

Vishrut Wadhwa vs M/S Relio Quick India Pvt. Ltd on 6 March, 2021

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IN THE COURT OF DISTRICT JUDGE (COMMERCIAL-02)

SOUTH DISTRICT, SAKET COURT, NEW DELHI

OMP (COMM.) 12/19

Vishrut Wadhwa
S/o Late Shri Umesh Wadhwa,
R/o House No. 5, Akashdeep Enclave,
Sarvamangal Society, Zirakpur,
Mohali, Punjab-140603

..... Petitioner

Versus

1. M/s Relio Quick India Pvt. Ltd.
Through Sandeep Kapoor, Mg. Director,
H-57, Jadunath Enclave, Sector-29,
Faridabad-121009, Haryana.

..... Respondent No. 1

2. Ld. Arbitrator

..... Respondent No. 2

Date of Institution : 13.09.

Date of arguments : 19.02.20

Date of Judgement : 06.03.202

JUDGEMENT

1. This is a petition U/s 34 of Arbitration & Conciliation Act, 1996 (hereinafter referred as "A&C Act") filed by the petitioner, Vishrut Wadhwa on 13 th September, 2019 directed against the award dated 27 th March, 2019, passed by Shri C.K. Chaturvedi, Ld. Sole Arbitrator.

2. This court has heard submissions advanced by Shri Harpreet Singh Nagpal, learned counsel for the petitioner as well as Shri Kanishk Ahuja, learned counsel for respondent.

3. In brief, background facts leading to filing of this petition are that petitioner, Vishrut Wadhwa was working as Relationship Manager since 2009 till September, 2014 with M/s Relio Quick India Pvt. Ltd. (Respondent no. 1), which company was carrying on business of organizing automobile shows in Malls and is also stated to be the real nephew of Shri Sandeep Kapoor, director of Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 1 respondent no. 1. There was a clause in the employment agreement dated 21.02.2009 between the parties whereby petitioner had been

restrained from competing, solicitation and non-disclosure of data with respondent no. 1 for a period of two years after cessation of services. There was arbitration clause no. 19 in the employment agreement. In the year 2014, petitioner alongwith Shri Sanjeev Sharma entered into a partnership firm in the name of Strategem Business Consulting LLP (SBC LLP). The said SBC LLP was under a royalty agreement dated 25th September, 2014 with respondent no. 1 in the year 2014. However, the claim of respondent no. 1 before the Arbitrator was in respect of breach of terms of employment agreement with respondent no. 1 qua the non- solicitating, confidentiality and non-competing clause. Dispute had arisen between the parties and arbitration was invoked by respondent no. 1. Shri C.K. Chaturvedi (Retd. District & Sessions Judge) was appointed as Sole Arbitrator, who entered upon the reference on 14 th December, 2017. Case of the petitioner is that claims was filed by the respondent no.1 on 18.01.2018. On completion of proceedings, Ld. Sole Arbitrator passed the award on 27 th March, 2019 vide which Ld. Arbitrator passed an award of Rs.28,80,000/- against the petitioner with interest @ 12% per annum.

4. It may be noted that after this court had heard arguments of both the parties, on 19.02.2021, Ld. Counsel for the petitioner e-filed an application U/s 151 CPC requesting to allow the amendment in the memo of parties and taking on record amended memo of parties. In the application, it was stated that the correct address of the petitioner is Vishrut Wadhwa son of Late Shri Umesh Wadhwa, R/o House No. 5, Sarvamangal Society, Jirakpur, Mohali, Punjab- 140603. After hearing, this court had observed that application may be taken on record and the changed address by the petitioner shall not have any effect on the merits of the case and application was disposed of accordingly. Petitioner was also directed to place on record the application in physical form and thereafter on 24.02.2021, Ld. Counsel for petitioner had filed the application alongwith amended memo of parties on record.

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5. Ld. Counsel for the petitioner submits that as per Section 34 read with Section 2(1)(e) of the Act, this Court is the competent court having jurisdiction i.e. territorial, pecuniary & subject matter, to entertain the present petition. Ld. Counsel for petitioner has submitted that the present petition has been preferred within the limitation period of three months as prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996. It is submitted that the impugned award was passed on 27.03 2019, stamp fee of Rs. 3000/- was filed by the respondent on 10 06 2019 and copy the of award was sent to the petitioner along with covering letter dated 14.06.2019 through speed post was received by the petitioner on 19 06.2019. This petition was preferred on 13.09.2019.

