

SUPREME COURT OF INDIA

Kailash Rani Dang

Vs.

Rakesh Bala Aneja

C.A.Nos 7257-7258 of 2008

(Dalveer Bhandari and Harjit Singh Bedi JJ)

12.12.2008

JUDGMENT

HARJIT SINGH BEDI, J.

1. Leave granted.

2. These appeals arise out of the following facts:

On 7th June, 1995 a partnership deed was executed between Subhash Chander Aneja, since deceased, his son Amit Aneja and the appellant Kailash Rani Dang, a cousin of Subhash Chander Aneja, aforesaid with regard to the running of Alka Cinema, situated at P-2, Sector-15 NOIDA. The shares in the partnership were also delineated therein. On 21st July, 1998, a family arrangement was entered into between Subhash Chander and Kailash Rani, in which it was agreed that the latter would get 50% of the earnings from the Cinema Hall as well as from the commercial exploitation of the adjoining plot, whereas 50% would go to the former. This agreement also contained an arbitration clause whereby all disputes and differences would be referred to the sole arbitration of

Shri Hans Raj Dang and on his non-availability, to the sole arbitration of Dr. Amar Nath Kumar. Disputes having arisen, Kailash Rani vide her letter dated 2nd July, 1999, invoked the arbitration clause in the family arrangement by writing to Shri Hans Raj Dang requesting him to act as the arbitrator. Shri Hans Raj Dang, however, vide his letter dated 7th July, 1999 informed Kailash Rani that he would not be able to act as such because of ill-health. Copies of these letters were sent to the respondent Subhash Chander as well.

Kailash Rani, in these circumstances, wrote a letter dated 12th July, 1999 to the alternate Arbitrator Dr. Amar Nath Kumar requesting him to act as the arbitrator and also informing him that though the cinema hall was bringing an income of Rs. 2.5 lacs per month, she had not been paid a single penny on that account. Dr. Amar Nath Kumar accordingly wrote a letter dated 17th July, 1999 to Kailash Rani calling upon her to file her statement of claim before 25th July, 1999 and to send a copy thereof to Subhash Chander, through registered post.

He also called upon Subhash Chander to file his reply to the statement of claim by 2nd August 1999 and fixed 11.00 A.M. on 8th August, 1999 as the date and time of the hearing at a specified venue at Ghaziabad. On 23rd July, 1999, Kailash Rani dispatched her statement of claim by registered post to the Arbitrator as well as to Subhash Chander.

The receipt of this statement was acknowledged by Subhash Chander by his communication on 29th July, 1999 addressed to Kailash Rani wherein he asked for the supply of certain documents, failing which it would not be possible for him to file a reply to the statement of claim. Kailash Rani, vide her letter dated 2nd August 1999, replied reminding Subhash Chander that the documents he was seeking were already in his possession as he was one of the executants thereto, but that in any case the copies could be taken from the arbitrator during the course of hearing on 8th August, 1999. Subhash Chander nevertheless, through his Advocates, M/s. Sen & Sen addressed a communication dated 7th August, 1999 to the arbitrator denying the execution of any family arrangement dated 21st July, 1998 and again asking for the supply of the documents referred to in the statement of claim, and further, that the arbitration proceedings be deferred till all the documents were in fact supplied.

As a follow up to the communication from his Advocates, Subhash Chander did not appear before the Arbitrator on 8th August, 1999. The Arbitrator, accordingly, addressed a letter to him pointing out that his non-appearance justified the initiation of ex-parte proceedings but another opportunity was being afforded to him and further that Kailash Rani had undertaken to supply copies of all documents relied upon by her on the next date of hearing in his presence. The hearing was also fixed at 11.00 A.M. on 25th August, 1999. Subhash Chander however did not appear before the Arbitrator on 25th August, 1999 as well and after waiting till 2.00 P.M. on that date the Arbitrator ordered ex-parte proceedings and thereafter passed an ex-parte Award against him. A copy of the Award was sent by the Arbitrator to both parties through speed post; the copy of the Award being addressed to Subhash Chander at his business address, Alka Cinema, P-2, Sector -15, NOIDA.

