

**IN THE COURT OF JAGMOHAN SINGH SANGHE,
ADDITIONAL DISTRICT JUDGE, AMRITSAR.
(UID No. PB0447)**

Case Details	
Case Type	ARB
Filing No.	621/2017 Dated 21.02.2017
Regn. No.	4/2017 Dated 22.02.2017
CNR No.	PBAS01-002001-2017
Date of Decision	22.02.2018

1. M/s. Bharat Dupatta House, Shop No.1, Khanna Market, Kermion Wali Gali, Katra Jaimal Singh, Amritsar through its proprietor Sumesh Kumar Mehra.
2. Sumesh Kumar Mehra proprietor of M/s. Bharat Dupatta House, shop No.1, Khanna Market, Kermion Wali Gali, Katra Jaimal Singh, Amritsar.

...Petitioners.

Versus

1. Rajesh Patwari proprietor of M/s. Srishti Creations, 356, Kucha Ghasiram Chandni Chowk, Delhi-6.
2. M/s. Srishti Creations through its proprietor Rajesh Patwari, 356, Kucha Ghasiram Chandni Chowk, Delhi-6.
3. Jagdish Bhutani, Arbitrator, Delhi Hindustani Mercantile Association (Regd.), Chandni chowk, Delhi-110006.
4. Delhi Hindustani Mercantile Association (Regd.), Chandni Chowk, Delhi-110006.

....Respondents.

Petition under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the ex parte award dated 21.04.2014 passed by the

respondent No.3 being the alleged sole arbitrator against the petitioner.

.-.-.-.-.

Present: Shri Sanjay Kapoor, Advocate
counsel for the petitioners.
Shri Danish Bansal, Advocate
counsel for the respondents No.1 & 2.

JUDGMENT

1. The petitioners have filed the present objection petition under Section 34 of the Arbitration and Conciliation Act 1996 (in short 'The Act') for setting aside the arbitral award dated 21.04.2014 passed by Shri Jagdish Bhutani, Arbitrator respondent No.3.

2. The petitioners have averred that on 22.11.2016, one employee of the respondents No.1 and 2 came in the market and started enquiring about the properties of the petitioners from the market and declared that very soon the properties of the petitioners would be attached and sold in court auction with the orders of the court at Amritsar. The petitioner immediately rushed to his counsel and on inquiry through online e courts website, it came to the knowledge of the petitioner that an execution filed by the respondent No.1 is pending against the petitioners in the court of Shri Yukti Goyal, Additional Civil Judge (Senior Division), Amritsar regarding some ex parte arbitration award alleged to have been passed against the petitioners. The award was neither served nor informed to the petitioners. No copy of the award has till date been supplied to the petitioners. It is averred that the said award is liable to be set aside on the following grounds :-

i) That the said arbitral award dated 21.04.2014 is not valid in the eyes of law to which the parties have subjected it, under the law for the time being in force.

ii) That the alleged arbitration agreement is not valid under the law to which the parties have subjected it. There is no arbitration agreement between the parties. The petitioners never entered into any alleged arbitration agreement with respondents No.1 and 2 nor any alleged arbitration agreement was ever executed between the petitioners and respondent No.1 and 2. The petitioners never executed any alleged arbitration agreement with alleged respondent No.1 and 2 nor any arbitration agreement has ever been signed by the petitioners with respondents No.1 and 2 for referring any alleged dispute to respondents No.3 and 4. The alleged arbitral tribunal was constituted illegally and had no jurisdiction. The alleged arbitral proceedings were illegal one and were unilateral and are void ab-initio and are against the provisions of the Arbitration and Conciliation Act, 1996 as well as against the rule of natural justice. There is no consensus ad idem at the time of the appointment of the Arbitrator and thus the appointment could not have been made unilaterally which renders the arbitration illegal and as such, the arbitral award is liable to be set aside. Neither there is any arbitration agreement

between the parties nor the claim of the respondents No.1 and 2 was within limitation, despite that the respondent No.3 has allowed the claim of the respondents No.1 and 2 and in this manner has mis-conducted the proceedings and therefore, the said proceedings are liable to be set aside. The alleged bills referred to in the arbitral award are forged and fabricated one nor it bears the signatures of the petitioners.

iii) That the petitioner was not given proper notice of appointment of any alleged arbitrator as well as of the arbitral proceedings. There is no arbitration agreement in the eyes of law. The address of the petitioners mentioned in the arbitral award is wrong and incorrect and wrong and incorrect address had been given by the respondent No.1 & 2 intentionally and deliberately with malafide intention to get an ex parte award by playing fraud with the petitioners. No notice was ever served upon nor received by the petitioners pertaining to appointment as well as of the arbitral proceedings. No shop number, the name of the locality has been mentioned in arbitration award. The shop of the petitioners is not situated in Gali Kermo Deori nor the shop of petitioners is situated near Telephone exchange. There are 5-7 telephone exchanges in Amritsar city. The shop of the petitioners is situated at Katra Jaimal Singh,

