



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 13.12.2023**  
**Pronounced on: 06.03.2024**

+ **O.M.P. (COMM) 271/2023, CRL.M.A. 25425/2023, I.A. 13924/2023, I.A. 13925/2023, I.A. 13926/2023**

**IN THE MATTER OF:**

**AVDHESH MITTAL**

..... Petitioner

Through: Mr. Ravi Gupta, Sr. Advocate with  
Mr. Arun Batta, Mr. Rohan Sharma,  
Ms. Ranjna Ahuja, Mr. Abdul Wahid,  
Ms. Neha Kumari and Ms. Muskaan  
Mehra, Advocates

versus

**DEEPAK VIG**

..... Respondent

Through: Ms. Maninder Acharya, Sr. Advocate  
with Ms. Jyoti Taneja, Ms. Niharika,  
Mr. B.K. Singh and Mr. Sivam  
Malhotra, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

1. Arguments have been addressed on the preliminary objection raised by the respondent that the petition is time barred. Respondent has submitted that against the arbitral award dated 27.10.2022, objections under Section 34 have been filed by the petitioner on 01.06.2023, rendering the objections time barred and consequently liable to be dismissed.

2. The present judgment is confined to the aforesaid objection and does not deal with the findings on the merits of the disputes relating to the arbitral award.



3. Present petition has been filed under Section 34 of the Arbitration and Conciliation Act (hereafter, the '*A&C Act*') seeking setting aside of the award dated 27.10.2022 passed by the Sole Arbitrator in the context of Lease Agreement dated 14.08.2008 entered into between the parties with respect to premises *No. E-52, Greater Kailash, Part-II, New Delhi*. Petitioner was the lessor and respondent was the lessee under the Agreement.

4. Petitioner served a notice terminating the tenancy. Though respondent vacated the premises but dispute arose on the aspect of refund of security deposit, the cost incurred in repairs and other allied claims.

5. Available record reveals that arbitration proceedings commenced somewhere in the year 2010-12 at the behest of respondent-tenant who raised a total of 8 claims before the arbitrator, pertaining to refund of security amount of Rs.1.14 crores, claim of Rs. 15 lakhs spent on repair of major construction defect, claim of Rs.5 lakhs on account of expenses incurred in getting the lift repaired, claim of Rs.7 lakhs on account of loss suffered due to water logging, claim of Rs.50 lakhs on account of loss of business and booking already made due to early termination of lease, claim of Rs. 50 lakhs on account of loss of reputation due to early termination of lease, claim of Rs.10 lakhs as legal expenses and cost, and claim of interest @ 36% p.a. from date of institution till realisation. Petitioner too preferred 8 counter claims inter-alia comprising of claim of Rs.5.33 lacs towards non-payment of stamp duty, claim of Rs.1,18,89,432/- towards arrears of rent, claim of Rs.36,91,032/- towards interest on late payment of security amount, claim of Rs.9,43,205/- towards outstanding arrears of electricity and water dues, claim of Rs.1,34,73,680/- towards damages caused to demised



premises, claim of Rs.2.5 crores towards damages for loss of profit in earnings of guest house, claim of Rs.15 lakhs as cost, and claim of pendente lite and future interest @ 36% p.a.

6. It seems that after recording of some evidence, the parties stopped appearing in the arbitral proceedings. Learned Arbitrator made telephonic enquiries with learned counsels for the parties and was informed that the respondent/claimant had been hospitalised owing to severe depression. Further, it was informed that the petitioner was travelling abroad frequently. Resultantly, the arbitral proceedings were kept in abeyance for a considerable time. Later, proceedings were sought to be revived by the respondent's son, on behalf of the respondent. On the application for revival, notice was issued to the petitioner through courier, registered and speed post and the same was received back with the report '*not available at the premises*'. Telephonic enquiries made by the learned Arbitrator to petitioner's son revealed that the petitioner had gone and settled abroad. However, no contact details were provided. Eventually, learned Arbitrator allowed the revival application and proceeded with the case in the absence of the petitioner, and passed the impugned award.

7. Respondent filed execution proceeding being OMP(ENF.)(COMM.) 47/2023. Summons were served on the petitioner on 01.04.2023 whereafter, the present petition came to be filed on 01.06.2023.

8. Petitioner contends that it had no knowledge of the revival of the arbitral proceedings or of the passing of the impugned award till 01.04.2023, when summons in execution proceedings was received by him. Vide communication dated 12.04.2023, the petitioner (through his counsel) requested the learned Arbitrator to supply a signed copy of the award. An



unsigned copy of the impugned award was received on 08.05.2023, followed by a signed copy on 12.05.2023. The petition filed on 01.06.2023 is therefore, within the statutory period of 3 months provided under Section 34(3) of the A&C Act.

9. Respondent, on the other hand, would contend that petition has been filed beyond the permissible statutory period and the delay cannot be condoned.

10. This court had requisitioned the Arbitral records but the entire record has not been received. In this context, a communication has been received from the learned Arbitrator which states that the records being old, complete records are not traceable. From the available records, it is apparent that a signed copy of the award was despatched to the petitioner on 01.11.2022 through speed post, but the same was received back with the remarks '*house sealed*'.

