

**MERCHANT BANK OF SRI LANKA LIMITED**

**v.**

**AMARASIRI DE SILVA**

SUPREME COURT

S.N. SILVA, C.J.

BANDARANAYAKE, J. AND

ISMAL, J.

SC (APPEAL) NO. 79/99 (A)

SC (HC) LA APPLICATION NO. 9/99

(HC/ARB/34/97)

AND

(HC/ARB/127/98)

29<sup>TH</sup> NOVEMBER, 2000

*Arbitration - Arbitration Act, No. 11 of 1995 - Requirement to deliver a copy of the award to each party - Section 25(4) of the Act - Application for enforcement of the award under section 31(1) of the Act - Whether the registered article postal receipt must be attached to such application in proof of the communication of the award under section 25(4).*

In arbitration proceedings between the appellant and the respondent, the Registrar of the Sri Lanka National Arbitration Centre had sent a letter dated 13.12.1996 to the appellant with the original of the award dated 27.11.1996. The letter stated that a copy of the award was sent to the respondent's address. The appellant made an application on 17.07.1997 for enforcement of the award in terms of section 31(1) of the Arbitration Act, No. 11 of 1995 ("the Act")

The High Court of Colombo refused to enforce the award on the ground that the registered postal article receipt in proof of the communication of the award was not attached. Thereafter the appellant filed a petition and affidavit with a motion dated 4.11.1998 in the High Court tendering the relevant postal article receipt dated 17.12.1996 but submitted that it was not mandatory to attach the receipt. The High Court disallowed the appellant's application for non-compliance with section 25(4) of the Act which required that a copy of the award shall be delivered to each party.

**Held :**

The delivery of the award to the parties is mandatory. However, in the circumstances the appellant had adduced sufficient evidence of compliance with section 25(4) as to the delivery of the award to the respondent. Hence the High Court should take action in terms of section 31(6) of the Act.

**APPEAL** from the Judgment of the High Court of Colombo.

*Romesh de Silva, P.C.* with *Hiran de Alwis* for appellant.

*Jefry Zalnudeen* for respondent.

*Cur. adv. vult.*

March, 27, 2001.

**SHIRANI A. BANDARANAYAKE, J.**

This is an appeal from the judgment of the High Court of Colombo dated 24.04.1998. Leave to appeal was granted by this Court by Order dated 22.09.1999. The facts are briefly as follows:

The appellant entered into a lease agreement, bearing No. 94/2501 dated 23.09.1994 with the respondent in Colombo. In terms of clause 16 of the said lease agreement, provision was made for recourse to arbitration, in the event of any dispute between the appellant and the respondent. In April 1996, the appellant informed the respondent that a sum of Rs.712,826/79 was due from him as at 31st October 1995. The appellant then informed the respondent that he is referring this dispute that had ensued, for arbitration and in terms of clause 16 of the lease agreement, requested the respondent to nominate an arbitrator within a week from the date of his letter. The respondent failed to nominate an arbitrator and the sole arbitrator, nominated by the appellant, fixed arbitration proceeding for 07.10.1996. The respondent was informed of the commencement of the arbitration proceedings.

By his letter dated 07.10.1996, respondent undertook to settle his dues and wanted time to meet the Bank officials but had failed to do so. When the proceedings commenced on 05.11.1996, the respondent was absent and unrepresented and the arbitrator proceeded with the inquiry *ex-parte*.

The arbitrator made an award dated 27.11.1996 and the Registrar of the Sri Lanka National Arbitration Centre, had sent

a letter dated 13.12.1996, to the appellant with the original of the award. In that letter it is stated that a copy of the award was sent to the address of the respondent. The appellant made an application on 17.07.1997 for the registration and enforcement of the said arbitral award in terms of section 31(1) of the Arbitration Act, No.11 of 1995.

The High Court of Colombo refused to enforce the arbitral award on the ground that the registered postal article receipt, in proof of the communication of the arbitral award to the respondent was not attached. The appellant thereafter filed a petition and affidavit with a motion dated 04.11.1998 in the High Court of Colombo tendering the relevant postal article and submitted however that it was not mandatory to attach the registered postal article receipt. The High Court Judge, by order dated 04.11.1998, disallowed the appellant's application for non-compliance of section 25(4) of the Arbitration Act, No. 11 of 1995.

Section 25(4) of the Arbitration Act, No. 11 of 1995 states that,

"After the award is made, a copy signed by the arbitrators constituting the arbitral tribunal in accordance with subsection(1) of this section shall be delivered to each party."

According to Russell,

". . . a requirement that the award be delivered will be satisfied when it has been notified to the parties by service of a copy on each one of them (*Russell on Arbitration*, 21<sup>st</sup> edition, 1997, pg.275)."

Thus section 25(4) of the Arbitration Act, No.11 of 1995, clearly requires that a signed copy of the arbitral award be delivered to each party after it is made by the tribunal. Such delivery of the award to the parties, in my view, is mandatory considering the consequential steps that could be taken by the parties in relation to the enforcement of the award thus communicated, viz, to

enforce or to set it aside in terms of section 31 or 32 of the Arbitration Act, No.11 of 1995.

It appears that at the time this matter was taken up at the High Court, Colombo, the original registered postal article receipt in proof of the communication of the arbitral award to the respondent, was not attached to the petition. However, by motion dated 04.11.1998, the appellant had produced the original registered postal article receipt dated 17.12.1996 and the pink slip, certifying the registered postal article receipt. In fact the appellant had brought it to the notice of Court by his petition dated 04.11.1998 that the original of the registered postal article receipt was filed in a similar application in High Court Arbitration case No. 26/97.

In these circumstances, I hold that the appellant has adduced sufficient evidence of compliance with the requirement in section 25(4) of the Arbitration Act, No.11 of 1995 as to the delivery of the award to the respondent. The appeal is accordingly allowed and the judgment dated 24.04.1998 of the High Court, Colombo is therefore set aside. In all the circumstances, there will be no costs.

This matter is referred back to the High Court for action to be taken in terms of section 31(6) of the Arbitration Act, No.11 of 1995.

**S.N. SILVA, C.J.** - I agree.

**ISMAL, J.** - I agree.

*Appeal allowed.*