

Benarsi Krishna Commit.& Ors vs Karmyogi Shelters P.Ltd on 21 September, 2012

Equivalent citations: AIRONLINE 2012 SC 727

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Bench: J. Chelameswar, Altamas Kabir

REPORTABLE | |

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL)No.23860 of 2010

BENARSI KRISHNA COMMITTEE & ORS. ... PETITIONERS

Vs.

KARMYOGI SHELTERS PVT. LTD. ... RESPONDENT

J U D G M E N T

ALTAMAS KABIR, J.

1. In this Special Leave Petition, a question has been raised as to whether the service of an Arbitral Award on the agent of a party amounts to service on the party itself, having regard to the provisions of Section 31(5) and Section 34(3) of the Arbitration and Conciliation Act, 1996, hereinafter referred to as “the 1996 Act”.

2. The Petitioner is a Committee of Managing Landlords, who are co- owners of the Benarsi Krishna Estate at the Moti Cinema compound, Chandni Chowk, Delhi. The property apparently belongs to the Khanna family and the Seth family. The Respondent No.1 is a Private Limited Company incorporated under the Companies Act, 1956, and is an estate developer and builder of both residential and commercial properties. The Petitioner Committee entered into a Collaboration Agreement dated 16th November, 1990, by which the Respondent agreed to convert the Moti Cinema compound into a commercial complex. Subsequently, the agreement was amended on 2nd May, 1991, by which certain changes were introduced with regard to the scheme of payment. Inasmuch as disputes arose between the parties over the working of the agreement, the Respondent filed an application under Section 11 of the 1996 Act for appointment of an Arbitrator and by an order dated 14th May, 2001, the Delhi High Court appointed Justice K. Ramamoorthy, a retired Judge of the said Court, as the Sole Arbitrator. After considering the materials brought on record, the learned Arbitrator passed his Award upon holding that the Respondent had committed breach of the terms of the Collaboration Agreement and directed the Petitioner to refund the sum of Rs.41 lakhs which had been received from the Respondent, within three months from the date of the Award and in default of payment within the said period, the amount would carry interest @ 12% per annum from the date of the Award till the date of payment.

3. As will appear from the records, copies of the Award, duly signed by the learned Arbitrator, were received by the counsel for the respective parties. As far as the Respondent is concerned, the endorsement shows that the copy of the Award was received by its counsel on 13th May, 2004. However, no application for setting aside the Award was filed by the Respondent within the period of three months from the date of receipt of the Award, as provided under Section 34(3) of the 1996 Act.

4. On 3rd February, 2005, the Respondent filed a Petition, being O.M.P. No.51 of 2005, under Section 34 of the 1996 Act, to set aside the Award of the learned Arbitrator. According to the Petitioner, the said petition was filed after a delay of more than 9 months from the date of the receipt of the Award. The said objection of the Petitioner was considered by the learned Single Judge of the High Court who by his order dated 28th August, 2009, dismissed the Respondent's petition on the ground that the same was time barred. The learned Single Judge accepted the contention of the Petitioner that the expression "party" used in Section 31(5) of the 1996 Act, would also include the agent of the party.

5. The matter was carried to the Division Bench of the High Court by the Respondent on 5th October, 2009, by way of F.A.O. (OS) No.578 of 2009. Accepting the case of the Respondent that service of the Award had not been properly effected, the Division Bench remanded the matter to the Single Judge to decide the objections on the Award on merits, upon holding that for compliance with the provisions of Section 31(5) of the 1996 Act, a copy of the Award had to be delivered to the party itself and service on its counsel did not amount to service within the meaning of Section 31(5) of the aforesaid Act. The Special Leave Petition has been filed against the said judgment and order of the Division Bench of the Delhi High Court.

6. In arriving at its decision which has been impugned in these proceedings, the Division Bench of the Delhi High Court referred to its own judgment in National Projects Constructions Corporation Limited Vs. Bundela Bandhu Constgructions Company [AIR 2007 Delhi 202] and a decision of this Court in Union of India Vs. Tecco Trechy Engineers & Contractors [(2005) 4 SCC 239], which had considered the decision of the Delhi High Court in Bundela Bandhu's case (supra). The Division Bench also referred to the decision of the Privy Council in the celebrated case of Nazir Ahmed Vs. King Emperor [(AIR 1936 PC 253], wherein it was categorically laid down that if an action is required to be taken in a particular manner, it had to be taken in that manner only or not at all. While observing that all the aforesaid controversies could have been avoided if the Award had been served on the party directly, the Division Bench also observed that in view of Section 2(h) of the 1996 Act, there was no justifiable reason to depart from the precise definition of the expression "party" which means a party to the arbitration agreement.

