

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

FAO No.8122 of 2015 (O&M)

Date of decision: 05.12.2015

M/s Khurana Enterprises

... Appellant

Vs.

M/s Ishan Retail Limited

... Respondent

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. Anil Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.25680-CII-2015

For the reasons stated in the application, duly supported by an affidavit, delay 32 days in filing the appeal, is condoned.

C.M. stands disposed.

FAO No.8122 of 2015 (O&M)

The appellant is aggrieved of the order dated 29.05.2015, whereby, the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act"), against the Award dated 03.01.2013 whereby, the Arbitrator passed the claim of Rs.27 lacs along with interest @ 18% per annum, for the date of the Award, till its realization, have been dismissed.

Mr. Anil Sharma, learned counsel appearing on behalf of the appellant submits that the Arbitrator has not complied with the procedure prescribed under Section 24(3) of 1996 Act and therefore, the proceedings conducted by him are vitiated in law. This fact has not been noticed by the Objecting Court as the objections were within the jurisdiction of the Arbitrator. In support of his contention, he relied upon the judgment of the Delhi High Court in ***C.P.Madan vs. National Small Scale Industrial Corporation Limited and another*** 2007(3) Arb.LR 370 (Delhi).

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

I am of the view that there is no force in the contention raised by Mr. Sharma and the appeal is liable to be dismissed for the following reasons:-

It would be apt to reproduce the relevant paragraph of the award which reads thus:-

“That vide my notice dated 21.08.2012 hearing was fixed for 04.09.2012. That in response to my notice dated 21.08.2012, Sh. Bharat Bhushan Goel appeared for the party on the first part and Sh. Sanjeev Kumar Arora Advocate appeared from the part on the second part, and Sh. Sanjeev Kumar Arora, requested that he will file Vakalatnama on the next date of hearing which was fixed as 5.10.2012.

On 5.10.2012, Sh. Mukesh Khurana (in person) appeared for the party on the second part and counsel for the first part requested for an adjournment due to his personal difficulty accordingly the case was fixed to 16.10.2012.

On 16.10.2012 party on the first part appeared but no body was appeared on behalf of the respondents. Accordingly, the case was adjourned to 30.10.2012, which was conveyed to Sh. Sanjeev Kumar Arora, telephonically.

On 30.10.2012, the party of the first part submitted their claims along with the supporting documents. The party on the second part did not appear on even today. Accordingly the same is proceeded as ex-parte. And the case was adjourned for 13.11.2012 for the evidence and the arguments. On 13.11.2012, Sh. Pardeep Kumar representative of the claimant company appeared and requested for an adjournment. Accordingly, the case was adjourned to 20.12.2012 for the evidence and arguments.”

On 04.09.2012, appellant had put in appearance through Sanjeev Kumar Arora, Advocate and the matter was adjourned to 05.10.2012. On 5.10.2012, Mukesh Khurana (in person) appeared before the Arbitrator and sought for adjournment due to his personal difficulty and the matter was adjourned to 16.10.2012. On 16.10.2012,

none appeared on behalf of the appellant and message of next date of hearing on 30.10.2012 was conveyed to Sh. Sanjeev Kumar Arora, telephonically but thereafter, nobody appeared and accordingly, the appellant was proceeded against ex-parte. Once the appellant had availed the services of the Advocate, therefore, it cannot be believed that appellant did not have the notice as per the provisions of Section 25(b) of 1996 Act. In my view, the Arbitrator has resorted to the provisions of Section 25(b) of 1996 Act, which reads thus:-

Section 25- Default of a party

“(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of Section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant.”

The ratio decidendi culled out by Delhi High Court in **C.P.Madan's case (supra)**, wherein, the adverse party did not have notice to the arbitration proceedings, much less, had not put in appearance at any point of time and in these circumstances, the Delhi High Court drew inference, that the provisions of Section 24(3) of 1996 Act were not complied with. The facts and circumstances of the present case are entirely different, therefore, the aforementioned judgment is not applicable.

Keeping in view the aforementioned facts, the appellant

was aware of the arbitration proceedings and cannot be permitted to take summersault which does not support his case. I do not intend to differ with the findings rendered by the Objecting Court in dismissing the objections.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 05, 2015
savita