

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 2251 of 2015(O&M)
Date of decision : September 1, 2015

Shailender Singh

..... Appellant

Versus

Kotak Mohindra Bank Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Pankaj Middha, Advocate
for the appellant.

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 12.11.2014 whereby the objections filed under Section 34 of Arbitration and Conciliation Act, 1996 by the appellant against the ex-parte award dated 11.8.2009 has been dismissed.

Learned counsel for the appellant submits that the objections have erroneously been dismissed to be time barred for the reasons that the appellant was not delivered the copy of the ex-parte arbitration award and he acquired the knowledge of the same on receipt of notice of the execution application. He submits that as per the ratio decidendi culled out by the Hon'ble Supreme Court in

Benarsi Krishna Committee and others Vs. Karmyogi Shelters

Pvt. Ltd. 2012 (4) RCR (Civil) 584 and Harchand Singh Vs. M/s Reliable Agro Engineering Services (Pvt.) Ltd. In FAO No. 4224 of 2007 decided on 4.3.2010 the expression “delivered” means that the award has to be delivered under the signatures of the affected party. However, since no such procedure has been followed, therefore the Additional District Judge, has, erroneously dismissed the objections being barred by limitation.

He further submits that had the objections been treated within limitation, the appellant would have convinced the Court with regard to the findings rendered by the arbitrator vide its ex-parte award viz-a-viz the payment of loan amount. He submits that the arbitrators have proceeded the appellant ex-parte in utter haste and ought to have resorted to substituted service.

I have heard learned counsel for the appellant, appraised the paper book as well as record of the arbitrator.

The arbitrator had send the copy of the notice of the proceedings by registered post dated 12.6.2009 for appearance on 11.7.2009. The registered envelop came back with the report that the appellant “refused” to accept. This fact, has also been noticed, in the order dated 11.8.2009 of the arbitration proceedings. There would have been some force, in the contention of the learned counsel for the appellant that in case the report had been to the effect that the appellant was not found, the arbitrator, in my view, in such situation ought to have resorted to the substituted service. Since in the instant case, the appellant has refused the service of summons, the presumption under Section 27 of the General Clauses

Act, 1897 has to be drawn against the appellant. In essence, registered notice sent by registered post at the correct address is deemed to have been served.

There is no dispute that the address given in the Memo of Parties before the Arbitrator was H.No.82, Block 315, VPO Mehara, Jind bearing postal code 126101. The copy of the ex-parte award was also sent through registered post on 21.8.2009 but the same has also not been received by the appellant. The appellant has coined a story that he acquired knowledge of the ex-parte award only when he received notice of the execution proceedings. There is no dispute to the ratio decidendi culled out in the aforementioned judgments, but in view of the facts noticed above, that the appellant has refused to receive the summons of the arbitration proceedings, much less even arbitration award and filed objections in the year 2011 against the ex-parte award dated 11.8.2009 it would not apply to the present case. The objections, in my view, were hopelessly time barred as the applicant-appellant had been very callous and lackadaisical in filing the objections.

There is no illegality or perversity in the aforementioned judgments and decrees which warrants interference.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 1 , 2015
archana