The Postman visited the cinema premises on 30th August, 1999 but Subhash Chander was not present. The Postman went to the address again the next day but Subhash Chander refused to receive the registered envelope, though the name of the sender Dr. Amar Nath Kumar, the Arbitrator stood written thereon. The Postman accordingly returned the envelope to the sender with an endorsement of refusal dated 31st August 1999.

Kailash Rani thereafter (on 7th April, 2000) filed an Application in the Court of the District Judge, Gautam Budh Nagar for the execution of the Award. Subhash Chander at this stage filed an Application under Order 21 Rule 26 of the Code of Civil Procedure in the Executing Court seeking a stay of the execution proceedings, and denying any knowledge of the passing of the Award dated 25th August, 1999 and also, inter alia, pleading that though he had not appeared before the Arbitrator on 25th August, 1999, one Mishra, his Manager, had done so on his behalf, who, after having waited for an hour, had found neither the appellant nor the Arbitrator present, on which he had gone away and that this fact had been communicated to the Arbitrator by Registered post on 6th September, 1999.

He also filed an application dated 28th November 2000 under Section 34 of The Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") praying that the ex-parte Award dated 25th August, 1999 be set aside emphasizing therein that he had received a copy of the Award only on 7th October, 2000 during the course of the execution proceedings. Subhash Chander expired on 29th November 2000 and is now represented by his L.Rs including respondent No. 1 Rakesh Bala Aneja, his widow. Kailash Rani, in response to the aforesaid objection petition, filed a reply pleading that it was time barred and raising several objections on merits as well. The District Judge – the Executing Court, thereafter, called upon the parties to produce their evidence. The statement of the Postman Dharam Pal, who had tendered the envelope on 30th and 31st August, 1999 which Subhash Chander had refused to accept was recorded. The Court accordingly concluded that as Subhash Chander had refused to accept the notice from the Postman he was deemed to have been served and as such the application under Section 34 was clearly beyond time as the maximum time permissible for such an application was 90 days. The objection petition was, thus, dismissed. Rakesh Bala filed a Revision Petition in the Allahabad High Court which set aside the order of the Executing Court vide the impugned judgment dated 13th November 2006, which to us, suffers from some basic contradictions.

This is what the Court had to say:

"It is true that in usual course if the entry of refusal of service of the award is made by the Postman it is to be accepted by the Court as correct. In this view of the matter the present objections are to be found presented after the expiry of the limitation period provided for the purpose. The service of award upon a party who is definitely aggrieved by the same is not a matter to be viewed very lightly. The service is not a mere formality and it is a matter of substance. The termination of an arbitral proceedings are always subject to certain conditions and it is also subject to provisions of

Section 33 & 34 of the Act. In fact the delivery of award to a party has to be effective after the same has been received by the said party. This delivery actually has the effect of conferring 'certain rights upon the parties as also bringing to an end the right to exercise those rights on expiry of the period of limitation'. Therefore, the delivery of the copy of the award made is something which is very substantial for the parties. The mere entry of refusal of acceptance by the Postman upon the registered envelope should not be given so much importance as to shut the entire available avenues for the redressal of his grievance of a party which has been quite adversely effected by it."

In support its observations the High Court relied on the judgment of this Court in *Union of India vs. Tecco Trichy Engineers and Contractors* (2005) 4 SCC 239. It was accordingly held that the date of receipt of the Award by Subhash Chander would be deemed to be 11th October 2000 and as such the application under Section 34 of the Act was within time. Kailash Rani filed a review application against the judgment dated 13th November, 2006 but it too was dismissed on 7th August 2007. Faced with this situation, Kailash Rani is before us in the present appeals, both against the orders dated 13th November 2006 and 7th August 2007.