Amritsar and the name of the locality is not mentioned in the arbitration award. No notice as alleged ever served upon the petitioners nor the petitioners had received any alleged notices. The alleged letter referred to in arbitral award alleged to be received by respondent No.3 on 12.10.2013 was never issued by the petitioners nor it bears the signatures of the petitioners. The alleged letter is a forged and fabricated document and has been forged just to create evidence. The petitioners neither sent any alleged letter to the respondent No.3 nor had any knowledge regarding the alleged arbitral proceedings. Moreover since no arbitration agreement existed between petitioners and respondent No.1 & 2 as such, any alleged arbitral proceedings and arbitral award are illegal and contrary to law and against the public policy and rule of natural justice and are liable to be set aside.

iv) That the alleged claim of the respondent No.1 and 2 is prima-facie barred by limitation. There were no such alleged transaction between the parties.

v) That the arbitral award dated 21.04.2014 is in conflict with public policy of India and alleged award is in violation of law of natural justice.

vi) That the arbitration award does not constitute reasons and such award without reasons is liable to be set aside.

Even brief history of reasons is not mentioned in the award. Neither any pleadings were initiated nor mentioned in the impugned award. The petitioner reserves his right to initiate criminal proceedings against the said arbitrator.

vii) That the aforesaid award was neither served nor informed to the petitioner and the petitioner came to know about the same only on 22.11.2016 when the petitioners appeared in the aforementioned execution proceedings. No copy of award till date has been supplied to the petitioners. The petitioners made the inspection of file of the aforesaid execution petition on 12.12.2016 and contents of the award have come to the knowledge of the petitioners only thereafter. Hence, the present application is well within time.

viii) That the award is totally based on conjectures and surmises and it is a work of fraud and forgery of the respondents No.1 and 2 in connivance with respondent No.3 and 4.

3. Notice of the petition was served upon the respondents upon which respondents No.1 and 2 appeared through Shri Danish Bansal, Advocate and contested the petition on merits. Record of arbitrator was also summoned which has been received and attached with the main file.

4. While contesting the petition on merits, respondent number

1 and 2 filed reply by taking preliminary objections about non-maintainability of the objection petition; the petition being time barred and the same being an abuse of process of law. On merits, it has been averred that the petitioners from the very beginning were fully aware regarding passing of the ex-parte award dated 21.04.2014 but they intentionally and deliberately did not come to the court for setting aside the ex parte award within a stipulated period as enshrined under section 34 of the Arbitration and Conciliation Act, 1996. It is denied that the award was neither served nor informed to the petitioners and that the petitioners came to know about the same on 22.11.2016. Proper and effective procedure was adopted for providing and informing the petitioners about the ex parte award against them but they have completely failed to file the petition for setting aside the award dated 21.04.2014 inspite of having knowledge about the same. It is denied that the award in question is liable to be set aside on the grounds taken in the petition. It is denied that the arbitral award dated 21.04.2014 is not valid in the eyes of law. It is denied that there is no arbitration agreement between the parties. It is denied that the petitioners never executed any alleged arbitration agreement with the respondents No.1 & 2. It is denied that the alleged Arbitral Tribunal was constituted illegally and had no jurisdiction as alleged. Denying all other averments a prayer for dismissal of the petition has been made.

5. As the present objection petition has been instituted under Section 34 of the Act, it is to be adjudicated upon on the basis of legal

grounds as more specifically provided under this provision and not on the basis of factual grounds or merits. In this view of the matter, an opportunity for leading any evidence by any of the party is out of question in this petition.

6. The counsel for the petitioners has contested this petition on the grounds that the Arbitrator was appointed without there being any arbitration clause or agreement in this regard. The act of appointment of Arbitrator is unilateral and without jurisdiction. It is argued that the award in question is illegal and is against the public policy as the Arbitrator has proceeded ex parte against the petitioners on the basis of a wrong address given by the respondents which has resulted into denial of an opportunity of being heard for the petitioners as such, the arbitration award is illegal. It is argued that the claim of the respondents is barred by limitation and the award in question does not constitute any valid reasons which is accordingly liable to be set aside being passed in violation of the rules of natural justice.

