



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Miscellaneous Appeal No.3306/2019

1. Javed Mohammad S/o Shri Abdul Sattar, Resident Of House No. 2627, Teli Mohalla, Nasirabad, District Ajmer
2. Salauddin Khan S/o Shri Abdul Sattar, Resident Of House No. 2627, Teli Mohalla, Nasirabad, District Ajmer

-----Appellants

Versus

1. Kotak Mahindra Bank Ltd., Registered Office 36-38 A Nariman Point Mumbai 400021 Branch Office Krishna Tower 57 Sardar Patel Marg C Scheme, Jaipur Through Signatory Authority Ajay Sharma
2. Shri Indrpal Singh Mehla Sole Arbitrator, Resident Of 21/198,kaveri Path, Near K.L. Saini Stadium, Mansarovar, Jaipur
3. Salauddin Khan S/o Shri Naeemuddin Khan, Resident Of House No. 2308, Badi Mandi, Nasirabad, Ajmer. Deceased hence, through Lrs:-
3/1 Rukaiya Wife of Late Shri Salaumuddin, Resident of House No.2308, Badi Mandi, Nasirabad, Ajmer.
3/2 Salmaan Son of Late Shri Salamuddin, Resident of House No.2308, Badi Mandi, Nasirabad, Ajmer.
3/3 Shoaib Son of Late Shri Salamuddin, Resident of House No.2308, Badi Mandi, Nasirabad, Ajmer.
3/4 Sumaiya Daughter of Late Shri Salamuddin, Resident of House No.2308, Badi Mandi, Nasirabad, Ajmer.
3/5 Simran Daughter of Late Shri Salamuddin, Resident of House No.2308, Badi Mandi, Nasirabad, Ajmer.

-----Respondents

For Appellant(s)	:	Mr.Jaideep Singh, Adv.
For Respondent(s)	:	Mr.Naman Yadav, Adv. for Mr.Pankaj Gupta, Adv.



HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE BHUWAN GOYAL
Order

28/04/2025

AVNEESH JHINGAN, J:-

1. This appeal is directed against the order dated 19.03.2019 of the Commercial Court, Jaipur dismissing the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') on the ground of limitation.

2. The appellants got financed a truck from the respondent No.1. On failure to maintain financial discipline the arbitration proceedings initiated culminated in award dated 07.12.2009. The petition under Section 34 of the Act filed was dismissed having filed beyond one hundred and twenty days of receipt of award.

2. Learned counsel for the appellants submitted that the petitioner gained knowledge of award on receipt of notice from the Executing Court. The contention is that limitation should be counted from the date of knowledge to the appellant.

3. Learned counsel for the respondents refutes the contention submitting that the award was sent through the registered post on 11.12.2009 and was delivered on 16.12.2009. That the acknowledgment receipt was placed on record.

4. On a pin pointed query during the hearing, learned counsel for the appellants shows inability to point out the pleading that the Haseena was not related to the appellants and was not living at the given address with the appellant.

5. The contention is that the limitation shall start running from the date of knowledge, lacks merit.



6. Section 27 of the General Clauses Act, 1897 deals with the meaning of service by post. The three requirements for invoking the presumption of service are: (i) sending the document through registered post by pre-paying the charges; (ii) letter containing the document, and (iii) there being a proper address on the letter.

In the present case, it is a case where presumption of service of award is to be invoked. It is not being disputed that the letter was sent at the address of the appellants, was delivered there and there is no pleading that the person on whom it was delivered was not the family member of the appellants residing with them.

7. Section 34 (3) of the Act is reproduced below:-

“(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

Sub-section (3) of Section 34 of the Act stipulates filing of an appeal within ninety days of receipt of the arbitral award. The proviso to the sub-section empowers the court to condone the delay upto thirty days.

8. In absence of disputing the findings recorded by the Commercial Court that the registered letter containing the award



was delivered at the address of the appellant on 16.12.2009 and the Commercial Court having no power to condone the delay beyond thirty days, rightly dismissed the petition under Section 34 of the Act.

9. No case is made out for interference, the appeal is dismissed.

(BHUWAN GOYAL), J

(AVNEESH JHINGAN), J

Himanshu Soni/20

Reportable: Yes