6. Ld. Counsel for petitioner has further submitted that the Award dated 27.03.2019 passed by the respondent No 2/Sh. C.K. Chaturvedi, Ld. Sole Arbitrator (Retd. District & Sessions Judge, Delhi) is in conflict with the public policy of India: patently illegal, wholly without jurisdiction, and in contravention of Principles of Natural Justice and the provisions of the Arbitration & Conciliation Act, 1996. Ld. Counsel for the petitioner has relied upon decision of the Hon'ble Supreme Court in Ssangyong Engineering & Construction Co. Ltd. v National Highways Authority of India 2019(15) SCC 131.

7. It is submitted that arbitration proceedings were invoked in contravention of the employment agreement as well as the provisions of the Arbitration & Conciliation Act 1996. It is further submitted that the arbitration proceedings were initiated by the respondent no 1 in contravention of specific terms of the Act i.e. without any efforts of conciliation, and in contravention of law i.e. without serving mandatory notice for invoking arbitration clause. It is further submitted that as transpired from the arbitration record, the respondent no 1 has made no mention of any conciliation efforts in the claim filed before the Ld. arbitrator, which proves that no such efforts were ever made. Further the alleged notice dated 12.10.2017 mentions that the efforts for reconciliation were made, however, the respondent no 1 has not disclosed details as to when how & what Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 3 efforts were made towards conciliation. It is submitted that as per clause of the employment agreement, the arbitration clause cannot be invoked as no proceeding of conciliation has taken place or failed in view of provisions of clause 18 of the agreement which specifically provides in case of difference between the employee and the management of the company, the HR Head of the company shall hold conciliation process to resolve the difference and disputes in an amicable manner for the best interest of the company Therefore, the arbitration proceedings commenced in contravention of the provisions of clause 18 and 19 of the Employment Agreement

8. Ld. Counsel for petitioner has further submitted that petitioner was not given proper notice of invocation of arbitration clause and appointment of the Ld. Arbitrator by the respondent no. 1 was without the consent of the petitioner, in fact the respondent no. 1 never informed the petitioner about any dispute. It is submitted that as transpired from the arbitration record in its claim before the arbitral tribunal, the respondent no. 1 has claimed that it had sent notice dated 07.06.2017 which came back unclaimed and has mentioned about the arbitration notice dated 12 10 2017, however, there is no mention of service of the said notice. It is submitted that during the proceedings dated 14.12 2017, before the Ld. arbitrator, the counsel for the respondent no. 1 has submitted that the alleged arbitration notice was not responded by the petitioner, however, the respondent no. 1 did not mention about the mode & or fate of service of the notice. While as per the proceedings dated 18.01.2018, the counsel for the respondent no. 1 has claimed that the alleged arbitration notice was received back unclaimed. It is submitted that the Arbitral Tribunal, during proceedings dated 18.01.2018, directed the respondent no. 1 to file proof of service along with supporting affidavit but no proof of service well as affidavit in compliance of the given directions was filed by the respondent no. 1.

9. It is further submitted that the address of the petitioner mentioned on the alleged arbitration notice dated 12.10.2017 and given in the claim before the arbitrator is wrong, and is also different from the address mentioned in the alleged notice of the respondent no. 1 as well as the copy of the Partnership Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 4 Agreement of Stratagem Business Consulting LLP placed before the Ld. Arbitrator by the respondent no. 1 only. It is submitted that the wrong address of the petitioner given by the respondent is so similar that it has led to inadvertent error in the petition as well. Also, the contradictory statements and failure to file proof of service & affidavit by the respondent no. 1 highlights that the claim of reconciliation efforts as well as service of mandatory arbitration notice is false and also highlights deliberate misrepresentations made by the respondent no. 1. It is submitted that the Ld. Arbitrator had no

jurisdiction to adjudicate the claim of the respondent no 1.

