

(1990) 10 KL CK 0058

High Court Of Kerala

Case No: M.F.A. No. 407 of 1985

The Official Liquidator

APPELLANT

Vs

Kudremukh Iron Ore Company
Limited

RESPONDENT

Date of Decision: Oct. 30, 1990

Acts Referred:

- Arbitration Act, 1940 - Section 13, 14, 14(1), 14(2), 17
- Limitation Act, 1963 - Article 178, 19

Hon'ble Judges: Paripoornan, J; Balanarayana Marar, J

Bench: Division Bench

Advocate: C.M. Devan and E.R. Venkiteswaran, for the Appellant; V.L. Shenoy, for the Respondent

Judgement

Balanarayana Marar, J.

Respondent filed suit as O.S. 61 of 1979 before Sub Court, Cochin u/s 20 of the Arbitration Act. A judgment and decree were granted by the Subordinate Judge and Arbitrators were appointed. They entered on reference and passed an award. The award was filed in Court and notice of filing of the award was given by the arbitrators to both parties. The Court issued a notice directing parties to appear on 25 September 1984. No application was filed for setting aside the award within a period of 30 days. Appellant filed objections thereafter and contended that notice of the award was not issued to him. The Court below after hearing both Bides held that Appellant had notice of filing of the award. Overruling the objections a decree was passed in terms of the award. Aggrieved by that decision Defendant has come up in appeal.

2. The grievance of the Appellant before the Court below was that he did not get notice of filing of the award and the award is vitiated for that reason and liable to be set aside as the arbitrator has misconducted himself. The short question that arises for consideration is whether Appellant had been given notice of the filing of the

award.

3. Before considering the merits of the contentions raised by the Appellant it would be appropriate to refer to Section 14 of the Arbitration Act. That section reads:

(1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) Where the arbitrators or umpire state a special case under Clause (b) of Section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of the award.

4. The section has been divided into three parts of which we are concerned only with Sub-Sections 1 and 2. Sub-section (1) requires the arbitrator to sign the award after, it is made and to give notice in writing to the parties of the making and signing thereof. The notice should also state the amount of fees, and charges payable in respect of the arbitration and award. At the request of any party to the arbitration agreement or any person claiming under such party the arbitrators or umpire shall cause the award or a signed copy of it to be filed in Court. The Court also can direct the arbitrators or umpire to file the award in Court. When the award is filed in-Court either at the request of the party or on the direction of the Court, notice of the filing of the award shall be given to the parties by the Court. The award can also be produced by the arbitrators suo motu without either party to the agreement or any person claiming under him making the request or without the Court summoning the award.

5. Section 14(1) of the Act requires that after the arbitrators or the umpire have made their award and after they had signed it they have to give notice in writing to the parties of the making and signing thereof. On the other hand when the award is filed in Court either at the request of any party or on the direction of the Court, the Court has only to give notice to the parties of the filing of the award. Sub-section (2) of Section 14 does not provide for issue of a notice in writing to the parties as stipulated in Sub-section (1) of Section 14. There is thus a sharp distinction between the manner of service of notice contemplated u/s 14(1) and Section 14(2) of the Act. The difference in the provisions of the two Sub-sections would indicate that the Court is not bound to give notice in writing to the parties whereas it is sufficient if notice is given orally or in any other manner. The difference in the provisions of

these two Sub-sections came up for consideration before the Supreme Court in [Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others,](#) . The Supreme Court held that the difference in the provisions of the two Sub-sections with respect to the giving of notice is significant and indicates clearly that the notice which the Court is to give to the parties of the filing of the award need not be a notice in writing. It was further observed that notice can be given orally and no question of service of notice in the formal way of delivering notice or tendering it to the party can arise in the case of a notice given orally. It was further held that the communication of the information that an award has been filed is sufficient compliance with the requirements of Sub-section (2) of Section 14 with respect to the giving of the notice to the parties concerned about the filing of the award. After referring to the meaning of "notice" in Oxford Concise Dictionary the Supreme Court held that the expression "give notice" in Sub-section (1) of Section 14 simply means giving intimation of the filing of the award. In that case notice of the filing of the award was given to the parties through Pleaders. The Supreme Court held that the intimation to the Pleaders amounted to service of notice on the parties about the filing of the award. The Supreme Court further observed that oral communication will amount to service when no particular mode of service is prescribed.

