Indian Rayon Corporation Ltd

Vs

Raunaq And Company Pvt. Ltd

Civil Appeal No. 2746 of 1988

(Sabyasachi Mukharji JJ)

04.08.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. Special leave granted. The appeal is disposed of by the order herein.

2. This appeal is directed against the judgment and order of the Division Bench of the High Court of Calcutta, dated August 25, 1987, dismissing the application for setting aside the award, on the ground that the said application was barred by lapse of time. The award in this case was filed inn the High Court on February 4, 1977. The respondent affirmed an affidavit on November 29, 1977 stating that the award had been filed in the Court on February 4, 1977 and prayed that a notice be issued and served on the appellant so that the judgment in terms of the award could be passed.

3. On January 10, 1978 the respondent's advocate-on-record took out a Master's Summons and used the aforesaid affidavit as the ground for the prayers which were made in the summons. On February, 1, 1978 M/s Khaitan & Company, solicitors, on behalf of the appellant filed a vakalatnama and a requisition in the department of the High Court for searching the records in this case. On February 2, 1978, M/s Khaitan & Co. searched the records of the High Court of Calcutta. On February 4, 1978, the appellant filed an affidavit stating that the award had been wrongly filed in the High Court of Calcutta and it should be taken off the file.

4. On May 3, 1978 an order was passed as prayed in the affidavit and the Master's Summons, and on July 30, 1981, a notice under Section 14 (2) of the Arbitration Act, 1940 (hereinafter called 'the Act') was served on the appellant. Section 14 (2) of the Act enjoins the arbitrator or the umpire to give notice to the parties of filing of the award in order to facilitate the passing of the order thereon.

5. On August 18, 1981, the appellant applied for a certified copy of the award and the application for setting aside the award under Section 30 of the Act, was filed on September 8, 1981. Under clause (b) of Article 119 of the Limitation Act, 1963 the time for setting aside an award or getting an award remitted for reconsideration is 30 days from the date of the service of the notice of the filing of the award. Hence, there must be filing of the award in court. A notice must be given to the party parties concerned of such filing of the award in the court and on the expiry of 30 days from the service of the said notice limitation for setting aside an award expires. In this case, it appears that the appellant applied for a certified copy of the award on August 18, 1981 and on September 1, 1981, the appellant received the certified copy from the court. The application under Section 30 of the Act, for setting aside the award was made on September 8, 1981. Hence, if the date of service of the notice of the filing of award be July 30, 1981 then in the events that have happened as narrated

above, indisputably the application was within time. If, however, the notice is attributed to have been served prior to that then the application was barred by lapse of time. The High Court held that the notice in this case was served prior to July 30, 1981.

6. It appears as mentioned before that on February 4, 1978 an affidavit had been field in the High Court, stating on behalf of the appellant that the award had been wrongly filed in that court. The appellant has, therefore, acknowledged that the award had been filed and a notice was issued to it in respect of the said award. In our opinion, this conclusion irresistibly follows from the narration of events mentioned hereinbefore. In order to be effective both for the purpose of obtaining the judgment in terms of the award and for setting aside the award, the award must be filed in the court. There must be service of notice or intimation or communication of the filing of the said award by the court to the parties. If all these factors are established or are present, the mode of service of the notice would be irrelevant. If the substance is clear, the form of the notice is irrelevant but the notice of the award having been filed in the court, is necessary. The filing in the court is necessary and the intimation thereof by the Registry of the court to the parties concerned, is essential. Beyond this there is no statutory requirement of any technical nature under Section 14 (2) of the Act.