7. Appearing in support of the Special Leave Petition, Mr. Ranjit Kumar, learned Senior Advocate, reiterated the submissions which had been made before the High Court. Learned senior counsel reiterated that after the Award had been passed on 12th May, 2004, a copy of the same, duly signed by the Arbitrator, was received by counsel for the Respondent on 13th May, 2004, while the Petition under Section 34 was filed only on 3rd February, 2005, well beyond the period of 3 months prescribed in Section 34(3) of the 1996 Act and also beyond the further period of 3 months as indicated in the proviso thereto. Since the question for decision in the Special Leave Petition largely depends on the interpretation of Sub-section (3) of Section 34 and the proviso thereto, the same is extracted hereinbelow for purposes of reference :-

"34. Application for setting aside arbitral award. -

(1) (2)
 (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter. "

8. Mr. Ranjit Kumar urged that service of the Award on the Advocate for the party was sufficient compliance of the provisions of Section 34(3) of the 1996 Act, as had been held by a Four-Judge Bench of this Court in Nilakantha Sidramappa Ningshetti vs. Kashinath Somanna Ningashetti [1962 (2) SCR 551], which was later followed in East India Hotels Ltd. Vs. Agra Development Authority [(2001) 4 SCC 175]. Mr. Ranjit Kumar submitted that in Nilakantha Sidramappa Ningshetti's case (supra) this Court held that intimation to the pleaders of the parties amounted to service of the notice on the parties about the filing of the Award.

9. Mr. Ranjit Kumar also referred to the decision of this Court in *State of Maharashtra Vs. ARK Builders Pvt. Ltd.* [(2011) 4 SCC 616], in which this Court, following its earlier decision in *Tecco Trechy Engineers's case* (supra), held that Section 31(5) of the 1996 Act contemplates not merely the delivery of any kind of copy of the Award, but a copy of the Award which had been duly signed by the Members of the Arbitral Tribunal. Learned counsel pointed out that in the said decision, the Hon'ble Judges had taken note of the fact that an attempt was being made to derive undue advantage of an omission on the part of the learned Arbitrator to supply them with a signed copy of the Award, but ultimately held that the same would not change the legal position and it would be wrong to tailor the law according to the facts of a particular case.

10. As an additional ground, Mr. Ranjit Kumar referred to the use of the words "signed by parties" under Order 23 Rule 3 read with Order 3 Rule 1 of the Code of Civil Procedure, which provide that any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf. Mr. Ranjit Kumar contended that on the strength of the Vakalatnama executed by the party in favour of his Advocate/agent, service of notice effected on the Advocate holding such Vakalatnama amounted to service of the notice on the party himself, as was held in the case of *Pushpa Devi Bhagat Vs. Rajinder Singh & Ors.* [(2006) 5 SCC 566].

11. A similar view had been expressed by this Court in *Byram Pestonji Gariwala Vs. Union Bank of India & Ors.* [(1992) 1 SCC 31], whereby this Court held that the expression "signed by parties" would include "signed by his pleader". Mr. Ranjit Kumar submitted that once a Vakalatnama had been executed by a party in favour of his Advocate, the said Advocate was competent to do such acts as could be done by the party himself. Accordingly, the Division Bench of the Delhi High Court had in the teeth of the aforesaid decisions erred in holding that service of the signed copy of the Award by the learned Arbitrator on the Respondent's counsel, did not amount to compliance of the provisions of Section 31(5) of the 1996 Act, which specifically enjoined that the copy was to be delivered to each party.