6. Section 14 contemplates issue of two notices. One under Sub-section (1) by the arbitrators to the parties intimating them of the making and signing of the award and the other by the Court about the filing of the award. What is meant by notice in writing of the making of the award was considered by the Supreme Court in [Parasramka Commercial Company Vs. Union of India \(UOI\),](#) . In that case the arbitrator did not send a notice as such of the making of the award but sent a copy of the award signed by him to the Company in whose favour the award was passed. That was made by two letters dated 5th May 1950 and 16th May 1950. The Company acknowledged the receipt of the award. The arbitrator sent the original award to Court on 3rd July 1951. An application was made by, the Company u/s 14(1) of the Arbitration Act on 30th March 1951 for making the award rule of the Court. The Subordinate Judge rejected the application finding that it is barred by limitation under Article 178 of the Limitation Act (as it then stood) according to which the period prescribed is ninety days. A revision before the High Court was unsuccessful. On further appeal to the Supreme Court it was held that a written notice clearly intimating the parties concerned that the award had been made and signed starts limitation. Limitation begin to run from the receipt of the copy of the award which was signed by the arbitrator and which gave due notice to the parties concerned that the award had been made and signed. Regarding the word "notice" the Supreme Court held that it denotes merely an intimation to the party concerned of a particular fact. It was observed that the words "notice in Writing" cannot be limited to a letter whereas notice may take several forms. It was held that it must be in writing and must intimate quite clearly that the award has been made and signed.

In that case the award signed by the arbitrator was sent to the Company and acknowledged by them. The Company had thus sufficient notice that the award had been made and signed.

7. In the present case the, joint arbitrators signed the award on 28th July 1984 and the parties were informed as per letter dated 9th August 1984 that the award would be filed in Sub Court, Cochin on 10th July 1984. Obviously a mistake was committed regarding the date. The award signed on 28th July 1984 could not have been produced in Court on 10th July 1984. The date intended was 10th August 1984. Realising this mistake one of the arbitrators issued another notice on 20th July 1984 informing the parties that the award was made and published on 28th July 1984 but filed in Court on 10th August 1984 and not on 10th July 1984 as shown in the previous letter. In the letter sent on 9th August 1984 mention has been made that a copy of the award was also enclosed. Appellant does not dispute the receipt of these two letters as well as the receipt of the award. There has thus been sufficient compliance of Section 14(1) of the Act and it will be open to any of the parties to request the Court to make the award a rule of Court.

8. There is no limitation provided for filing of the award in Court by the arbitrator either suo motu or upon the direction of the Court. Once an award is filed in Court either by summoning the award from the arbitrator or the arbitrator suo motu filing the same in Court, the Court gets jurisdiction to pass a decree u/s 17 of the Act in terms of the award. Sub-section (2) of Section 14 contemplates only issue of notice by the Court to the parties of the filing of the award incase the arbitrator or umpire files the award in Court either at the request of any party or any person claiming under such party or if so directed by the Court. The Sub-section does not stipulate that notice shall be issued to the parties in case the arbitrator produces the award suo motu in Court without either party to the agreement making a Request for filing the same or the Court directing such production. In this case the award was filed by the arbitrators suo motu and notice of filing was given by the arbitrators to the parties. A question arises as to whether notice of filing of the award u/s 14(2) of the Act has to be issued by the Court to the parties of the filing of the award suo motu by the arbitrator. Section 14(2) of the Act does not provide for issue of a notice by the Court in a case where the arbitrator has suo motu filed die award in Court. But the Court has to pronounce the judgment according to the award u/s 17 of the Act after the time for making an application to set aside the award has expired or when the Court sees no cause to remit the award or any of the matter referred to arbitration for reconsideration or to set aside the award. In order to enable the parties to set aside the award or to get the award remitted it is essential that they should get notice of the filing of the award. Even if Section 14(2) does not provide for issue of a notice in the case of the arbitrator filing the award suo motu in Court there is a duty, cast on Court to issue notice to the parties informing them of the filing of the award in Court. The question whether notice has to be issued in such cases by the Court came up for consideration before a Full Bench of the Allahabad

