

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 5TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

W.P NO.105455 OF 2023

BETWEEN:

1. T. YOUNIS S/O. HAJIT AMIRSAB,
AGE: 56 YEARS, OCC.: BUSINESS,
R/O: RESIDING BESIDE SATYA SHAMALA SCHOOL,
SHANKALAPUR, HOSAPETE-583201.
2. DASANAL MALLAMMA,
AGED ABOUT: 58 YEARS, OCC: HOUSEHOLD,
3. DASANAL SHANKARAPPA,
AGED ABOUT: 48 YEARS, OCC: AGRICULTURE,
4. L.B. LAXMI DEVI,
AGED ABOUT: 47 YEARS, OCC: HOUSEHOLD,
5. DASANAL RENUKA W/O. BHARMAPPA,
AGED ABOUT: 35 YEARS, OCC: HOUSEHOLD,
6. DASANAL HANUMANTHAPPA,
AGED ABOUT: 44 YEARS, OCC: AGRICULTURE,
7. DASANAL NIRMALA,
AGED ABOUT: 30 YEARS, OCC: HOUSEHOLD,

ALL ARE R/O: HOUSE NO.3/1, 18TH WARD,
S.R. NAGAR, HOSPET, TAL & DIST: HOSPET.

PETITIONERS NO.2 TO 5 AND 7 REPRESENTED BY
THEIR G.P.A. HOLDER PETITIONERS NO.6.

(BY SMT. ARCHANA A. MAGADUM, ADVOCATE)

...PETITIONERS

AND:

1. NATIONAL HIGHWAY AUTHORITY OF INDIA,
C-10, "SHREE NILAYAM,
1ST MAIN, 2ND CROSS, VIVEKANANDA NAGAR,
BEHIND R.T.O. OFFICE,
HOSAPETE-583201,
REPRESENTED BY ITS PROJECT DIRECTOR.

2. THE SPECIAL LAND ACQUISITION OFFICER AND
COMPETENT AUTHORITY,
NATIONAL HIGHWAYS AUTHORITY OF INDIA,
4TH MAIN ROAD, 5TH CROSS,
OPPOSITE GANGAPARAMESHWARI,
KALYAN MANTAPA, VIDYANAGARA, BALLARI-583 104,
REPRESENTED BY THE SPECIAL LAND ACQUISITION OFFICER.

3. THE ARBITRATOR AND ADDITIONAL DEPUTY COMMISSIONER,
BELLARY DISTRICT,
HUNGUND-HOSPETE SECTION (NH-13)
OFFICE OF THE DEPUTY COMMISSIONER
AND DISTRICT MAGISTRATE,
OPPOSITE TO RAILWAY STATION,
BALLARI-583101.

...RESPONDENTS

(BY SRI RAKESH BILKI, ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI QUASHING THE IMPUGNED ORDER IN A.A. NO. 23/2022 AND A.A. NO. 25/2022 DATED 24/08/2023 PRODUCED AT ANNEXURE-A AND ANNEXURE-A1 PASSED BY THE LEARNED PRINCIPAL DISTRICT AND SESSIONS JUDGE BALLARI.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.09.2023, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned petition is filed assailing the order of the Court below passed on I.A.No.4 filed under Section 151 of CPC, wherein the petitioners application filed in I.A.No.4 requesting the Court to dismiss the application filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the A&C Act') as not maintainable as application under Section 34 is not accompanied by a certified copy of the award and the same was produced during the pendency of the proceedings and after expiry of the period of limitation indicated under Section 34(3).

2. The Court below having examined the rival contentions has declined to entertain the application filed in I.A.No.4 on the ground that application filed under Section 34 is accompanied by the photocopy of a signed copy of an award

and therefore, objections raised by the petitioners herein was over-ruled by the Court below. The said order is under challenge.