3. Mr. Arun Jaitley, the learned senior counsel for the appellant has raised several arguments during the course of hearing. He has first pointed out that Subhash Chander, the deceased respondent, had always adopted an indifferent attitude towards the arbitration proceedings inasmuch that though he had knowledge of the proceedings he had deliberately stayed away on the 25th August 1999 when he, as per his own statement, had not appeared before the Arbitrator but had sent his Manager Mishra instead, though even his alleged appearance was an afterthought. He has also pointed out that Subhash Chander in his objection petition had denied the execution of the family arrangement dated 21st July 1998 though the execution of the partnership deed which was, in fact, the parent document executed on 7th June 1995 had not been denied and this too, and the fact that the appellant Kailash Rani though entitled to 50% of the income from the cinema had not received even a penny on that account, was the reason for his recalcitrant attitude. He has pleaded that it is in this background that the matter would have to be examined even with regard to the receipt of a copy of the award by him on 31st August 1999, as held by the executing court or on the 11th of October 2000 as observed by the High Court. In this connection, Mr. Jaitley has then brought to our notice the statement of Dharam Pal PW1, the postman who deposed that he had visited Alka Cinema on the 30th August 1999 and after finding Shri Aneja absent he had again visited the next day but the latter had refused to accept the envelope on which he had made an endorsement to that effect and returned the unsealed envelope to the sender. Reliance has also been placed on Section 3 of the Act which talks about the receipt of written communications, to support the argument that as the envelope had been addressed to the very address, which was the subject matter of the business and the partnership, it was deemed to have been served. Mr. Jaitley has also distinguished the judgment of this Court in *Tecco Trichy Engineers* (supra) and submitted that it had no applicability to the facts of the present matter.

4. Mr. Ranjeet Kumar, the learned senior counsel for the respondent has, however, pointed out that the execution of the family arrangement dated 7th June 1995 had been denied by him and as the service of the award was a matter of great moment and with deep ramifications for him and his

family, there was no reason as to why he would not have filed his objections had he been served on the 30th August 1999 or 31st August 1999, as alleged. He has also pleaded that Subhash Chander had asked for several documents by his communication dated 29th June 1999 and the request had been reiterated on 7th August 1999, and as the said documents had not been supplied, he had advisedly stayed away from the arbitration proceedings. It has also been submitted that as per the family arrangement dated 21st July 1998, the sole learned arbitrator was Shri Hans Raj Dang and in his absence Dr. Amar Nath Kumar and that there was no evidence to show that the former had, at any stage, been approached to assume the role of arbitrator and as such the very initiation of proceedings before the latter was not in order. He has also pleaded that in any case the presumptions, if any, raised on account of Section 3 of the Act had been dispelled by the certificate dated 26th August 2003 issued by the Manager of Hotel Shakti, Allahabad to the effect that Subhash Chander Aneja had checked into the hotel at 8.10 a.m. on 30th August 1999 and had checked out on the 31st of August 1999 at 8.35 p.m. to submit that on both dates when the postman had allegedly visited the premises of Alka Cinema in Noida, Subhash Chander Aneja had been in Lucknow and the postman's statement was, thus, a complete lie. Mr. Ranjeet Kumar has placed reliance on Tecco Trichy Engineers (supra) and, in addition, on Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd. (2003) 5 SCC 705 in support of his submissions.

5. We have heard the learned counsel for the parties and gone through the record. We reproduce herein-under Section 3 of the Act:

"Sec.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 communications is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communication in respect of proceedings of any judicial authority."

6. A bare perusal of the aforesaid provisions would reveal that if a written communication is delivered to the addressee personally at his place of business, it shall be deemed to have been received by him on the day it was delivered. Admittedly, a copy of the award had been sent to Subhash Chander at the Alka Cinema which was, in fact, the property which was the subject matter of the partnership business between the parties. In this view of the matter, the statement of the postman Dharam Pal becomes extremely relevant wherein he deposed that on the 30th August 1999, Subhash Chander had not been present in the cinema premises and that on the next day he had refused to receive the communication even when tendered to him which fact had been endorsed by him on the envelope which had then been returned to the sender. We are, thus, of the opinion that by virtue of sub-clause (a) of Section 3 (1) read with Section 3(3), a presumption that the document had indeed been delivered is writ large on the facts of the case. Mr. Ranjeet Kumar has, however, drawn our attention to the certificate issued by Hotel Shakti. We find that this document is dated 26th August 2003 that is about four years after the event. Moreover, it is significant that in the objections filed in the executing court, no reference whatsoever had been made to this communication and, even more significantly, it had been produced in the Executing Court for the first time during the course of arguments. We are, therefore, of the opinion that this document is an afterthought and created with the object of strengthening the submission that the copy of the award could not have been delivered to Subhash Chander as he had been absent from the cinema on the two crucial dates.