10. Ld. Counsel for the petitioner has argued that the provisions of the Act mandate full opportunity to each party to present the case and sufficient advance notice of any hearing. It is submitted that petitioner was not served with the notice/ letter of the arbitration proceedings in accordance with law, and was not aware about the arbitration proceedings being conducted by the respondent no 2/Ld. Arbitrator. The Ld. Arbitrator continued proceedings without effecting proper service upon the petitioner in the arbitration proceedings. It is submitted that as transpired from the arbitration record the address of the petitioner mentioned on the alleged arbitration notice dated 12.10.2017 and given in the claim before the arbitrator is wrong, and is also different from the address mentioned in the alleged notice dated 07.06.2017 of the respondent no. 1 as well as the copy of the Partnership Agreement of Stratagem Business Consulting LLP placed before the Ld. Arbitrator by the respondent no. 1 only. It is submitted that the address of the petitioner mentioned at page 179, 200 & 202 of the petition is correct and is different from the address given by the respondent no. 1 in the alleged notice dated 12.10.2017 and before the Ld. Arbitrator. It is submitted that the respondent no I did not send any e-mail wrt arbitration case pending before the respondent no 2 despite having the correct email address and correct residential address of the petitioner.

11. It is submitted that as transpired from the arbitration record, the respondent no. 2 entered upon the reference on 14.12.2017, and directed for sending notice copy of the proceedings dated 14.12.2017 to the petitioner Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 5 through Regd. AD. As per proceedings dated 18.01.2018, the counsel for the respondent no. 1 herein informed that the proceedings dated 14.12.2017 were sent but has not been responded to by the petitioner herein. It is submitted that the Ld. Arbitrator then directed for filing of proof of service along with supporting affidavit, however, neither proof of service nor supporting affidavit was ever filed by the respondent no. 1.

12. Ld. Counsel for the petitioner has argued that during the proceedings dated 18.01.2018, the respondent no. I provided e-mail addresses of the petitioner to Ld. Arbitrator, but no attempt was made to serve petitioner through the given email addresses. It is further submitted that during the proceedings dated 23.02.2018, respondent no 2/Ld. Arbitrator recorded that the petitioner has been served but it is not recorded as to how the service was effected. It is submitted that as transpired from the Orders dated 14.03.2018, 05.04.2018, 02.05.2018 and 23.05.2018, no notice of hearing was sent by the respondent no. 2 and no effort was made to effect service upon the petitioner.

13. It is submitted that the petitioner, for the very first time, came to know about the arbitration proceedings at the stage of final arguments, through an e-mail dated 04.07.2020, sent by the counsel for the respondent no 1. It is submitted that the said e-mail was attached with the e-mail dated 23.06.2018 of the Ld. Arbitrator sent on wrong e-mail address. In his e-mail dated 23.06.2018, the Ld. Arbitrator has admitted that he sent only one letter on 02.02.2018 (after 3 hearings). It submitted that even the said letter dated 02.02.2018 was never received by the petitioner as the same was sent on wrong address. In reply to the e-mail dated 04 07.2020, the petitioner had categorically informed about not receiving the letter dated 02.02.2018 and sought copy of notice/documents and 3 weeks' time for filing reply. It is submitted that petitioner also

informed about hospitalisation of his mother for surgical procedure and his necessary attendance with her. It is submitted that petitioner at Mohali, Punjab. was informed on 04.07.2018 only, about the next date of arbitration proceedings on 07.07.2018 at Delhi.

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14. Ld. Counsel for the petitioner has argued that after the hearing dated 07.07.2018, on 08.07.2018, counsel for the petitioner spoke to the respondent no. 2 and sought copies of the proceedings, claim, documents, etc, whereupon the respondent no. 2 directed the counsel for the petitioner to contact the counsel for the respondent no. 1. In spite of efforts of the petitioner, the counsel for the respondent No. 1 never disclosed the further proceeding in the arbitration case and never supplied copies of proceeding and arbitration case file. It is submitted that the concerned mails have been relied upon by the respondent no. 1 as well. After receiving the email dated 24.07.2018, the petitioner and his counsel tried their best to contact the counsel for the respondent No. 1 to receive the copies of all the documents & arbitration proceedings but to no avail as the counsel for the respondent No 1 did not provide the same.

15. Ld. Counsel has submitted that after 07.07.2018, the next arbitration proceedings were held on 28.01.2019, no reason has been mentioned for the unusual gap of over 6 months between the arbitration hearings, however, despite long unusual gap, no attempt to intimate the petitioner was made when the petitioner/his counsel had made categorical request for supply of copy of the documents arbitration proceedings and had expressed willingness to contest the arbitration to the Ld. Arbitrator as well as the counsel for the respondent no. 1 herein. Thereafter, in haste, the Ld. Arbitrator, on the very next hearing i.e. 27.03.2019, without any intimation to the petitioner, announced the arbitral award.