3. Learned counsel appearing for the petitioners reiterating the grounds urged in the petition would vehemently argue and contend that in an application under Section 34, the applicant is bound to produce the certified copy of the award. Reiterating the grounds urged in the petition, she would point out that while filing said application, there were certain accepted procedures that need to be followed, even if they are not enumerated in the A&C Act or in other Statute. She would further submit that since Section 34 application is not accompanied by a certified copy of the award, there is a fundamental defect in the application and therefore, subsequent production of certified copy of award would not remove the fundamental defect and therefore, she would contend that the application filed under Section 34 needs to be dismissed on that sole count.

4. To buttress her arguments, she has placed reliance on the judgment rendered by the High Court of Chattisgarh, Bilaspur in the case of ***Union of India through Ministry of Road, Transport and Highways vs. Bhola Prasad Agrawal and Another***¹. By placing reliance on the said judgment, she would point out that the certified copy of award is produced on 03.06.2023 while award was passed by the Arbitrator on 04.07.2022 and therefore, she would contend that application is not within time and therefore, the Court below erred in rejecting the application.

5. *Per contra*, learned counsel appearing for the respondent Nos.1 and 2 repelling the contentions advanced by the learned counsel for the petitioners would vehemently argue and contend that application under Section 34 is filed along with a photocopy of the award and since application is filed within the period stipulated under Section 34(3) of the A&C Act, the objections raised by the petitioners cannot be

¹ Arbitration Appeal No.15/2022 Dtd: 21.09.2022

entertained and the Court below has rightly rejected the application. Counsel on record would further point out that this objection is raised when the matter was posted for arguments and therefore, it is contended that the objections raised in the application filed in I.A.No.4 lacks bonafides and the same is tainted with malafides and therefore, he would request this Court not to interfere with the order under challenge.

6. Heard learned counsel for the petitioners and learned counsel appearing for the contesting respondents. Perused the order under challenge.

7. Section 34 of the A&C Act confers right upon a party to file an application before the Court for setting aside an arbitral award. While filing such an application, there are certain accepted procedures that need to be followed. A question may arise as to whether application filed under Section 34 if suffers from minor procedural defects and if not

found to be fundamental in character in absence of their adherence, the filing of 34 application can be rendered *non-est*.

8. The Delhi High Court in recent cases namely ***Oil and Natural Gas Corporation Limited vs. Joint Venture of M/s. Sai Rama Engineering Enterprises (ONGC)***² and ***Ambrosia Corner House Private Limited vs. Hangro S.Foods (ACHPL)***,³ had an occasion to deal with the question relating to defective application filed under Section 34. In both the cases cited supra, the judgment debtors filed applications impugning arbitral awards within the prescribed time limit of three months plus further conditional time limit of 30 days (statutory limitation) as enshrined under Section 34 of the A&C Act. In both the cases, 34 application had certain defects. In ***ONGC***, some affidavits which were signed by the deponent and also duly verified, were not attested. The Vakalathnama was also not stamped. While in ***ACHPL*** case,

² FAO(OS) CM.Nos.49024/2019 & 1785/2020 Dtd: 09.01.2023

³ 2023 SCC Online Del 517

copy of the impugned award was not filed along with application and affidavit in support of application was not attested.

9. In **ONGC** case, the judgment debtors tried to cure all the defects and were found to be successful in doing so, but not before the expiration of statutory limitation. On the other hand in **ACHPL** case, the judgment debtor was successful in weeding out all the defects and claimed to have done so within the statutory limitation. But the decree holder contested this and contended that defects were cured after the expiry of statutory limitation. In both the cases, the decree holders contended that 34 application though filed within statutory limitation, had procedural deficiencies and therefore, it was claimed that applications are *non-est* and since rectifications were made only after expiry of statutory limitation, the applications were not maintainable. The Delhi High Court in both the cases, decided in favour of the judgment debtors and held that applications would not be

considered *non-est* because the defects were not material and fundamental. In **ACHPL**, the copy of impugned award was not produced while in the present case on hand, the respondent Nos.1 and 2 while filing 34 application have produced a photocopy of the award sent by the Arbitrator through RPAD.