High Court in the decision in [The District Co-operative Development Federation Ltd. Vs. Ram Samujh Tewari](#), . It was held:

The award may be produced before the Court by the arbitrator also suo motu without either any party to the agreement making a request or without the award being summoned by the Court. In either case, whether the award is filed before the Court, on being summoned on an application by a party u/s 14(2) or on the award being filed by the arbitrator suo motu or on the award being summoned by the Court suo motu, the Court must proceed to give notice of filing of the award to the parties and act u/s 17.

The Court can proceed u/s 17 and pass a decree in terms of the award only when it sees no cause to remit or set aside the award. In order to enable the party affected to move the Court either to get the award remitted or to get it set aside the parties should be informed of the filing of the award. The Court has therefore to issue notice to the parties of the filing of the award even in cases where the award has been filed suo motu by the arbitrator.

9. What is to happen to the award sent by the arbitrator himself to the Court was considered by the Supreme Court in the decision in [Parasramka Commercial Company Vs. Union of India \(UOI\)](#), . The Supreme Court observed that the matter obviously arises under the second Sub-section of Section 14 and will have to be considered quite apart from the application made by the Company to have the award made into rule of Court. It necessarily follows that the filing of an award by the arbitrator suo motu in Court comes u/s 14(2) of the Act and in such cases also the Court shall give notice to the parties of the filing of the award.

10. The next aspect to be considered is whether notice of the filing of the award was given to the Appellant by the Court in this case. The case of the Appellant is that a copy of the award was not sent by the Court nor was the Appellant informed of the filing of the award. At the same time he admits receipt of a communication received from Court informing him that the final judgment in O.S. 61 of 1979 will be pronounced on 27th May 1985. The Court below was aware of the fact that the notice did not mention the fact of filing of the award. But the Appellant was aware of the making and signing of the award as well as the filing of the award in Court. u/s 14(1) the arbitrator has only to give notice in writing to the parties of the signing and making of the award. That was done by the arbitrators by two notices, one on 9th August 1984 and the other on 20th August 1984. The receipt of those notices is admitted. The grievance of the Appellant is only that the Court had not given him notice of the filing of the award nor was a copy of the award sent by the Court. In this case Appellant was aware of the filing of the award by the arbitrator from the arbitrators themselves. Still the Court shall give notice of filing of the award and the period of limitation under Article 19(b) of the Limitation Act to set aside the award or to remit the same for reconsideration starts from the date of service of the notice of the filing of the award. Though the fact of filing of the award does not find a place in

the notice issued by the Court the fact of filing of the award was intimated by the arbitrators themselves. A copy of the award as also sent by them. Appellant cannot therefore contend that he was not aware of the filing of the award nor can he say that he did not receive a copy of the award. He can only contend that the Court has not given notice of the filing of the award as stipulated u/s 14(2) of the Act. But the Court has informed Appellant about the posting of the case to 27th May 1985 for passing final judgment. That notice was issued after the award was filed in Court and the fact of filing was intimated by the arbitrators to the parties. Section 14(2) does not contemplate a notice in writing to the parties of the filing of the award. The difference in the provisions of the two Sub-sections has already been noticed. As held by the Supreme Court in [Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others](#), "give notice" means simply giving intimation of the filing of the award. Even oral communication will amount to service of notice since no particular mode of service has been prescribed. There has been intimation of the filing of the award by the notice issued by the Court below informing the parties about the posting of the case for passing final judgment. Final judgment can be passed only on receipt of the award. It necessarily implies that the award had been received in Court before issuing the notice. There has thus been sufficient intimation to the Appellant of the filing of the award firstly by the letters issued by the arbitrators and secondly the notice issued from Court. A copy of the award has also been received by Appellant. The grievance of the Appellant that he did not get notice of the filing of the award is therefore without substance. The Court below has rightly overruled the objections raised by the Appellant. No interference is called for in appeal.

In the result we dismiss the appeal but in the circumstances without costs.