7. Learned counsel for the respondents has questioned the arguments advanced by the counsel for petitioners by submitting that the arbitration clause is very much there as per the specific reference having been given to the same clause underneath the bills of transaction. It is argued that the appointment of Arbitrator and passing of award by him is not a unilateral act but is a result of bilateral arbitration agreement between the parties. It is argued that the award is well reasoned and has been passed by affording the petitioners with

effective opportunity of being heard through various communications sent through registered letters. It is argued that even the petitioners by way of a letter dated 11.10.2013 has acknowledged their liability to repay the outstanding amounts of the respondents. It is argued that the address of the petitioners as mentioned on the registered letters is same as mentioned by the petitioners even in the present petition as such, they are not entitled to seek benefit of the failure of arbitrator to serve them with proper notice on the correct address. It is argued that the petitioners have challenged the award after prescribed period of limitation and without service of any prior notice as prescribed under section 34 (5) of the Arbitration and Conciliation Act 1996 as amended w.e.f. 23.10.2015. With these arguments a prayer for dismissal of the petition has been made.

8. I have heard the contentions of the counsel for the parties and have carefully gone through the arbitration file coupled with the stand of the parties as taken through their petition and reply.

9. Before proceeding further, it is appropriate to note here that scope of interference in arbitration award under section 34 of the Act is limited. In **Delhi Development Authority Vs. M/s R.S.Sharma & Co., New Delhi, 2008(4) RCR (Civil) 165**, it has been held by the Hon'ble Supreme Court that under the Arbitration and Conciliation Act the award passed by the Arbitrator can be set aside only on the grounds mentioned in Section 34(2) of the said Act when such award is

(i) Contrary to substantive provisions of law; or

(ii) the provisions of the Arbitration and Conciliation Act, 1996; or

(iii) against the terms of the respective contract; or

(iv) patently illegal, or prejudicial to the rights of the parties, is open to interference by the Court under Section 34(2) of the Act.

(b) Award could be set aside if it is contrary to;

(i) fundamental policy of the law; or

(ii) the interest of India; or

(iii) justice or morality;

(c) The Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.

(d) It is open to the Court to consider whether the Award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.”

It is further held by the Hon'ble Apex Court in **Santa Stone & Lime Co.**

Ltd., M.P. Etc. Vs. Union of India & Another etc. 2008(3) R.C.R.

(Civil) 226 and J.G.Engineers Pvt. Ltd. Vs. Union of India and

another-2011(3)-RCR (Civil) 683 that “*the scope of appellate court is*

limited and court would not be justified in re-appreciating the material

on record and substituting its own view in place of arbitrator's view.” It

is also observed that “*the arbitrator is the sole judge of the quality as*

well as the quantity of evidence and it will not be for the court to take

upon itself a task of being a judge of the evidence before the arbitrator.

The court should approve the award with the desire to support it, if that

is reasonably possible rather than to destroy it, by calling it illegal.”

Similarly, Hon'ble Delhi High Court in **M/s Renaissance Acqua Sports**

vs M/s Hotel Marina 2010 (6) RCR (Civil) 993 has held that

“Reasonableness of the reasons given in the award by arbitrator cannot be challenged. Where award was passed by arbitrator after going through all issues on factual matrixes of the case and after giving full and adequate opportunity of hearing to the parties, such award cannot be challenged under section 34 of the Act.”

10. Being guided through the settled law, the arguments advanced by the counsel for the petitioners are taken up for discussion so as to record their sustainability one by one.

11. It is the first argument of the counsel for the petitioners that the arbitration award and appointment of Arbitrator is unilateral act on the part of the respondents without there being any arbitration clause. When this contention is considered in the light of the arbitration file lying attached with the petition, the same does not find favour with this court. Perusal of the arbitration file reveals that the matter was referred to the Arbitrator on the basis of a reference in this regard having been sent by the respondents by stating therein that the petitioner's firm is dealing in the business of ladies suits as such, they have purchased those cloth materials from the respondents time to time. It is further specifically mentioned in that reference that an amount of Rs. 1,50,247/- is due towards the petitioners on account of these business transactions. In support of this reference, reliance has been placed by the respondents on the transaction/sale invoices wherein at page 45 of the arbitration file, the terms and conditions of the business transactions finds specific

reference. As per terms and conditions mentioned therein it is specified that all the disputes between the parties are to be decided by Delhi Hindustani Mercantile Association (Regd.), Delhi as per its rules and regulations as well as under Arbitration and Conciliation Act. The jurisdiction of the arbitration is also specifically mentioned as Delhi. In view of the specific reference of arbitration clause, the argument of the counsel for the petitioner regarding absence of arbitration agreement is not sustainable. In this view of the matter, the appointment of Arbitrator and carrying out the proceedings by the Arbitrator is certainly not a unilateral act.