12. Countering the submissions made by Mr. Ranjit Kumar, Mr. K.V. Viswanathan, learned Senior Advocate, firstly urged that once hearing before the learned Arbitrator had been concluded and an Award had been passed by him, the power given to an Advocate by the Vakalatnama executed in his favour, came to an end and the learned Advocate was no longer entitled to act on the strength thereof. Accordingly, service on the said Advocate would not amount to service even on an agent of the party, even if Mr. Ranjit Kumar's submissions were to be accepted. Mr. Viswanathan, however, contended that service on the learned Advocate of the party cannot be treated as service of the Award on the party itself, as had been very clearly held in the very same decision referred to by Mr. Ranjit Kumar in *Pushpa Devi Bhagat's case* (supra).

13. Referring to the decision of the Three-Judge Bench of this Court in *Tecco Trechy Engineers's case* (supra), Mr. Viswanathan submitted that the decision rendered therein completely covered the issue raised in this Special Leave Petition. Learned counsel submitted that on a construction of

Sub-Section (3) of Section 34 of the 1996 Act, the learned Judges had held that “service on a party” as defined in Section 2(h) read with Section 34(3) of the 1996 Act, had to be construed to be a person directly connected with and involved in the proceedings and who is in control of the proceedings before the Arbitrator, as he would be the best person to understand and appreciate the Arbitral Award and to take a decision as to whether an application under Section 34 was required to be moved.

14. As to the decision in Pushpa Devi Bhagat’s case (supra), Mr. Viswanathan submitted that the same was rendered on a completely different set of facts which could have no application to the facts of this case. Mr. Viswanathan submitted that no interference was called for with the decision of the Division Bench of the High Court impugned in the Special Leave Petition, which was liable to be dismissed.

15. Having taken note of the submissions advanced on behalf of the respective parties and having particular regard to the expression “party” as defined in Section 2(h) of the 1996 Act read with the provisions of Sections 31(5) and 34(3) of the 1996 Act, we are not inclined to interfere with the decision of the Division Bench of the Delhi High Court impugned in these proceedings. The expression “party” has been amply dealt with in Tecco Trechy Engineers’s case (supra) and also in ARK Builders Pvt. Ltd.’s case (supra), referred to hereinabove. It is one thing for an Advocate to act and plead on behalf of a party in a proceeding and it is another for an Advocate to act as the party himself. The expression “party”, as defined in Section 2(h) of the 1996 Act, clearly indicates a person who is a party to an arbitration agreement. The said definition is not qualified in any way so as to include the agent of the party to such agreement. Any reference, therefore, made in Section 31(5) and Section 34(2) of the 1996 Act can only mean the party himself and not his or her agent, or Advocate empowered to act on the basis of a Vakalatnama. In such circumstances, proper compliance with Section 31(5) would mean delivery of a signed copy of the Arbitral Award on the party himself and not on his Advocate, which gives the party concerned the right to proceed under Section 34(3) of the aforesaid Act.

16. The view taken in Pushpa Devi Bhagat’s case (supra) is in relation to the authority given to an Advocate to act on behalf of a party to a proceeding in the proceedings itself, which cannot stand satisfied where a provision such as Section 31(5) of the 1996 Act is concerned. The said provision clearly indicates that a signed copy of the Award has to be delivered to the party. Accordingly, when a copy of the signed Award is not delivered to the party himself, it would not amount to compliance with the provisions of Section 31(5) of the Act. The other decision cited by Mr. Ranjit Kumar in Nilakantha Sidramappa Ningschetti’s case (supra) was rendered under the provisions of the Arbitration Act, 1940, which did not have a provision similar to the provisions of Section 31(5) of the 1996 Act. The said decision would, therefore, not be applicable to the facts of this case also.

17. In the instant case, since a signed copy of the Award had not been delivered to the party itself and the party obtained the same on 15th December, 2004, and the Petition under Section 34 of the Act was filed on 3rd February, 2005, it has to be held that the said petition was filed within the stipulated period of three months as contemplated under Section 34(3) of the aforesaid Act. Consequently, the objection taken on behalf of the Petitioner herein cannot be sustained and, in our

view, was rightly rejected by the Division Bench of the Delhi High Court.

18. Consequently, the Special Leave Petition must fail and is dismissed.

19. There will, however, be no order as to costs.

... .. J . (A L T A M A S K A B I R)
.....J. (J. CHELAMESWAR) New Delhi Dated: 21.09.2012.