16. Ld. Counsel for the petitioner has submitted that extension of period beyond 12 months is not in accordance with provisions of the Act. It is submitted that as transpired from the proceedings dated 28.02.2019, the respondent no. 2/Ld. Arbitrator has observed that "The reference was entered on Oct. 17 and the case has continued beyond 12 months. It is submitted that it has been impliedly extended and extended period is available for six months. It is submitted that as per Section 29A of the Act, 1996, the arbitration award ought to have been passed within 12 months from the date of entering upon the reference (i.e. 14.12.2017). It is submitted that the mandate of the Ld. Arbitrator had terminated Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 7 on 13.12.2018, as per the provisions of Section 29-A (4) of the Act, the Award passed on 27.03 2019 after 15 months of entering upon the reference is, thus, bad in law. It is submitted that petitioner had not given any consent, as mandated by Section 2013 of the Act, for extending the period for making the award. Also, no application was preferred by the respondent no. 1 before the court for extending the period of making award as per the mandate of Section 29- A (4) of A&C Act.

17. It is submitted that the Ld. Arbitrator had (wrongly assumed the mandate/ jurisdiction impliedly as apparent from the proceedings dated 28.01.2019. It is submitted that the petitioner was neither served nor was moved ex parte by the learned arbitrator, thus the respondents ought to have sought consent of the petitioner for extending the period of making award after expiry of 12 months.

18. Ld. Counsel for the petitioner has argued that the Award is outcome of guesswork & assumptions, and is not based on evidence and that respondent no. 1, in its evidence, only filed self-serving affidavits of its directors to prove its claims, and failed to bring on record any cogent evidence to prove his alleged claims of breach of employment agreement by the petitioner. It is submitted that the respondent no. 1 did not adduce any evidence to prove that the alleged shows were organised by the petitioner. It is further submitted that respondent no. 1 failed to prove that the petitioner has knowledge of confidential data, etc., and has misused the same. It is further submitted that respondent no. 1 failed to prove that the work being shown in the photographs and purportedly belonging to the respondent no. 1 was its proprietary copyright work and was confidential in nature, which was illegally used by the petitioner. It is further submitted that respondent no. 1 has miserably failed to establish the allegations levelled against the petitioner by adducing relevant & admissible evidence. It is submitted that none of the documents including photographs brought on record has been proved in accordance with law. It is submitted that the sole basis of the findings in the award is the photographs adduced by the director of the respondent no. 1. It is submitted that neither the photographs have been proved by its maker, nor Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 8 the possibility of tampering of photos has been ruled out, nor the respondent no. 1 has provided as to how he has procured the photographs, nor expert evidence or report of authenticity of photographs is on record and thus, no evidence was brought on record to prove the admissibility & relevance of the alleged photographs produced by the respondent. It is submitted that respondent no. 2, without any evidence, wrongly accepted the photographs to be authentic and returned his findings. It is further submitted that the Ld. Arbitrator has extrapolated one specific unproved incident to presume that the petitioner has done all that has been alleged & not proved by the respondent no. 1. It is submitted that the respondent No. 1 has even failed to prove actual loss suffered by it on account of alleged breach of employment agreement by the petitioner.

19. The Crux of the objections against the award are that invocation of arbitration proceeding was not in accordance with law and petitioner was not served with the notice of invocation of arbitration by the respondent no. 1 and by the learned arbitrator, in accordance with law and the period of arbitration proceedings extended after 12 months was not in accordance with law and the findings of arbitrator as regards damages awarded are erroneous.

20. Case of the petitioner is that as per the award, respondent no. 1 had served the notice dated 12.10.2017, however, no such notice for invoking the arbitration clause by respondent no. 1 was served upon the petitioner and there is no proof of proper service of this notice. In the order dated 14.12.2017 Ld. Arbitrator has recorded the submission of the counsel for the respondent no. 1 herein that the notice of the arbitration dated 12.10.2017 has not been responded by the petitioner herein, however, there is no observation or any proof mentioned regarding the service of the notice upon the petitioner.

