IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.8945 of 2014 (O&M)
Date of decision: 14.09.2015

Pradeep Sharma ... Appellant

Vs.

Sanjeev Sharma 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. Pradeep Sharma, appellant in person.

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

Mr. Anil Kshetarpal, learned Senior Advocate assisted by Mr. Abhay Pal Singh, Advocate seeks permission of this Court to withdraw from this case, though he has been requested by this Court to represent the appellant

Ordered accordingly.

Challenge in the present appeal is to the impugned order dated 10.09.2014, whereby, objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act, 1996) against the Award dated 12.11.2011 have been dismissed being beyond period prescribed in sub section

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(3) of Section 34 of the Act, 1996. The applicant participated before the Arbitrator and represented his case by placing on record the relevant record, much less, family settlement dated 12.06.2011 alleged to have been reduced in writing on 29.07.2011. The limitation to file objections is 90 days. However, the said period is extendable by another 30 days by moving an application, accompanied by an affidavit. In the instant case, the objections, admittedly, were filed on 20.10.2012, i.e., after a lapse of almost 07 months.

It has been contended by Mr. Pradeep Sharma, appellant that he did not receive the copy of the Award as the same was lying outside his house. Such plea cannot be accepted, for the reason that it is the case, where, he participated before the Arbitrator. As per the provisions of Order 31 Rule 5 CPC and Section 3 of the Arbitration and Conciliation Act, 1996, receipt is deemed to have been effected. The aforesaid contention, in my view, is not tenable, but an adoption of delaying tactics, for the reason, that communication dated 15.05.2012, regarding passing of the Award was sent/conveyed to the appellant. It is a matter of record that Award was delivered to the applicant and the same was confirmed by the Courier Company. Exhibits P12, P13 and P14, are the letters written by the Objector. The Courier Company in their reply asserted that the documents were delivered to the objector on 23.11.2012 against his signatures. Even correspondence exchanged between the Objector and the Arbitrator would reveal that he had knowledge of the Award. The

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Award is in consonance with the family settlement dated 12.06.2011 reduced in writing on 29.07.2011. It is unfortunate that the dispute is between two real brothers. Only on account of parties, being brothers, method of Arbitration was resorted to instead of indulging into mud slinging. Since provisions of Limitation Act are excluded in view of sub section 3 of Section 34 of the Act, 1996, the objections were held by the objecting Court to be beyond limitation.

The parameters for interference in the Award of the Arbitrator has been defined under Section 34 of the Arbitration and Conciliation Act, 1996, it can be interfered with only on limited points. The instant case is a case of kind, where, the appellant has not been able to prove the same before Objecting Court.

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 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

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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 Arbitrator has dealt with the dispute which was contemplated and was within the scope of it. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but viz-a-viz proceedings, in my view the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants of the parties to the *lis.*

The award read as a whole is just, fair and reasonable and only certain claims have been granted which are duly been supported with reasons. It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

Keeping in view the aforementioned fact, objections were time barred, as well as, there was no illegality and perversity in the Award as it confirmed to the settlement arrived at between the

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parties to the lis.

Therefore, there is no illegality and perversity in the impugned order.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 14, 2015
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