

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 6430 of 2011(O&M)
Date of decision : August 18, 2015

Tajinder Singh

..... Appellant

Versus

M/s PKF Finance Limited and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Pavan Malik, Advocate and
Mr. Kulbhushan Soi , Advocate
for the appellant.

Mr. Rohit Sud, Advocate
for respondent No.1 and 2.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The challenge in the present appeal is to the impugned order dated 9.8.2011 whereby objections filed by the appellant/creditor/loanee who has alleged to have obtained a loan for purchase of vehicle has been dismissed.

Mr. Malik, learned counsel for the appellant raised the foremost objection that no notice of passing of award has been given, much less there has not been compliance of principles of natural justice, therefore, the award is liable to be set aside, as the appellant had, prior to the reference of the arbitration, filed a civil suit. In the said suit, application under Section 8 of the Arbitration and

Conciliation Act, 1996 was filed by the respondent and order dated 15.3.2008 was passed whereby the civil court observed that the matter was liable to be referred to the Arbitrator. He submits that he has not received notice from the Arbitrator regarding entertaining of reference. The appellant could have served notice about the arbitration proceedings when the parties were alive to the situation before the civil court.

Learned counsel for the respondents submits that the order is perfect, legal and justified. The appellant had notice of the arbitration proceedings. He refused to receive the notice of the arbitrator and willfully absented himself from the arbitration proceedings, therefore there is no illegality and perversity in declining the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996.

I have heard learned counsel for the parties and appraised the paper book.

The Legislature in its wisdom has held that while entertaining the reference, one of the grounds is that party making application shall be given prior notice. The arbitrator as per record, had already entered into reference on 21.12.2007. The parties were already alive to the dispute before the civil court. Nothing prevented the respondent to serve the copy of the arbitration proceedings so that the appellant could participate/file counter claim, if any.

The District Judge, has erroneously not noticed the proceedings conducted by the Arbitrator, much less the order dated 15.3.2008 as noticed above. Since the appellant has not been

heard and has been proceeded ex-parte by the arbitrator without putting his defence, I deem it appropriate to set aside the impugned order as well award and remit the matter back to the arbitrator, which is to be appointed as per the agreement. The arbitrator on entering the reference shall serve notice of the arbitration proceedings at the given address of the appellant and as well as to his counsel in the High Court.

Parties shall be permitted to file claim/defence/counter claim, if any before the arbitrator.

It is expected that the arbitrator shall decide the same as expeditiously as possible preferably within four months.

The appeal is accordingly allowed.

(AMIT RAWAL)
JUDGE

August 18 , 2015
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