

CASE NO.:
Appeal (civil) 1238-1239 of 2001

PETITIONER:
EAST INDIA HOTELS LTD.

Vs.

RESPONDENT:
AGRA DEVELOPMENT AUTHORITY

DATE OF JUDGMENT: 21/03/2001

BENCH:
Syed Shah Mohammad Quadri & S.N. Phukan.

JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T..JJ U D G M E N T

PHUKAN, J.

Leave is granted.

In these appeals by special leave, appellant has assailed the judgement dated 1.10.1999 of the High Court of Allahabad passed in Civil Revision No.106 of 1999. The appellant filed an application under Section 20 of the Arbitration Act, 1940 (for short the Act) before Additional Civil Judge, Agra, which was allowed and the disputes between the parties were referred to arbitration. After the proceedings were concluded, the Umpire filed the award before the court on 13.11.1998, which was made rule of the court by order dated 25.02.1999. Being aggrieved, the respondent filed a revision petition before the High Court, which was allowed by the order under challenge, on the ground that no notice under sub-section (2) of Section 14 of the Act was served on the respondent.

To appreciate the contentions raised by the learned counsel for the parties, it is necessary to refer to the orders passed by the trial court on different dates:

13.11.1998 Case was called for. The Parties are absent. The Award was filed by the Umpire Shri Jethanandji. Shri Prem Narain Agarwal, learned counsel for East India Hotels and Shri Suresh Chandra Gupta, learned counsel for Agra Development Authority be informed. Umpire Shri Jethanandji shall place on record all the papers concerning the Award within fifteen days.

Case be put up on 14.12.1998 for further orders.

Sd/- Vith Addl. Civil
Judge (Sr. Division)
Agra.

Noted for filing of the Award.

Sd/- 13-11-1998
(Counsel for East India Hotel).

Sd/- 19-11-1998
For ADA (Parokar)
Kirpa Shankar.

Sd/-
Suresh Chander Gupta
Sr. Standing Counsel, ADA
23-11-1998.

On 28.11.1998 case record was put up and the court recorded the fact of filing of papers concerning the award by the Umpire, as directed by the court and further directed to put up the case on the next date fixed. On 14.12.1998 the presence of the parties was noted but the court could not take up the case for want of time. That order was duly noted on behalf of the respondent. On 4.01.1999 the court recorded filing of the application under Section 17 of the Act by the appellant and noted that a copy was supplied to the respondent who prayed for time to file reply. The case was put up on 7.01.1999, presence of parties was recorded and the next date was fixed on 14.01.1999 as on that date the case could not be taken up on account of strike by the lawyers. On 19.02.1999 parties were present in the court, arguments were heard and on 25.02.1999, the award was made rule of the court.

We have now to determine as to what amounts to service of notice under sub-section (2) of Section 14 of the Act.

Dr. Singhvi, learned senior counsel has contended that notice under sub-section (2) of Section 14 need not be in writing and what is essential is that notice or intimation or communication of filing of Award must be issued and communicated by the court to the parties. According to the learned counsel notice to the counsel representing the party would be sufficient compliance in view of Rule 5 of Order III C.P.C. The learned senior counsel has further submitted that as the order passed by the trial court on 13.11.1998 was noted by the learned standing counsel for the respondent, it was sufficient notice under sub-section (2) of Section 14 of the Act. In the alternative it was contended by the learned senior counsel that if the said order dated 13.11.1998 is not accepted as notice under sub-section (2) of Section 14 as along with the award, the records were not filed by the Umpire, the order dated 14.12.1998 would amount to notice, as the order was passed by the trial court after records were filed by the Umpire and it was duly noted on behalf of the respondent.

Mr. Dwivedi, learned senior counsel for the respondent drawing our attention to the language of sub-section (2) of Section 14 of the Act, has contended that only after award along with depositions and connected documents are filed by the Arbitrator/Umpire, the stage of issuance of notice under said sub-section (2) would arise. In this connection learned counsel has also placed reliance on Rule 8 of the Arbitration Rules framed by the Allahabad High Court. According to the learned senior counsel as on 13.11.1998 records from the Umpire were not received by the court, the said order though noticed by the learned counsel for the respondent would not be a notice to the parties.

We extract below sub-section (2) of Section 14 of the Act: 14. (2) The arbitrators or umpire shall, at the request of any party of the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

From a perusal of the above provision, shorn of unnecessary details, it is clear that notice under sub-section (2) of Section 14 of the Act need not be in writing and that it can also be oral. What is essential is that there must be service of notice or intimation or communication of the filing of the award to the parties, mode of service of such a notice being immaterial. But such information, communication and knowledge must be by or pursuant to order of the court. However, after filing of an award by the arbitrator or the Umpire in the court, if it merely records the presence of the parties or their counsel but does not indicate that notice of filing of the award be given to the parties, no service of notice can be attributed from that fact, as notice must be referable to an act of the court.

