

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.1696 of 2013 (O&M)

Date of decision : 31.08.2015

Shiromani Gurdwara Prabandhak Committee

...Appellant

Versus

M/s Chanan Singh and Company and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. BBS Randhawa, Advocate for the appellant.

Mr. A.K. Maleri, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the order dated 07.02.2013, whereby objection petition filed by the appellant-SGPC against the award dated 30.01.1997, has been dismissed.

Mr. Kanwaljit Singh, Senior Advocate assisted by Mr. BBS Randhawa, learned counsel appearing on behalf of appellant submits that award has been rendered by the Arbitration Committee, ex parte, as no notice of the arbitration proceedings was received by the appellant. It has been specifically mentioned in the objection No.4 that all notices by the Arbitration Committee ought to have been sent at Chandigarh and not at

Amritsar. It has further submitted that summons were never sent nor received at the office of SGPC, Chandigarh, therefore, there was no occasion for the objector to appear before Arbitration Committee, thus, objections falls within parameters of Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act').

He further submits that Objecting Court has failed to refer and deal with such objections and hence rejected the same in most sketchy, mechanical and stereo typed manner. He further submits that no notice of the arbitration proceedings have been received. Even the Objecting Court has not referred to the specific objections taken in this regard, thus, award is liable to be set aside.

Mr. A.K. Maleri, learned counsel appearing on behalf of respondent No.1 submits that agreement dated 06.12.1991 was entered into between Contractor and Shiromani Gurdwara Prabandhak Committee at sub Office i.e. House No.30, Sector-5, Chandigarh through President. The Arbitration Committee had not sent one, but many notices, of the arbitration proceedings. First notice was sent on 04.10.1996 to the appellant for appearance before the Committee on 28.10.1996. Second was sent on 26.11.1996 for causing appearance on 28.12.1996. Third was sent on 28.12.1996 for causing appearance on 17.01.1997. All the aforementioned summons were sent through registered post but on all occasions the appellant did not put in appearance. In one of the notice sent for appearance on 17.01.1997, it is categorically mentioned that in case, the appellant does not appear, ex parte proceedings shall be taken, but despite that, the appellant-Committee did not put in appearance.

He further submits that even ex parte award was also sent through registered post by the Arbitrator at the same very address i.e. House No.30, Sector-5, Chandigarh and the same has been received and the objection under Section 34 has been filed, thus, Objecting Court has rightly dismissed the objections which are not falling within the parameters of Section 34 of the Act.

Mr. Kanwaljit Singh, learned Senior Counsel in rebuttal has relied upon following judgments in support of his contentions to contend that Arbitrator was required to resort to the substitute services.:-

- i) *Rabinder Singh Sodhi Vs. State of Punjab and another, 2007(2) R.C.R. (Civil) 210,*
- ii) *M/s Punjab Kashmir Finance Pvt. Ltd. Vs. Jagsir Singh and ors., 2013(2) ICC 347,*
- iii) *Pramod Kumar Mittal Vs. Niranjan Ktuhar Mittal, 1987(2) ArbiLR 164,*
- iv) *M/s Sultanpur Agro Agencies and ors. Vs. M/s HMT Ltd. and another, 2009(5) R.C.R. (Civil) 429,*
- v) *Prem Nath L. Harsaran Dass and another Vs. Om Parkash L. Ram Kishen Dass Aggarwal, 1956 AIR (Punjab) 187.*

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

The aforementioned facts would reveal that Arbitration Committee had sent numerous summons intimating the date of hearing of the arbitration proceedings, but the Committee has failed to put in appearance despite receipt of the summons, which was sent through registered post. Presumption under Section 27 of the General Clauses Act is

liable to be drawn against the appellant as no such envelope has been returned back with the report unserved. The Arbitration Committee also resorted to substituted service by causing publication in the newspaper namely 'Punjabi Tribune' wherein address of both Amritsar and one of Chandigarh was notified but yet no one had put in appearance. The Committee-appellant received the copy of the award sent by registered post for filing the objections within time, thus there is no force in the arguments, that summons, were never received by the appellant.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme Court in catena of judgments, wherein, it has been laid down that until and unless the award suffers from illegality or for want of reasons as statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.** In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. It is not the case of the appellant that the award is against the public policy or has violated the principles of

judicial approach, much less against the statute and other provisions of Section 34 of the Act.

The award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator or Committee is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

There is no merit in the aforementioned appeal.

Impugned order does not suffers from illegality and perversity.

Accordingly, appeal is dismissed.

31.08.2015

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**(AMIT RAWAL)
JUDGE**