11. The preliminary issue for consideration is whether signed copy of the award would be deemed to have been delivered and received by the petitioner on 01.11.2022, when a letter was allegedly sent by the arbitrator to petitioner's address i.e., E-94, Greater Kailash-I, New Delhi-110048, post pronouncement of the award dated 27.10.2022, for the purpose of commencement of limitation period prescribed under Section 34 of the Act.

12. Respondent has heavily relied upon Section 3(1)(b) of the A&C Act, to claim deemed delivery of the award, contending that the arbitrator discharged his legal burden by sending a copy of award to the last known address of the petitioner. Petitioner countered respondent's contention, by arguing that Section 3 is not applicable to the delivery of award under Section 31(5) and applies only to the communications made during the



pendency of the arbitral proceedings.

13. Additionally, petitioner submitted that, admittedly, E-94, Greater Kailash-I, New Delhi-110048 was sealed under municipal action on 13.09.2022 and was de-sealed on 24.11.2022 pursuant to order of even date passed by Sub Divisional Magistrate (Hauz Khas). The petitioner has further referred to the order dated 24.11.2022 passed by this Court in W.P.(C) 12989/2021, wherein the factum of sealing of petitioner's house has been duly noted.

14. Petitioner has contended that he was proceeded ex-parte, which itself shows lack of knowledge on the part of the petitioner about the arbitral proceedings and the eventual award that came to be passed.

15. A perusal of the arbitral record reveals that the petitioner remained unserved even in the revival application filed by the respondent, after the arbitral proceedings had remained suspended for a period of around 7-8 years, on account of inaction of the parties. The arbitral record further reveals the fact that upon the filing of the revival application by the respondent, learned arbitrator had issued three notices to the petitioner, out of which two were received back unserved with the remark '*not available at the premises*'.

16. The impugned award records that on the petitioner failing to appear, learned Arbitrator made telephonic contact with petitioner's son, who informed about non-availability of the petitioner on account of him having settled abroad. No further contact details were provided. Indisputably, in the arbitral proceedings, the petitioner had mentioned only one address. At no point of time was any alternate address of the petitioner available with the learned Arbitrator.



17. On the aspect of the applicability of Section 3 of the A&C Act to the delivery of the signed copy of the award under Section 31(5) of the Act, it is deemed apposite to first extract the provisions themselves:-

**“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.”

**“31. Form and contents of arbitral award.-** (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

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(5) After the arbitral award is made, a signed copy shall be delivered to each party.”

18. At this stage, the Court also takes note of Section 34(3) of the Act. The delivery of a signed copy of the arbitral award to a party is not a mere formality but confers a substantive right in its favour to assail the award. The non-exercise of such substantive right within the statutory period has



the effect of extinguishing the same and the award attaining finality. The settled legal position is clear that the limitation provided under Section 34(3) commences only from the date when a signed copy of the award is received by the party seeking to assail the award. The use of words ‘but not thereafter’ in the proviso to Section 34 of the A&C Act being couched in negative, shows that the provision is mandatory in nature and leaves no discretion with the Court to condone delay beyond 30 days after the expiry of statutory period of 3 months from the date of receiving a signed copy of the award.

19. The fact scenario in the present case shows that the petitioner had remained unrepresented post revival of the arbitral proceedings. At the cost of repetition, it is noted that on parties failing to appear, the learned Arbitrator had not only telephonically contacted the respective counsels for the parties but also the parties. The learned Arbitrator sent three notices on the revival application filed by the respondent, to the petitioner. Further, the fact remains that the award was passed in the petitioner’s absence.

20. Section 31(5) of the A&C Act stipulates that a signed copy of the award must be delivered to the parties however, it does not provide any mode or manner of delivery. Section 34(3), which stipulates the limitation period for filing objections against the award, uses the expression ‘received’ with regard to the time from which the limitation period would commence.

21. Section 3(1)(b) of the Act, which is generally about the service of written communications under Part I of the Act, refers to the mode of service. It provides for deemed service if the written communication is sent by a registered letter or any other means which provides a record of the attempt to deliver the communication, to the addressee’s last known place of



business, habitual residence or mailing address. This provision refers to written communications and does not categorically mention ‘arbitral award’. Arbitral awards are delivered by the arbitrators to the parties under Section 31(5) by way of a written communication. The said written communication is in the form of a cover letter sent along with the arbitral award, to effect ‘delivery’ under Section 31(5). In this manner, Section 3 would cover written communications via which the arbitral awards are ‘delivered’ to the parties under Section 31(5). It cannot be ignored that Section 3(1)(b) applies to Part I of Act, of which Section 31 and 34 are also part, and excluding applicability of Section 3 to the delivery of arbitral awards under Section 31 would be unjustified.