21. Sh. Harpreet Singh, Ld. Counsel appearing for the petitioner, further submits that petitioner was never served with the summons of the proceedings and that in the order dated 18.01.2018 before Ld. Arbitrator, it is noted that Ms. Neha Bhatia counsel for the respondent no. 1 appeared therein and submitted that the notice of the arbitration was duly sent to the petitioner herein but it was returned

back unclaimed and also the proceedings of the last date (12.10.2017) Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 9 were sent, but not responded. Whereupon Ld. Arbitrator had directed the counsel for the respondent no. 1 herein to file proof of service along with supporting affidavit, however, no such affidavit as well as proof of service was filed by respondent no. 1 during the arbitration proceedings. It is further submitted that also Ld. Arbitrator had directed respondent no. 1 to inform the petitioner herein through the e-mails provided during the hearing. Neither any e-mail was sent by the respondent no. 1 herein nor by the Ld. Arbitrator himself on the given e-mail addresses informing about the arbitration proceedings /the next date of hearing.

22. Ld. Counsel further submitted that in the order dated 23.02.2018, though Ld. Arbitrator has recorded regarding service upon the petitioner through registered AD, however, there is no mention of any service or date of service as well as the acknowledgement. Ld. Counsel referred e-mail 23.06.2018 stated to be sent by Ld. Arbitrator (on the incorrect address). It is submitted that Ld. Arbitrator has himself mentioned about only one service i.e. of 02.02.2008 (actually 2018), which further highlights that Ld. Arbitrator only attempted one service on the given date and not prior to that.

23. In response, Sh. Kanishk Ahuja, Ld. Counsel for respondent, submits that the petitioner alleges that he was not duly served and was not aware of the arbitration proceedings. The petitioner also goes to the extent to state that, if he had the knowledge of the arbitral proceedings, he would have participated and contested the same. In this regard the learned counsel for respondent no. 1 submitted that he would show that a complete false petition is being filed. It is submitted that the respondent no. 1 had sent a notice dated 12 th October, 2017 to the petitioner invoking the arbitration clause and appointing the sole arbitrator to adjudicate disputes. But the said notice was returned as an 'unclaimed', this is because the petitioner opted not to claim the notice which arrived at his door steps. In fact, previously also a notice dated 07.06.2017 was sent to the petitioner prior to initiating the arbitration. The said notice was also received by the petitioner but was neither complied with nor was it replied.

24. Pursuant thereto, the sole arbitrator entered into reference and a communication was sent which was also not responded. It is pointed out that the sole arbitrator vide notice dated 2 nd February, 2018 had sent a letter to the Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 10 petitioner regarding entering into reference and also enclosed the Statement of Claim and list of documents filed by the respondent no. 1. The said letter dated 2nd February, 2018 was also received by the petitioner, however the petitioner again opted not to appear. This fact also stands recorded in the proceedings dated 23rd February, 2018. Copy of letter dated 23 rd February, 2018 is already on record as Annexure R-2with the reply of the respondent.

25. What is also important to note is that the petitioner has received the impugned award on the same address on which now the Petitioner claims that he was never served. Therefore, the petitioner all throughout was served and now a contrary stand has been taken with the intention to mislead the court. It is submitted that rather, necessary prosecution should be initiated against the petitioner for committing forgery U/s 340 Cr.P.C.

26. It defies common logic that the petitioner acknowledges and receives the impugned award which is sent on the same address on which the previous communications were sent but in a very clever fashion the petitioner intends to deny that prior to the award, no communications were received by him which were sent on the same address. There is no explanation to this fact that the petitioner receiving the award on the said address which is mentioned by the petitioner himself all throughout in all the proceedings before the courts but now to establish a case under section 34 of the Act, it is beyond understanding that the petitioner is stating that he never received the communication which was sent by the arbitrator but the petitioner states to have received the award on the same address on which all the previous communications were being sent.

27. In view of the above, it is clear that the petitioner was duly served. Adding up to the above, it is also shown that despite ample opportunities being granted again vide email dated 4th July, 2018, the counsel for the respondent no. 1 sent an email to the petitioner in terms of the directions of the sole arbitrator. Along with the said email, the counsel for the respondent no. 1 appended the email of the sole arbitrator which also mentioned the next date which was 7 th July 2018 with the details of the venue at chamber number 609, Lawyers chambers Block III, Delhi High Court at New Delhi. At this juncture, it is relevant to note that it was only one occasion when the sole arbitrator mentioned incorrect email Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 11 address as a typographical error that is on the email dated 23 rd June 2018 (appended mail to 04.07.2018 email), however the respondent no. 1 immediately issued the email on the correct email addresses that is on 4 th July 2018.

