petitioner no.1 nor signatures on the said AD cards. It is also pertinent to mention here that the addresses of petitioners on these AD cards are the same

as mentioned in the present petition, meaning thereby that the addresses are correct. Hence, it stands proved that the petitioners were duly served with the Award on 28.12.2013. But since the present petition U/Sec.34 of the Act was filed on 24.11.2015 i.e. much after the expiry of period of limitation of 90 days, the same is barred by limitation and accordingly, requires to be dismissed." (underlining added)

3. I may note that in fact the objection petition need not have been dealt with in detail on merits inasmuch as the objections were found to have been filed beyond the period of limitation prescribed under Section 34 of the Arbitration and Conciliation Act, and which is the period of 90 days plus condonation of delay of additional 30 days i.e total 120 days, and hence the objection petition necessarily has to be dismissed as time barred in view of the judgment of the Supreme Court in the case of Union of India Vs. M/s Popular Construction Co. (2001) 8 SCC 470.

4. I do not therefore find any illegality or perversity in the impugned judgment and which rightly deals with all the issues, including of the objections being barred by time.

5. In view of the above discussion, the first appeals along with pending applications are dismissed.