7. Mr. Ranjeet Kumar's reliance on Tecco Trichy Engineers case (supra) to our mind is tenuous. In this matter, the Southern Railways had entered into a contract and a dispute having arisen, the matter was referred to arbitration. The Tribunal gave its award on the 10th March 2001/11th March 2001 and a copy of the award was delivered in the office of the General Manager, Southern Railway on 12th March 2001 and an acknowledgement of its receipt was given by some clerk. On 10th July 2001, the Chief Engineer presented an application for setting aside of the award and also an application for condonation of delay under Section 34(3) of the Act. The application for condonation of delay was contested by the contractor as being beyond limitation. The objection found favour with the learned Single Judge of the High Court who rejected the application holding it as barred by limitation. This decision was upheld by the Division Bench leading to the filing of an appeal in this Court. This Court set aside the aforesaid judgment and while doing so observed that the Ministry of Railways was a very large conglomerate with several divisions and sub-divisions headed by senior officers and the General Manager being at the apex of the administration of the division was responsible for laying down the policy and taking broad strategic decisions and was not involved in the day-to-day management and operations of the different departments and that it was only departmental head, who was directly connected with a particular dispute who would know what the matter was about. This is what the Court had to say:

7. It is well known that the Ministry of Railways has a very large area of operation covering several divisions, having different divisional heads and various departments within the division, having their own departmental heads. The General Manager of the Railways is at the very apex of the division with the responsibility of taking strategic decisions, laying down policies of the organisation, giving administrative instructions and issuing guidelines in the organisation. He is from elite managerial cadre which runs the entire organization of his division with different departments, having different departmental heads. The day-to-day management and operations of

different departments rests with different departmental heads. The departmental head is directly connected and concerned with the departmental functioning and is alone expected to know the progress of the matter pending before the Arbitral Tribunal concerning his department. He is the person who knows exactly where the shoe pinches, whether the arbitral award is adverse to the department's interest. The departmental head would naturally be in

a position to know whether the arbitrator has committed a mistake in understanding the department's line of submissions and the grounds available to challenge the award. He is aware of the factual aspect of the case and also the factual and legal aspects of the questions involved in the arbitration proceedings. It is also a known fact and the Court can take judicial notice of it that there are several arbitration proceedings pending consideration concerning affairs of the Railways before arbitration. The General Manager, with executive workload of the entire division cannot be expected to know all the niceties of the case pending before the Arbitral Tribunal or for that matter the arbitral award itself and to take a decision as to whether the arbitral award deserves challenge, without proper assistance of the departmental head.

9. In the context of a huge organisation like the Railways, the copy of the award has to be received by the person who has knowledge of the proceedings and who would be the best person to understand and appreciate the arbitral award and also to take a decision in the matter of moving an application under sub-section (1) or (5) of Section 33 or under sub-section (1) of Section 34.

10. In the present case, the Chief Engineer had signed the agreement on behalf of the Union of India entered into with the respondent. In the arbitral proceedings the Chief Engineer represented the Union of India and the notices, during proceedings of the arbitration, were served on the Chief Engineer. Even the arbitral award clearly mentions that the Union of India is represented by the Deputy Chief Engineer/Gauge Conversion, Chennai. The Chief Engineer is directly concerned with the arbitration, as the subject-matter of arbitration relates to the department of the Chief Engineer and he has direct knowledge of the arbitral proceedings and the question involved before the arbitrator. The General Manager of the Railways has only referred the matter for arbitration as required under the contract. He cannot be said to be aware of the question involved in the arbitration nor the factual aspect in detail, on the basis of which the Arbitral Tribunal had decided the issue before it, unless they are all brought to his notice by the officer dealing with that arbitration and who is in charge of those proceedings. Therefore, in our opinion, service of the arbitral award on the General Manager by way of receipt in his inwards office cannot be taken to be sufficient notice so as to activate the department to take appropriate steps in respect of and in regard to the award passed by the arbitrators to constitute the starting point of limitation for the purposes of Section 34(3) of the Act. The service of notice on the Chief Engineer on 19-3-2001 would be the starting point of limitation to challenge the award in the Court.