28. It is not disputed that 4th July 2018 email of the respondent no. 1 sent through counsel was duly replied by vide his email dated 5 th July 2018. The Petitioner took note of the content of the email of 04.07.2018 and gave his response. Pursuant thereto, one Mr. Jagdish Manchanda advocate, representing the Petitioner, had sent an email dated 8 th July, 2018 wherein it may be noted that the said advocate confirmed about the knowledge of the next date as 7 th July 2018. It would be seen that vide email dated 8 th July 2018 sent by the advocate representing the petitioner, a request was made to provide copies of the documents so that necessary application could be filed before the tribunal by the petitioner. The said email of 8 th July, 2018 was duly replied by the advocate representing the respondent no. 1 stating that the complete set of documents can be collected from his office. But the petitioner opted not to do so. In fact, despite being aware of the date of 7 th July 2018, none appeared on behalf of the petitioner and moreover no application or representation was made thereafter by the petitioner. Therefore, despite having knowledge of the next date of hearing the petitioner opted to remain silent in a similar fashion as the petitioner has been dealing with the notices which were issued by the respondent as well as the sole arbitrator. The 7 emails exchanged from 4 th July, 2018 till 24th July, 2018 collectively are already on record Annexure R-3 (Colly.) with the reply by the respondent.

29. There is not a single line explanation as to why the petitioner kept silent from the date of acknowledging the email also that is with effect from 4 th July, 2018 until the passing of the award which is 27 th March, 2019 that is almost a period of 8 months from the date of acknowledging and gaining knowledge of the pendency of the proceedings. There was not a single occasion when the petitioner opted to approach the sole arbitrator seeking setting aside of the exparte order or showing

his bona fide intentions. The petitioner never approached the sole arbitrator and the respondent no. 1 showing a sufficient cause for him not appearing rather the petitioner opted to watch the proceedings Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 12 silently and now with ulterior motives has approached this Hon'ble Court in a clever manner and by pretending to be innocent. Sh. Ahuja submitted that the petitioner all throughout was served and was aware of the pendency of the arbitral proceedings however knowingly, intentionally and willingly the petitioner opted not to appear. It is urged that the petitioner cannot misguide and mislead the court in such a fashion.

30. Attention of this court was drawn towards the petition wherein the petitioner stated that he engaged a counsel 'after receiving the certified copy of award dated 27 March 2019 vide forwarding letter dated 14 th June, 2019 who obtained all the copies of proceedings and arbitration case file'. In this regard, it is submitted that the advocate representing the petitioner had sent an email on 8th July 2018 to the advocate for the respondent no. 1. The petitioner had already engaged a counsel. Therefore, the petitioner is misleading this Court. Moreover, if the petitioner can obtain the copies of the proceedings and arbitration case file after the passing of the award (without prejudice and without admitting the same), there is no explanation as to the fact that why the petitioner could not have obtained the copies of the arbitration case file and proceedings after 4 th July, 2018. There is no explanation as to what changed after the passing of the award and after the email of 4 th July, 2018 when the petitioner could have participated in the proceedings or could have obtained the copies of the proceedings in the similar fashion like the petitioner claims to have obtained now. Rather it was a clever strategy of the petitioner to watch the proceedings silently and not to participate and thereafter pretend to be innocent in the present proceedings by preferring a petition U/s 34 of the A&C Act.

31. Attention of the Court was also drawn upon the part XII and XIII of the grounds of the petition. In this regard, it is submitted that the petitioner engaged an advocate who sent an email to the lawyer for the respondent herein. It is not understandable that in what manner the petitioner is making a statement that he is not aware of technicalities of law and was not aware about the procedure to be taken after receiving the emails from 4 th July 2018, whereas the petitioner got the legal advice from the advocate namely Mr. Jagdish Manchanda who sent an email. When the petitioner became aware of the proceedings Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 13 admittedly, that is on 4 July 2018, thereafter, there is no explanation for not appearing on 7th July 2018 i.e., the hearing for which the venue was informed to the petitioner. In fact, after the said hearing, hearing also took place on 28 January 2019, 27th March, 2019 but the petitioner opted not to participate intentionally and knowingly and now the petitioner cannot make such statements in a fashion to mislead this Hon'ble court.

32. In support of the submissions, the respondent No. 1 relied on a judgment passed by the Hon'ble High Court of Delhi in FAO No. 527/2016 decided on 23.11.2016 titled as M/s Amardeep Prakashan Vs. M/s Siddharth Tradex (P) Ltd. & Anr. wherein the Hon'ble High Court was pleased to dismiss the petition observing that the petitioner despite having the knowledge of the arbitration proceedings being pending before the Sole Arbitrator, no steps were taken to join the proceedings by moving an appropriate application.