12. Learned counsel for the petitioners has further assailed the award on the ground that the same is against public policy and rules of natural justice as no opportunity of being heard has been given to the petitioners during these proceedings. This contention of the counsel for the petitioners has been carefully considered in the light of materials on the arbitration proceedings file. Perusal of file reveals that the appointment of Arbitrator and pendency of arbitration proceedings was communicated to the petitioners by way of number of registered letters. As many as ten such registered letters are lying attached with the arbitration file. During the course of arguments, learned counsel for the petitioners has pointed out that none of these registered letters has been delivered to the petitioners as they have been returned back unserved. Undoubtedly, these registered letters are unserved and returned back to the respondents. The question which arises here for consideration is that

whether the petitioners had information regarding the appointment of Arbitrator and continuation of arbitration proceedings at Delhi or not. If the answer to this question lies in affirmative, the return of registered letters unserved would not support the case of the petitioners. On being carefully scrutinized, the arbitration file consists of a letter dated 11.10.2013 written on the letter pad of the petitioner firm and bearing signatures of the petitioner No.2. The letter has been addressed to the respondents at the address/place where the arbitration proceedings were held. Through this letter, the petitioner is shown to have acknowledged his liability with an assurance that he will settle the accounts by paying small installments and that he was unable to visit the place of arbitration on 17.10.2013 on account of ill health. This communication is further duly supported by the envelope bearing the stamp of the Akash Ganga Courier Services, Amritsar alongwith the receipt of that courier. In these circumstances, it cannot be said that the said communication was not sent by the petitioners to the respondents at the place of arbitration. Another important factor which assumes significance in sequence of this discussion is that the petitioners have questioned their address as wrong which is mentioned on various communications/registered letters. It is necessary to mention here that even after disputing their address as wrong, the petitioners have mentioned the same address on the present petition also. It is also mentioned in the petition that the petitioners came to know about the pendency of execution petition against them at the concerned court at Amritsar and the address mentioned in the

arbitration proceedings is also conceded to be same which is mentioned in the arbitration proceedings, various communications, letter pads of the concern of petitioners on which the communication was made with the respondents. In this view of the matter, it cannot be held that the petitioners have not been afforded with an opportunity of being heard as such, the award is not liable to be interfered with on the ground of its being against the public policy or rules of natural justice.

13. Learned counsel for the petitioners has vehemently argued that it is an unreasoned award but the careful perusal of the award reveals that the contents of the reference made by the respondents coupled with the documents placed on file by them before the Arbitrator have been carefully considered in the absence of the petitioners after giving them an opportunity of being heard. The materials adduced before the Arbitrator have remained unrebutted as such, the award has been passed accordingly with reasons on those basis. It is also not out of place to mention here that the petitioners have instituted these objections after a long gap of about three years by claiming that the knowledge regarding the passing of award was gained by the petitioners when on 22.11.2016 the petitioners appeared in the execution proceedings. In view of the fact that the communication regarding their knowledge qua arbitration proceedings and by admitting their liability has been made by the petitioners much earlier through their letter dated 11.10.2013, the petitioners were required to institute the objections within the prescribed period of three months from the date of passing of

award or after another period of three months on proving the fact that they were prevented by sufficient cause to file those objections. It is also necessary to mention here that in view of the amended provision of sub section 5 of section 34 of the Arbitration and Conciliation Act, the petitioners were also to issue a prior notice to the respondents before instituting these objections but it has not been done so by the petitioners. The provision of sub section 5 is directory in nature but it certainly has bearings on the matter when considered in the light of the other material aspects discussed in the preceding paras.

14. As a cumulative effect of the discussion made above, this court is of the considered view that the impugned award is not liable to be interfered with on any of the grounds raised either through the petition as well as through oral submissions by the counsel for the petitioners. Hence, the interference or setting aside the impugned award is not justified.

15. Resultantly, the petition sans merits and the same stands dismissed. Memo of costs be prepared and file be consigned to record room, Amritsar after due compilation.

**Pronounced in the open court.
22.02.2018.**

**(Jagmohan Singh Sanghe)
Additional District Judge,
Amritsar.(UID No.PB0447)**

*dalipkumar
Stenographer Grade-I.

M/s. Bharat Dupatta Vs. Rajesh Patwari No.4/2017.

Present: Shri Sanjay Kapoor, Advocate
counsel for the petitioners.
Shri Danish Bansal, Advocate
counsel for the respondents No.1 & 2.

Arguments heard. Vide separate detailed order of even date,
the petition sans merits and the same stands dismissed. Memo of costs
be prepared and file be consigned to record room, Amritsar after due
compliance.

Pronounced in the open court.
22.02.2018

(Jagmohan Singh Sanghe)
Additional District Judge,
Amritsar.(UID

No.PB0447)
*dalipkumar
Stenographer Grade-I.