11. We cannot be oblivious of the fact of impersonal approach in the government departments and organisations like Railways. In the very nature of the working of government departments a decision is not taken unless the papers have reached the person concerned and then an approval, if required, of the competent authority or official above has been obtained. All this could not have

taken place unless the Chief Engineer had received the copy of the award when only the delivery of the award within the meaning of sub-section (5) of Section 31 shall be deemed to have taken place. As would be evident, no analogy between the case before us and the above cited case exists. The second judgment relied upon by Mr. Ranjeet Kumar i.e. Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd. (2003) 5 SCC 705 deals with the general policy pertaining to certain kinds of arbitration agreements and has nothing to do with the question posed before us. We, therefore, find that Mr. Ranjeet Kumar's arguments based on these two cases are misplaced.

8. A discussion on this aspect would be incomplete without a reference to the obstructionist attitude of Subhash Chander during the course of the arbitration proceedings. It is significant that though the execution of the family arrangement has been denied, the fact of the partnership deed qua Alka Cinema has not been denied. It is also clear that the cinema was under the complete and effective control of Subhash Chander and is now under the control of his legal representatives and that nothing has been paid to Kailash Rani on account of the income of the partnership. It has been submitted by Mr. Ranjeet Kumar that Subhash Chander had not appeared before the arbitrator as the documents referred to in the statement of claim had not been supplied despite several requests. Some facts, however, bear re-capitulation and they would be best put as in the award wherein the arbitrator observed as under:

"In pursuance of the Arbitration Clause, Smt. Kailash Rani Dang, since she was aggrieved by the acts and omissions of Shri S.C. Aneja referred the matter to the Arbitration of Shri Hans Raj Dang who refused to arbitrate due to his illness and other personal reasons by means of his letter dated 7.7.1999.

Accordingly, Smt. Kailash Rani Dang, referred the matter to my arbitration by means of letter dated 12.7.99.

I, there upon entered into the reference and by means of letter dated 17.7.99 called upon Smt. Kailash Rani Dang to send or to file a detailed statement of her claims before me latest by 25.7.99 and send a copy thereof to Shri S.C.Aneja through registered post. Shri S.C.Aneja was also called upon to send or file the reply of statement of the claim by 2.8.99. I also fixed 8.8.99 as the date of hearing at 11 A.M. at the following address:

KH-219, New Kavi Nagar,
Ghaziabad (U.P.).

Smt. Kailash Rani Dang filed her statement of claim in time and sent a copy thereof to Shri

S.C.Aneja by registered post. However, Shri S.C.Aneja did not send any reply to the statement of claim. By means of letter dated 29.7.99 addressed to Smt. Kailash Rani Dang along with copy endorsed to me, Shri S.C. Aneja acknowledged the receipts of the letters regarding statement of claim etc., but requested Smt. Kailash Rani Dang to send him the Photostat certified copies of the family arrangement and the partnership deed to him as well as to his wife. Later on by means of letter dated 7.8.99 M/s. Sen & Sen Advocates on behalf of their client S.C.Aneja requested to supply the documents to their client while acknowledging 8th Aug.99 as the date of hearing and requested to refer the arbitration proceeding till the documents are received by their client. It will not be out of place to mention here that by means of letter dated 2.8.99 sent through speed post addressed to Shri S.C.Aneja and copy endorsed to me, Smt. Kailash Rani Dang informed that the documents shall be produced before the Arbitrator and that Shri S.C. Aneja is free to inspect and get the copies from Dr.Amar Nath Kumar on that date i.e. 8.8.99 accordingly.