7. This conclusion, in our opinion, irresistibly follows from the principles enunciated by this Court in Nilkantha Shidramappa Ningashetti v. Kashinath Somanna Ningashetti where this Court held that the communication by the court to the parties concerned or their counsel, of the information that an award has been filed was sufficient compliance with the requirements of sub-section (2) of Section 14 of the Act. In the aforesaid decision this Court reiterated that the notice need not necessarily mean "communication in writing". The expression "give notice" in sub-section (2) of Section 14 of the Act simply means giving intimation of the filing of the award. Such intimation need not be given in writing and could be communicated orally or otherwise. That would amount to service of the notice when no particular mode was specified. Elaborating the aforesaid principles this Court at page 555 of the said report observed as follows :

> Sub-section (1) of Section 14 of the Arbitration Act, 1940 (10 of 1940) requires the arbitrators or umpire to give notice in writing to the parties of the making and signing of the award. Sub-section (2) of that section requires the court, after the filing of the award, to give notice to the parties of the filing of the award. 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. The notice can be given orally. No question of the service of the notice in the formal way of delivering the notice or tendering it to the party can arise in the case of a notice given orally. 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.'Notice' does not necessarily mean 'communication in writing'.'Notice' according to the Concise Oxford Dictionary, means 'intimation, intelligence, warning' and has this meaning in expressions like 'give notice, have notice' and it also means 'formal intimation of something, or instructions to do something' and has such a meaning in expressions like 'notice to quit, till further notice'. We are of opinion that the expression 'give notice' in sub-section (2) of Section 14, simply means giving intimation of the filing of the award, which certainly was given to the parties through their pleaders on February 21, 1948. Notice to the pleader is notice to the part, in view or Rule 5 of Order III. Civil Procedure Code, which provides that any process

> served on the pleader of any party shall be presumed to be duly communicated and made known to the party whom the pleader represents and unless the court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

8. The aforesaid question was again examined from a slightly different angle later in Dewan Singh v. Champat Singh where this Court while dealing with Article 158 of the Limitation Act, 1908 which was the previous article corresponding to clause (b) of Article 119 of the Limitation Act, 1963, held that the said article gave 30 days' time for applying to set aside the-award, from the date of service of the notice of the filing of the award. As mentioned hereinbefore, the notice of the service of the award may be communicated in any form. It need not necessarily be in writing. If that is the position in law then in view of the facts of this case the conclusion would irresistibly be that the notice was served at least either on February 3 or 4, 1977 because at that time the appellant had acknowledged that the award had been filed in view of the affidavit filed by it in the High Court of Calcutta and that the award had been filed in a wrong court, according to the appellant, and that he had notice of the said filing communicated to him by the court. That would be natural and ordinary inference to draw from the conduct of the parties are narrated before. If that is the position then the application, in our opinion, for setting aside the award was, indisputably, barred by limitation.

9. Counsel for the appellant, however, drew our attention to the statement recorded by the High Court where it was stated as follows :

> The learned counsel for both parties have agree the service of notice under Section 14 (2) of the Arbitration Act is a mandatory provision and an application for setting aside of the award shall not be time-barred so long as the aforesaid notice is not served.

10. It was, however, submitted on behalf of the appellant that there cannot be any concession on a question of law. We are of the opinion that this concession (sic contention) does not, as such, help the parties very much. The fact that the parties have notice of the filing of the award, is not enough. The notice must be served by the court. We reiterate again that there must be (a) filing of the award in the proper court; (b) service of the notice by the court or its office to the parties concerned; and (c) such notice need not necessarily be in writing. It is upon the date of service of such notice that the period of limitation begins and as at present under clause (b) of Article 119 of the Act, the limitation expires on the expiry of the 30 days of the service of that notice for an application for setting aside of the award. The importance of the matter, which need be emphasised, is the service of the notice by the court. It is not the method of the service that is important or relevant. In this case as both the courts have, in fact, found that the notice was issued and served and, in our opinion, that finding is based on cogent material and relevant evidence, prior to July 30, 1981, the application made in this case was clearly barred by lapse of time.

11. We find, therefore, no ground to interfere with the decision of the High Court. The appeal accordingly fails and is dismissed without any order as to costs.

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