Now we shall refer to the cases cited by the learned counsel. In Nilkantha Shidramappa Ningashetti vs. Kashinath Somanna Ningashetti and Others 1962 (5) SCC 400, a four judge bench while considering sub-section (2) of Section 14 of the Act held as follows:

Sub-section (1) of Section 14 of the Arbitration Act, 1940 (X 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 Oxford Concise 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

party, in view of r.5 of O.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.

In Secretary to Govt. of Karnataka and Another vs. V. Harishbabu 1996 (5) SCC 400 this court had occasion to consider again sub-section (2) of Section 14 of the Act, the Bench noticed the judgment passed in Nilkantha Shidramappa Ningashetti vs. Kashinath Somanna Ningashetti and Others (supra) and held that notice under sub-section (2) of Section 14 of the Act need not be in writing and it might be oral and there should be no formal mode of service; what is essential is that notice or intimation or communication of the filing of the award must be issued by the court to the parties and served upon the parties. The dictum in these cases support the view, we have expressed.

On 13.11.1998 the Trial Court recorded the fact of filing of the award by the Umpire and directed that learned counsel for the parties be informed. This order was duly noted by the counsel for both the parties. In our opinion the essential requirement of sub-section (2) of Section 14 was duly complied with inasmuch as intimation of filing the award to the parties was communicated. As notice to the counsel is notice to the party, the above order dated 13.11.1998 together with the endorsement of the advocate on the proceeding sheet would amount to a proper and valid service of notice under sub-section (2) of Section 14 of the Act. We have already mentioned that as per the direction of the court Umpire also filed the record. We, accordingly hold that order dated 13.11.1998 which was noted by the learned counsel, would amount to a valid notice under sub-section (2) of Section 14. We, therefore, need not consider the alternative arguments of Dr. Singhvi.

We may now consider the submission of Mr. Dwivedi, learned senior counsel for the respondent. Learned senior counsel has contended that the stage of issuance of notice would come only after filing of the records by the Arbitrator/Umpire and as no records were filed on 13.11.1998, the order passed by the court on that date could not be treated as notice to the parties. We cannot accept this contention. From a plain reading of sub-section (2) of Section 14 it would appear that under this sub-section the stage at which notice is required to be given by the court is after filing of the award and the notice pertains to the fact of filing of the award in Court. It is the duty of the Arbitrator/Umpire to file depositions, documents, etc. along with the award. If only award is filed and other documents are not filed, the Court may issue notice under this sub-section after the award is filed. It need not postpone issuing of notice till all the documents are filed. In our view a notice issued after filing of the award but before filing of other documents is a valid notice under sub-section (2) of Section 14 of the Act and no fresh notice need be issued after filing of other documents by the Arbitrator/Umpire.

In the case on hand by order dated 13.11.1998, court not only directed issuance of the notice to the parties of the filing of the award but also directed the Umpire to file the

records which was duly compiled with by the Umpire before the next date of hearing. After taking notice of filing of award no controversy was raised by the respondent regarding not filing of the records till the award was made rule of the court nor could it have raised such a controversy on the facts. In fact after filing of the application under Section 14 of the Act by the appellant, time was prayed for to file a reply on behalf of the respondent but no such reply was filed. In view of the above position, we are of the opinion that the contention of Mr. Dwivedi has no force and accordingly it is rejected.

Mr. Dwivedi has also pressed into service Rule 8 of the Arbitration Rules framed by the High Court. This rule prescribes the mode of filing of the award and the procedure to be followed by any party, if the records are not filed by the Arbitrator/Umpire. This rule does not speak of issuance of notice by the court under sub-section (2) of Section 14 and, therefore, would not be relevant for the present purpose.

Relying on Rule 6 of the Arbitration Rules, Mr. Dwivedi has contended that the order passed by the court on 04.01.1999 could not be construed as a notice. This point needs no consideration as no submission was made on behalf of the appellant that the order passed on that date would be a notice under sub-section (2) of Section 14 of the Act.

For what has been stated above we find merit in the present appeals and accordingly they are allowed by setting aside the impugned judgment. The order of the Additional Civil Judge, Agra dated 25.02.1999 making the award a rule of the court is affirmed. Considering the facts and circumstances of the case, we direct the parties to bear their own cost.

T.N. CIVIL SUPPLIES CORPN. WORKERS UNION VS T.N. CIVIL SUPPLIES CORPN.LTD. & ORS.