In spite of the full information and knowledge about the date fixed hearing i.e. 8.8.99 Shri S.C.Aneja remained absent on the date and did not appear to participate in the proceeding or to obtain copies of the documents Smt. Kailash Rani Dang remained present on that date, I also waited upto 2 p.m., but in vain.

To give one more opportunity to Shri S.C. Aneja I fixed another date i.e. 25.8.99 as the next date of hearing specially mentioning therein that Smt. Kailash Rani Dang has offered to supply to Shri S.C.Aneja copies of the documents relied upon by her on the next date of hearing i.e. 25.8.99 in my presence as Arbitrator. By means of letter dated 8.8.99 sent through Speed Post. And I also fixed the following Venue as the place of hearing at 11 a.m. on 25.8.99:-

14, Old Navyug Market,
Ghaziabad (U.P.).

A copy of the said letter was also sent to Sen & Sen Advocates and Consultants, B-12, Nizamuddin West, New Delhi with reference to their letter dated 7.8.99.

On 25.8.99 Smt. Kailash Rani Dang appeared and filed the following documents in support of her claim:

1. Partnership deed in original dated 7.6.1995.
2. Family arrangement in original dated 21.7.1998

3. Copy of affidavit filed by Shri S.C.Aneja in the High Court.
4. Copy of letter of reference dated 2.7.99 to Shri Hans Raj Dang.
5. Copy of letter of Shri Hans Raj Dang dated 7.7.99 expressing his inability to arbitrate.

I waited upto 2 p.m. on 25.8.99 for Shri S.C.Aneja to appear but nobody appeared on his behalf. Thus, it is established that Shri S.C.Aneja only wanted to delay the proceedings and he deliberately absented himself in the hearing and accordingly, I was left with no option but to proceed/continue with the arbitration proceedings in his absence." Nothing more needs be said about Subhash Chander's conduct in the face of these serious indictments by the arbitrator.

9. In view of the above observations, and the fact that no misconduct has been alleged against the arbitrator, we must take it as proved that Subhash Chander had deliberately stayed away from the arbitration proceedings in order to frustrate and delay the claim of Kailash Rani.

10. Mr. Ranjeet Kumar, as already indicated above, has also challenged the very appointment of the arbitrator and has referred us to the family arrangement under which Shri Hans Raj Dang had been named as the sole arbitrator and on his refusal Dr. Amar Nath Kumar, to suggest that as no request had been made to Shri Hans Raj Dang and as there was no refusal on his part, the appointment of the alternate arbitrator was not justified. This matter has been dealt with by the arbitrator in his award, but we have re-examined the matter ourselves. We find from the record that Kailash Rani had addressed a letter dated 2nd July 1999 to Shri Hans Raj Dang to arbitrate in the dispute and, he had, by his letter dated 7th July 1999, refused to accede to the request because of ill health and that a copy of this letter had also been endorsed to Subhash Chander. Faced with this situation, Kailash Rani had written letter dated 12th July 1999 requesting Dr. Amar Nath Kumar to act as the arbitrator which request had been accepted. The facts stated above have not been denied by Subhash Chander at any stage. It must, therefore, be taken that the aforesaid communications had indeed been exchanged. Moreover, even assuming that the family arrangement dated 21st July 1998 had not been executed and a dispute on facts had to be raised, Subhash Chander ought to have done so before the arbitrator and a boycott of the proceedings was unjustified. We, therefore, find no flaw whatsoever in the conduct of the arbitration proceedings by Shri Amar Nath Kumar.

11. The judgment of the High Court cannot, to our mind, be sustained. We, accordingly, allow Civil Appeal No. 7258 of 2008 arising out of SLP) No. 1958 of 2008, set aside the judgment of the High Court and restore that of the Executing Court dated 31st October 2006. Civil Appeal No. 7257

of 2008 arising out of SLP) No. 1957 of 2008 is rendered infructuous. There will be no order as to costs.