22. It bears noting that if Section 3 were to not apply to Section 31(5), then there would be a procedural gap in the Act inasmuch as ‘delivery’ of arbitral award could never be deemed, even if a party was deliberately avoiding ‘receiving’ the award, in order to defer the commencement of limitation period to challenge the same under Section 34 or otherwise. In such a situation, there could never be compliance of Section 31(5), unless there was actual physical proof of delivery of the award, due to which the next stage in the arbitral process i.e., raising of objections under Section 34, if any could never be reached.

23. In Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd.<sup>1</sup>, the Supreme Court has emphasised the legal mandate of establishing ‘delivery’ of the arbitral award to the parties under Section 31(5) of the Act, before rights under Section 34(3) could be

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<sup>1</sup> 2021 SCC OnLine SC 157





curtailed, on the ground of delay. The relevant extract from the judgment highlighting the sanctity of ‘delivery’ of the arbitral award is as under:-

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28. *In Union of India v. Tecco Trichy Engineers & Contractors, a three-Judge Bench of this Court held that the period of limitation for filing an application under Section 34 would commence only after a valid delivery of the award takes place under Section 31(5) of the Act. In para 8, it was held as under:*

“The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be ‘received’ by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as 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 award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.”

*(emphasis supplied)*

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24. However, in Dakshin Haryana Vitran (Supra), the issue of deemed delivery of the arbitral award was not the matter before the court, for it to



examine the applicability of Section 3 of the Act to the same. The court had been called upon to examine whether the limitation period for filing the objections under Section 34 could be reckoned from a later date i.e., when a signed copy of the award, along with minority award, was delivered to the petitioner and not from an earlier date i.e., when majority award was signed but a copy thereof was not delivered to the parties, to await the signing of the minority opinion. The court held that mere signing of the majority award, without delivery of copy of the same to the parties, would not meet the requirement of Section 31(5) of the Act.

25. This court has the benefit of the authoritative pronouncement by Supreme Court in Dakshin Haryana Vitran (Supra) and an occasion to apply the same to the facts of this case, where an additional dimension of deemed delivery of arbitral award under Section 3 has arisen.

26. As has been discussed above, if deemed delivery of award is not available by virtue of Section 3(1)(b), it may lead to an abuse of process of law, by a party that wishes to *de facto* enlarge the limitation period under Section 34, by not letting the limitation period to commence by delaying receiving of the award through clever means.

27. Having held that deemed 'delivery' of arbitral award under Section 31(5) can be presumed by the court by applying Section 3, this Court is of the considered opinion that the present case is not a fit case for presuming service, given the facts of the case.

28. Since 'delivery' of arbitral award is a substantive right of the parties to the arbitration, it cannot be undermined by a cavalier approach. A party claiming deemed delivery under Section 31(5) read with Section 3(1)(b), must establish beyond doubt that there is no reason to assume that the



service could not have been effected, despite complying with the conditions prescribed under Section 3(1)(b).

29. Presumption of service under Section 27 of the General Clauses Act and under Section 3 of the A&C Act, derive their origins from the rule of presumption laid down in Section 114 of the Indian Evidence Act. Under the said provision, the court 'may' presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business. It permits the courts to assume certain events to have happened, if the events leading up to the eventual event played out uninterruptedly and in the correct sequence. It is for this reason that a letter or written communication sent on the last known address of a party through a recognised mode of transmission can be presumed to have been delivered at the recipient address.

30. However, the said presumption under Section 114 is a rebuttable presumption, by virtue of Section 4 of the IEA.

31. The presumption of deemed service drawn under Section 3 of the A&C Act is not cast in stone that it can't be erased. It is easily shakeable or rebuttable since delivery of arbitral award under Section 31(5) is a substantive right that the parties enjoy. If a party against whom presumption is drawn is able to establish that the written communication could not have been delivered even after fulfilling the conditions under Section 3, the presumption stands rebutted. There can be cases where the party may be able to prove that it had ceased to use the last known address and due to ignorance of the pendency of judicial proceedings, the address could not be updated in the judicial records. There can be cases where a party is able to show that due to any cause of social disruption, the written communications,



even though sent to the last known address through post, could not be delivered. With regard to email, a party may be able to show that the email could not have been delivered, due to the computer or email address being compromised. Likewise, there can be several instances wherein one shows with credible evidence that delivery of written communications could not have been possible.

32. In the present case, the petitioner has shown that the premises in question, where the copy of the arbitral award is claimed to have been delivered on 01.11.2022, were lying sealed, as has also been recorded by the learned Arbitrator. It would not be legally permissible to presume service at an address lying sealed. It cannot be ignored that the petitioner was proceeded ex-parte till the passing of the award and the same was on the basis of deemed service in an application for revival of the arbitral proceedings that had remained suspended for about 7-8 years.

33. For the reasons discussed above, the deemed delivery of arbitral award as sought to be claimed by the respondent under Section 3(1)(b) is not made out.

34. The compliance of Section 31(5) was made on 12.05.2023, from which date the filing of the objections are within the time prescribed under Section 34(3) of the A&C Act.

35. List before Roster Bench on 28.03.2024.

**MANOJ KUMAR OHRI  
(JUDGE)**

**MARCH 6, 2024**

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