

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6405 of 2014

Date of Decision: 12.04.2016

Atul Sood

... Petitioner(s)

Versus

Kotak Mahindra Prime Limited and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. P.S.Takhtupura, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 26.8.2014, passed by learned Additional District Judge, Jalandhar, whereby objections of the petitioner were dismissed.

Relevant facts of the case that during the pendency of execution proceedings, objections were filed by the judgment debtor that award under execution is the result of collusion of the claimant/decreed holder as the award against the respondent was *ex parte* and without knowledge of the objector. No notice was served upon the objector. The arbitrator, namely, Harsukhchain Singh, Chandigarh had no jurisdiction to pass the award. The said award is *ex parte* award. Objector, through his counsel, applied to the arbitrator for

supply of certified copy of award. More so, objector had already paid the major amount to the decree holder and the said fact is not mentioned in the award even. The Court below dismissed the objections vide impugned order.

Learned counsel for the petitioner submitted that the *ex parte* award procured by the claimant is against the substantive provisions of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the Act") and the Court below has not taken into consideration the objections having been raised by the petitioner and the order impugned is liable to be set aside.

Learned counsel for the petitioner also submitted that during pendency of the application under Section 34 of the Act, the award lacks finality and cannot be enforced and there is automatic stay of execution application. On this point, reliance was placed upon the judgments rendered by the Calcutta High Court in ***Radheshyam Shaw alias Radhey Shyam Shaw v. Union of India 2008(3) WBLR 902*** and the Madhya Pradesh High Court in ***Banco Construction Co. V. Union of India 2012(2) MPLJ 579***.

Having considered the submissions made by learned counsel for the petitioner and gone through the judgments rendered by the Calcutta High Court in ***Radheshyam Shaw alias Radhey Shyam Shaw's case (supra)*** and the Madhya Pradesh High Court in ***Banco Construction Co.'s case (supra)***, this Court is of the considered view that the facts of the case are distinguishable from the above referred judgments for the reasons detailed hereunder.

The award, in the present case, was passed on 20.9.2011. The Court below has rightly observed that in the objection petition, it is nowhere mentioned that as to when the objector came to know about the passing of the award and whether the objections deserve dismissal only. Undisputedly, the award passed by the arbitrator was an *ex parte* award and objections under Section 34 of the Act were filed on 12.5.2014, which are pending before the Court below. As per the provisions of Section 36 of the Act, application to set aside the arbitration award is to be filed within the stipulated period, otherwise the award is to be enforced as if it is a decree of the Court. For ready reference, Section 36 reproduced as under:

"36. Enforcement.—*Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.*

The Court below has rightly dismissed the objection petition and rightly made observation that the order would not cause any prejudice to the rights of either of the parties in the proceedings under Section 34 of the Act.

In view of above, the present petition is without any merits and the same stands dismissed.

(Shekher Dhawan)
Judge

April 12, 2016
"DK"