10. In the recent judgments, rendered by the Delhi High Court in the case of **India Tourism Development Corporation vs. M/s. Bajaj Electricals Limited**⁴, the Delhi High Court has reiterated the dictum laid down by the **ONGC** case and emphasized that Section 34 application must be accompanied by a copy of the impugned award, otherwise application would be *non-est*.

11. In the light of the judgment rendered by the Delhi High Court on this point, let me assess the facts of the present case on hand to determine as to whether non-furnishing of a

⁴ O.M.P (COMM) 404/2019 dated 13.01.2023

certified copy of award along with application filed under Section 34 would render *non-est*.

12. The collective analysis of the judgment cited supra demonstrates the relevance of Section 31(5) concerning computation of the limitation period for filing an application under Section 34. If photocopy of the award is filed with an application under Section 34, it can be inferred that there is sufficient compliance and it can be deemed that Section 34 application is filed within the stipulated period as contemplated under Section 34 of the A & C Act. The purpose of service of award copy is only to enable the parties to challenge the award and compute the limitation under Section 34(3) of the A&C Act. Therefore, a signed copy of arbitral award assumes relevance only for the computation of limitation period.

13. In the present case on hand, the petitioner is not disputing the fact that application was filed within the

stipulated period. Therefore, non-furnishing of a certified copy of award will not render Section 34 application as a *non-est*.

14. It is also borne from the records that respondents were served with copy of only a photocopy of the award by the Arbitrator which was sent by RPAD. Therefore, filing in the present case on hand cannot be rendered *non-est* only on the ground that Section 34 application was not accompanied by a signed copy of the award. Section 34(3) specifies the time period within which the application for setting aside the award may be made, which is three months from the date of receipt of arbitral award by the applicant. Apart from sub-sections (2) and (3) of Section 34, sub-section (5) inserted by way of the Amendment to the Act in 2015, which mandates issuance of prior notice to the other party before filing of application under Section 34.

15. Upon careful examination of the provisions of Section 34, it becomes evident that while certain requirements

have been made mandatory before filing an application, for setting aside the award, filing of a signed copy of the award is not one of them. At the same time, it is important to note that Section 34 also does not explicitly state that an application under Section 34 can be filed only on the basis of a signed copy of award. Thus, it can be inferred that Section 34 is silent on this aspect.

16. The Delhi High Court in **ONGC** case, at para 41, has laid down the test to determine whether a filing is *non-est*. The test has four indispensable conditions. These are (a) the application must be intelligible, (b) the filing must be authorized, (c) it must contain contents that are material to the case, such as the names of the parties and the grounds for challenging the award, and most importantly, (d) it must be accompanied by a copy of the impugned award. The Delhi High Court, therefore, emphasized on laying thrust on these four requirements. Therefore, what can be inferred is that Section 34 application must be accompanied by copy of the

award and not necessarily a signed copy of the award at the stage of filing of the application under Section 34. However, if applicant intends to succeed and wishes to seek setting aside of an arbitral award, there shall be no impediment to produce the signed copy of award during the pendency of the proceedings.

17. This Court has also taken note of the fact that the A&C Act does not contain any mandatory procedural requirements except under Section 34(5) which says that “an application under this Section shall be filed by a party only after issuing prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement”.

18. Therefore, in the light of the observations recorded by this Court supra, I am of the view that Courts are required to adopt more liberal approach while considering the mandatory requirements relating to filing of Section 34

application. What the Courts should normally scrutinize while registering Section 34 application is to ascertain whether application is filed without signatures of either the party or its authorized or appointed counsel and affidavits are duly signed, verified and attested. The applicants have to strictly adhere to the above said requirements.

19. This Court has also taken cognizance of the fact that this application is filed when the matter was set down for arguments. This Court has also taken cognizance that in previous round of litigation, this Court had directed to dispose of the application within a period of three months. The learned Judge while rejecting the application has rightly noticed that these applications are filed only to drag the matter.

20. In the light of discussion made supra, I am not inclined to entertain the grounds urged in the instant writ

petition. The writ petition is devoid of merits and accordingly stands dismissed.

The pending interlocutory application, if any, does not survive for consideration and stands disposed of accordingly.

Sd/-
JUDGE

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