

(2008) 05 DEL CK 0170

Delhi High Court

Case No: F.A.O. (OS) 167 of 2007 and C.M. 7369 of 2007

Indus Ind Bank Ltd.

APPELLANT

Vs

Balvinder Singh and Another

RESPONDENT

Date of Decision: May 30, 2008

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 34, 34(3)
- Evidence Act, 1872 - Section 114
- General Clauses Act, 1897 - Section 27

Citation: (2008) 104 DRJ 259

Hon'ble Judges: Veena Birbal, J; T.S. Thakur, J

Bench: Division Bench

Advocate: T.S. Ahuja and Arun Arora, for the Appellant; Prakash Chander, for the Respondent

Final Decision: Dismissed

Judgement

Veena Birbal, J.

This appeal has been filed by the appellant against the order of the learned Single Judge dated 20th March 2007, by which Objections u/s 34 of Arbitration and Conciliation Act, 1996 to the award of the arbitrator dated 25.3.2005 have been dismissed as barred by limitation.

2. The facts giving rise to the present appeal are that M/s Ashok Leyland Finance Ltd. and respondent herein entered into a hire purchase agreement dated 30th April 2000 by which a truck priced at Rs. 7,67,110/- bearing registration number HR-55 4424 was handed over to respondent by the said company on hire-purchase basis. As per the terms of the hire-purchase agreement between the parties, the appellant i.e. M/s Ashok Leyland Finance Ltd. paid an amount of Rs. 6,50,000/- and respondent paid Rs. 1,17,110/- respectively to the manufacturer of the truck. The hiring instalments required to be paid by respondent were a sum of Rs. 21,900/-per month

for a tenure of 35 months and Rs. 21,950/- for the last month. Thus, the respondent was required to pay a total sum of Rs. 7,88,450/- to M/s Ashok Leyland Finance Ltd. under the aforesaid agreement.

3. The case of the appellant is that contrary to the terms of the agreement dated 30.4.2000, the respondent defaulted in payment of instalments and the advance cheques issued by him were dishonored. The agreement between the parties was terminated and M/s Ashok Leyland Finance Ltd. took back possession of the vehicle on 16 June 2001 as per clause 8(i) of the agreement and further sold it in 2001 to one Sh. Bhoom Singh for a sum of Rs. 6,30,000/-. Respondent disputed the same and sought the appointment of an arbitrator to arbitrate upon dispute raised by him.

4. This Court vide order dated 11 January 2002 appointed Sh. D.P. Sharma, Advocate as the sole arbitrator who passed the award dated 25.3.2005 by which the respondent was held entitled to a sum of Rs. 2.19,550 alongwith interest @ 9% from the date of award till the date of payment.

5. Ashok Leyland Finance Ltd. was taken over by the present appellant under scheme of amalgamation during the pendency of the arbitration proceedings.

6. The appellant bank filed objections against the arbitral award vide OMP bearing No. 3/2006. During hearing of those objections, the learned Single Judge, directed the appellant to file an affidavit regarding service of award on it. The affidavit thus filed stated that the award came to the knowledge of appellant only in October 2005 when it received the notice of execution proceedings. The appellant further stated that during the pendency of arbitral proceedings, M/s Ashok Leyland Finance Ltd. was merged with Indus Ind Bank Ltd. in April 2004, but this fact was not brought to the notice of the arbitrator and proceedings continued in name of M/s Ashok Leyland Ltd. Thus the employees of Indus Ind Bank Ltd. were not informed of the pendency of the proceedings.

7. The learned Single Judge vide impugned order dated 20.3.2007 dismissed the objections filed by the appellant as barred by limitation. It was noted that the award was communicated by the arbitrator to the parties vide forwarding letter dated 25th March, 2005 and was duly received by the appellant on 28th March, 2005 but the objections were filed on 20th December, 2005 which were well beyond period of limitation. The learned Single Judge also held that it was for M/s Ashok Leyland Ltd. and Indus Bank to intimate the arbitrator about merger and that even after the merger, the proceedings continued in the same name by the same counsel. The learned Single Judge also observed that the notice sent by Arbitrator of making the award was sent by registered post and there is a presumption of delivery of the letter within a reasonable time u/s 27 of General Clauses Act and Section 114 of Evidence Act.

8. In the present appeal, the appellant has argued that there was no service of award of sole arbitrator on appellant. It is also argued that the presumption raised by the learned Single Judge are rebuttable presumptions and thus the Court was not justified in drawing the presumption without giving an opportunity to rebut the same by leading evidence. It is also argued that service on M/s Ashok Leyland Ltd. could not have been construed as service on the present appellant.

9. Counsel for the respondent on the other hand submitted that there is no error in the impugned judgment and there is no case for interference by this court.

10. u/s 34(3) of the Arbitration and Conciliation, Act 1996 an application for setting aside award can be filed within three months from the date of receipt of the copy of award. However, proviso to Section 34(3) empowers the court to entertain such an application within further period of 30 days on showing sufficient cause by the applicant. Since the expression "entertain the application within a further period of 30 days but not thereafter" used in proviso is couched in the negative, the same is mandatory in character. The statute has prohibited a court from entertaining objections which are made after the period of 30 days after the expiry of three months from the date of receipt of award.

11. We have perused the records of the OMP filed before the learned Single Judge. The Award dated 25th March, 2005 was served upon the Ashok Leyland Ltd. on the 28th March, 2005 by registered post, but the objections were filed by the petitioner on 20th December, 2005. The arbitrator has placed postal receipts of service of the award on both the parties to the proceedings. There is no objection raised that the award was not served on the Ashok Leyland Ltd.

12. The argument of the appellant that the award even if sent by arbitrator was sent to Ashok Leyland Ltd. and not to the appellant bank and there is no service on the appellant bank also has to fail. M/s Ashok Leyland Finance Ltd. was merged with Appellant bank in April 2004 i.e. during the pendency of the arbitral proceedings. There is no document on record of arbitration proceedings to show that the Arbitrator was informed about the merger of Ashok Leyland Ltd. with appellant bank. The appellant bank with whom M/s Ashok Leyland Finance Ltd. had merged was under an obligation to bring the fact of merger to the notice of the Arbitrator but the same was not done. Moreover, the proceedings continued and M/s Ashok Leyland Finance Ltd. was continued to be represented by the same counsel. No objection was raised before the learned Single Judge that the appellant ought to have been served with an independent notice after merger. The appellant has attached a copy of the award to the objections but neither before the learned Single Judge nor in the appeal the appellant has disclosed the source of the copy of the award. In these circumstances, the appellant cannot avoid the legal consequences which arose due to the service of award on the Ashok Leyland Ltd. We find no force in the contention of the appellant that the objection could not have been rejected without recording the evidence.

13. In our considered opinion the learned Single Judge has rightly rejected the objections filed by the appellants, holding that the same are highly belated. The appeal is hereby dismissed.