33. In support of the submissions, the respondent No. 1 also relied on the Order VIII Rule 10 of CPC. It is also the settled proposition of law that where a party intentionally does not participate in the proceedings or does not file its defence, the court pronounces judgment against it on the basis of the claim.

34. Ld. Counsel for petitioner attempted to persuade the court that the petitioner, hailing from Zirkepur, Mohalli was informed about the next date of hearing i.e. 07.07.2018, of arbitration in Delhi on 04.07.2018 whereupon the petitioner herein had sought documents and orders of the ongoing arbitration as well as three weeks' time to take necessary steps. The petitioner had also informed about admission of his mother for surgical procedure and his personal attendance with his mother. It is submitted that the petitioner had also engaged counsel to take necessary steps however, the petitioner had no knowledge of any action thereafter. It is further submitted that even the next hearing, after 07.07.2018, of the arbitration proceedings were conducted on 28.01.2019, almost more than six months without any information or further notice to the petitioner.

35. Section 3 of the Act prescribes how written communications are deemed to be served on the opposite party. The same is reproduced herein below:-

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3. Receipt of written communications - (1) Unless otherwise agreed by the parties -

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority."

36. Our High Court in its judgment dated 22.09.2017 passed in FAO (OS) 338/2016 Shabnam Gulati V. M/S Religare Finvest Pvt Ltd., had discussed the scope of section 3 of the Act and held as under:-

"18. Section 3(1) of the Arbitration and Conciliation Act, specifically states that a written communication is deemed to have been received, if it is sent to the addressee's last known place of business, habitual address or mailing address by registered letter or by any other means which provides a record of "attempt to deliver

it". Therefore, unlike Sub-Rule 5 of Rule 9 of Order V of CPC requiring proof of acknowledgment or any other receipt of due delivery of the summons, or drawing of a presumption of due service only where the summons were properly addressed but the acknowledgement was lost or mislaid or for any other Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 15 reason was not received by the Court, under the Arbitration and Conciliation Act sending of notice by registered letter or by other means at last known place of business, habitual residence or mailing address which provides the record of "attempt to deliver it" is sufficient to draw a presumption of service. In fact the sub-section hold that it is deemed service.

19. It is also important to note here that Section 19(2) of the Arbitration and Conciliation Act, specifically provides that the Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. Arbitration and Conciliation Act is a special statute and would therefore have primacy in matters of procedure, including mode of service of notice issued by the Arbitrator. In view, thereof, Order V of CPC would not have direct application in matter of mode and/or manner of service. Moreover, it is obvious that the appellant was trying to avoid service and wanted to take advantage of slyness and pretence.

20. It is not the case of the appellant that the address given in the envelope was incorrect and/or was not the habitual residence of the appellant. The respondent cannot be made to suffer only because the appellant was purportedly not at her residence, whether intentionally or otherwise, when attempts were made to serve her with the notice issued by the arbitrator."

37. Next, Ld. Counsel for petitioner submitted that arbitration proceedings were initiated on 14.12.2017 and award was passed on 27.03.2019. Ld. Arbitrator in his proceedings dated 28.01.2019 recorded that "the reference was entered on October 2017. The case is continued beyond 12 months. It has been impliedly extended and extended period is available for six months. It is Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 16 submitted that as Ld. Arbitrator had not proceeded exparte against the petitioner herein, therefore, Ld. Arbitrator ought to have communicated and/or request consent of the petitioner herein for and/or issue notice to the petitioner in this regard. However, Ld. Arbitrator not acting in accordance with the provisions of A&C Act, impliedly assumed the extension of period beyond the period of 12 months in contravention of the provisions of Section 29 A of A&C Act. It is submitted that the respondent no. 1 herein ought to have moved appropriate application for extension of time as upon expiry of the period of 12 months, the mandate of arbitrator had automatically terminated. Section 29 A sub section 4 of A & C Act provides that in case the award is not made within the period specified in sub section 1 i.e. period of 12 months and no consent was given by the petitioner herein.

