

GAHC010020602017



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : CRP/136/2017

ANUP SARMAH and ANR.
S/O. SRI SADANANDA SARMAH

2: SMTI. RANJULA SARMA
W/O. SRI ARUP SARMAH
BOTH ARE RESIDENT OF H. NO. 45
JATIA
KAHILIPARA ROAD
GUWAHATI
DIST. KAMRUP
ASSAM

VERSUS

MAHINDRA and MAHINDRA FINANCIAL SERVICES LTD.
KRISHNA PLAZA, 3RD FLOOR, GANESHGURI, GUWAHATI, KAMRUP,
ASSAM.

For the appellant (s) : Mr. S. K. Barkataki, Advocate

Mr. S. Deka, Amicus Curiae

For the respondent (s) : Mr. M. Sarma, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

10.04.2024

This is an application under Section 115 of the Code of Civil Procedure, 1908 challenging the order dated 17.04.2015 passed by the learned

Additional District Judge No.3 Kamrup (M) at Guwahati in Money Execution case No.59/2013.

2. From a perusal of the materials on record, it reveals that an arbitration proceedings had taken placed between the respondent and the petitioners. Pursuant thereto, an arbitration award was passed on 25.04.2011 whereby the petitioners who suffered the award were directed to pay certain amount along with interest. Pursuant to the said award, the respondent in whose favour the award was passed, filed an application under Section 36 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') for enforcement of the said award taking into account that by virtue Section 36 of the Act of 1996, the award becomes a decree of the Court. Upon receipt of the said application, an objection was filed challenging the executability of the decree on various grounds including the ground that the signed copy of the award was not delivered to the petitioners.

3. This Court has duly heard the learned counsel for the petitioners; Mr. S. Deka, the learned Amicus Curiae as well as Mr. M. Sarma, the learned counsel for the respondent and given due consideration to their respective submissions.

4. Amongst the various objections which have been taken, the objection as regards the award having not been delivered to the petitioners herein is an objection which touches on the maintainability of the Execution Proceedings in as much as it is well settled that the delivery of an arbitral award under Sub-section (5) of Section 31 of the Act of 1996 is not a matter of mere formality. It is a matter of substance in as much as it is only after the stage under Section 31 of the Act of 1996 had passed that the stage of termination of the arbitral proceedings within the meaning of Section 32 of

the Act of 1996 arises. The delivery of the arbitral award to the party, to be effective, has to be "received" by the party. It is also very pertinent to take note of that delivery by the Arbitral Tribunal and the receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation for an award within 30 days under Section 33 (1) of the Act of 1996; an application for making an additional award under Section 33 (4) of the Act of 1996; an application for setting aside an award under Section 33 (3) of the Act of 1996 and so on. Under such circumstances, this delivery of the copy of the award has the effect of conferring certain rights on the party and also bringing to an end, the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of the award by the Tribunal and the receipt thereof by each party which constitutes an important stage in the arbitral proceedings.

5. In a recent judgment of the Supreme Court in the case of **Dakshin Haryana Bijli Virtran Nigan Limited vs. Navigant Technologies Private Limited**, reported in **(2021) 7 SC 657**, the Supreme Court in paragraph Nos.34 to 36 held the date on which signed award is provided to the parties is a crucial date in arbitration proceedings under the Act of 1996. It was further observed that it is only from the said date the period of 30 days for filing an application under Section 33 of the Act of 1996 for correction and interpretation of the award, or additional award can be filed; the arbitral proceedings would terminate as provided by Section 32(1) of the Act of 1996 and the period of limitation for filing objections to the award under Section 34 would commence. Paragraph Nos.34 to 36 of the said judgment are reproduced herein under:-

"34. There is only one date recognised by law i.e. the date on which a

signed copy of the final award is received by the parties, from which the period of limitation for filing objections would start ticking. There can be no finality in the award, except after it is signed, because signing of the award gives legal effect and finality to the award.

35. The date on which the signed award is provided to the parties is a crucial date in arbitration proceedings under the Arbitration and Conciliation Act, 1996. It is from this date that:

35.1. The period of 30 days for filing an application under Section 33 for correction and interpretation of the award, or additional award may be filed.

35.2. The arbitral proceedings would terminate as provided by Section 32(1) of the Act.

35.3. The period of limitation for filing objections to the award under Section 34 commences.

36. Section 34 provides recourse for judicial scrutiny of the award by a court, upon making an application under sub-sections (2) and (3) for setting aside the award. The period of limitation for filing the objections to the award under Section 34 commences from the date on which the party making the application has "received" a signed copy of the arbitral award, as required by Section 31(5) of the 1996 Act. Section 34(3) provides a specific time-limit of three months from the date of "receipt" of the award, and a further period of thirty days, if the court is satisfied that the party was prevented by sufficient cause from making the application within the said period, but not thereafter."

6. In the backdrop of the above, if this Court takes note of the impugned order, it would be seen that the learned Executing Court, i.e. the learned Additional District Judge No.3 Kamrup (M) at Guwahati did not take into

consideration this very aspect of the matter while passing the impugned order dated 17.04.2015. This very aspect of the matter ought to have been taken into consideration by the learned Executing Court in as much as without the terminating of the arbitral proceedings, the award does not become enforceable. It becomes enforceable when the arbitral proceedings stands terminated in terms with Section 32 of the Act of 1996.

7. Under such circumstances, this Court interferes with the impugned order dated 17.04.2015. This Court further directs the learned Additional District Judge No.3 Kamrup (M) at Guwahati to take up the said Execution Proceedings as well as Section 47 application filed by the petitioners herein and adjudicate as to whether the copy of the award has been duly served upon the petitioners/judgment debtors. It is made clear that in the circumstances, the award had been received by the petitioners herein, there shall be no impediment to continue with the executing proceedings.

8. This Court grants the liberty to the decree holder, i.e. the respondent herein to place such materials which would show that the copy of the award has been duly delivered to the petitioners/judgment debtors.

9. Taking into account that there was a stay granted by this Court on 28.04.2017, the stay order stands vacated and the parties being duly represented are directed to appear before the learned Additional District Judge No.3 Kamrup (M) at Guwahati on 13.05.2024.

10. The records which have been called for by this Court is also directed to be transmitted back to the Court below by the Registry forthwith so that on the next date so fixed, the said Court would be in a position to take up the matter. The Registry shall also employ the services of the Special Messenger for transmission of the said records, if so necessary.

11. In view of the above, the instant petition stands allowed to the extent indicated above. No costs.

JUDGE

Comparing Assistant