38. Ld. counsel for the respondent has further argued that petitioner mentions his address to be the wrong residential address which in fact is the same address mentioned in the memo parties of the present case, two affidavits and all of the proceedings. It is submitted that the said wrong residential address so alleged by the petitioner is the same address on which he was served with the present

award. This itself evidences the false statements made by the petitioner and he is trapped himself because of his ill intentions. It is submitted that petitioner has added 'phase 1' in his address in the petition at para XIII of grounds, whereas the same is neither mentioned in the memo parties nor in his own affidavit accompanying the present petition. However, the same is also not mentioned in the affidavit accompanying the application filed by the petitioner. It is submitted that the award has been received on the said address which is the same address on which previous communications were sent. Evidently, the petitioner is misleading and misguiding this court.

39. In support of the submissions, the respondent No. 1 also relies on the Order VIII Rule 10 of CPC. It is submitted that it is also the settled proposition of law that where a party intentionally do not participate in the proceedings or does not file its defence, the court shall pronounce its judgment against it on the basis of the claim.

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40. It is a settled principle of law that the arbitrator is the sole judge of quality as well as quantity of the evidence produced during the arbitration proceedings. It is submitted that scope of the Act and adjudication of the dispute between the parties by guiding to settle the dispute by arbitrator is a general binding between the parties and Section 34 of the Act cannot be misinterpreted as an attempt to probe by the Court qua the process which the arbitrator has applied to have arrived to his conclusion. The law is also settled qua the aspect that once the arbitrator has applied his mind to the matter before him, the court cannot re-appraise the matter as if it were an appeal and even if the court and the law also goes to the extent of settling that if two views were possible the view taken by the arbitrator will prevail.

41. Ld. Counsel for respondent has submitted that the petitioner is attempting to bring facts of some frivolous counterclaim which cannot be permitted in such a fashion and the submissions of the petitioner under the garb of the section 34 is not maintainable. Petitioner cannot be allowed to make averments or place on record the documents which were never part of the record of the Sole Arbitrator by taking the shelter of Section 34 of the Act. As stated above, the challenge to the award has to be within four corners of Section 34 of the Act and the entire petition is baseless and meritless.

42. To conclude this court finds no merits in the grounds raised by the petitioner. All the written communications had been sent to the petitioner at the address which is also mentioned by the petitioner himself in Memo of Parties of the present petition. It is not disputed that the same address was mentioned by the petitioner himself on several occasions i.e in a suit for defamation instituted by the petitioner, the affidavit, the complaint, the statement of truth -all annexed by petitioner himself along with the present petition. There was no occasion for the respondent no. 1 or the learned sole arbitrator serving the petitioner on any other address. This court is in agreement with the submissions advanced by learned counsel for the respondent that if the address of the petitioner was incorrect that he ought not to have received the award also sent by the sole arbitrator on the same address on which the previous communications were sent. Petitioner mentioned his address to be the wrong residential address which Vishrut Wadhwa Vs. M/s Relio Quick India Pvt.

Ltd. & Anr Page 18 interestingly, is the same address mentioned in the memo parties of the present case, two affidavits and all the proceedings. The petitioner has added 'phase 1' in his address in the petition at para XIII of grounds, whereas the same is neither mentioned in the memo parties nor in his own affidavit accompanying the present petition. The same is also not mentioned in the affidavit accompanying the application filed by the petitioner. Admittedly, award had been received on the said address which is the same address on which previous communications were sent.

43. As per Section 29-A (1) of A&C Act as amended up to 2015 and applicable in the present case, the award had to be passed within period 12 months from the date of entering reference and could be extended up to six months with the consent of both the parties, as per sub-section 3 of Section 29-A of A&C Act. Thus, sub-section 3 of Section 29 of A&C Act clearly states that the time period can be extended by consent of the parties. In the present case, the petitioner despite being duly served opted not to present himself before Tribunal. Ld. Arbitrator has rightly extended the time period. Arbitral Tribunal is not duty bound to forcibly bring a party before the Tribunal especially when the said party has intentionally not joined the proceedings before the tribunal despite service and also despite having knowledge of the arbitration proceedings. Provisions of the Act, nowhere stipulates an application of extension of time is to be filed by the parties seeking extension of six months.

44. In view of the above, this court finds no merits in the submissions advanced by the learned counsel for the petitioner. In the result, this petition U/s 34 of A&C Act deserves to be dismissed. Order accordingly. No order as to costs. File be consigned to record room.

(Dictated and announced today i.e. on 06.03.2021) (VINAY KUMAR KHANNA) District Judge (Commercial Court-02) South Distt., Saket, New Delhi/06.03.2021 Vishrut Wadhwa Vs. M/s Relio Quick India Pvt. Ltd. & Anr Page 19