

F.A.O.No.5015 of 2009 (O&M)

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

Date of Decision: September 02nd, 2016

1. **F.A.O.No.5015 of 2009 (O&M)**

Sudhir Kumar & another

...Appellants

Versus

Jalbir Singh & others

...Respondents

2. **C.W.P. No.3238 of 2011**

Jalbir Singh & another

...Petitioners

Versus

Financial Commissioner, Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.M.L.Sarin, Senior Advocate with
Ms.Alka Sarin, Advocate,
for the appellants in FAO-5015-2009.

Mr.Arun Jain, Senior Advocate with
Mr.Arnav Kumar Sood, Advocate,
for the respondents in FAO-5015-2009.

Mr.Keshav Partap Singh, Advocate,
for the petitioners in CWP-3238-2011.

Mr.Ajay Kaushik, Advocate,
for the L.Rs of respondent No.2.
Mr.Madan Gupta, Advocate &
Mr.Aayush Gupta, Advocate,
for respondent Nos.5 & 6 in CWP-3238-2011.

Mr.D.K.Mittal, DAG, Haryana,
for the State.

AMIT RAWAL, J.

By this common order, I intend to dispose of FAO No.5015 of 2009 arising out of allowing the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “1996 Act”) filed by Amar Singh (since deceased), now being represented by L.Rs, vide order dated 31.8.2009, whereby the arbitration award dated 1.12.2005, allegedly registered on 13.12.2005, has been set-aside, whereas Civil Writ Petition No.3238 of 2011 is at the behest of the beneficiaries of the award, who had challenged the impugned order dated 28.9.2010 (Annexure P-6), whereby the Financial Commissioner, Haryana had kept the mutation proceedings pending till the decision of the present FAO as the mutation was sought to be effected on the basis of the Will dated 8.2.2006, executed by Amar Singh in favour of Jalbir Singh and Smt.Rajwanti (since deceased).

Mr.M.L.Sarin, learned Senior Counsel assisted by Ms.Alka Sarin, Advocate, for the appellants-namely Sudhir Kumar and Baldev Singh, submits that Amar Singh was owner in possession of various lands and residential house, details of which are given herein below:-

khewat No.65, Khatoni No.80, Rect.No.17, Khasra Nos.18/2 (1-14), 19 (7-2), 22 (8-0), Rect.No.23, Khasras No.2(8-0), 9 (8-0), total kittas 5, situated at village Mirjapur, Tehsil Thanesar, District Kurukshetra as per jamabandi for the year 2000-2001;

b) Bara measuring 0 kanal 10 marlas, comprised in khewat No.29, Khasra No.421/1, situated at village Narkatari, Tehsil Thanesar, District Kurukshetra, as per jamabandi for the year 1996-97 and mutation no.227;

c) Property situated at village Kaul, Tehsil & District Kaithal, as detailed below:

i) Land measuring 1 kanal 11 marlas, comprised in khewat No.1082, Khatoni No.1395, Rect.No.126, Khasra Nos.21/26 (0-2), 1195 (0-14), 1197/2 (0-15), total kittas 3 to the extent of $\frac{1}{2}$ share;

ii) Land measuring 13 kanals 10 marlas, comprising in khewat No.1083, khatoni No.1396, Rect.No.125, Khasra Nos.5 (8-0), 6/1 (2-13), Rect.No.126, Khasra No.1/1 (2-17), total kittas 3;

iii) Land measuring 1 kanal 1 marla, comprised in khewat No.1085, khatoni No.1398, Rect.No.132, khasra Nos.2/1 (0-8), 9/1 (0-1), khatoni No.1399, Rect.No.126, Khasra No.1/3 (0-12), to the extent of $\frac{5}{21}$ shares;

iv) Share in land measuring 0 kanal 8 marlas comprised in khewat No.755, khatoni No.979, Rect. No.21, Khasra No.23/1;

v) Land measuring 34 kanals 11 marlas, comprised

- in khewat No.752, khatoni No.974, Rect.No.21, khasra Nos.23/2 (6-15), 24 (8-0), 25 (3-16), Rect.No.24, khasra Nos.5 (8-0), 6(8-0), total kittas 5;
- vi) Land measuring 61 kanals 15 marlas, comprised in khewat No.150, khatoni No.202, Rect.No.22, khasra Nos.10 (0-18), 11 (3-8), 20 (5-2), 21/2 (7-3), Rect.No.23, Khasra Nos.1 (8-0), 4/1 (4-18), 4/3 (1-0), 5/1 (2-11) 5/3 (1-17), 6 (7-18), 7/1 (7-17), 25/3 (3-4), Rect.No.141, khasra No.1/2/1 (7-19), total kittas 13;
- d) Residential house double storey along with shop, situated at Dhand-Nilokheri road, Kaul, District Kaithal.”

Vide Ex.R-4 of 6.7.2004, Amar Singh, original objector, transferred 3 kanals 9 marlas out of the property mentioned in para (a) above in favour of Sudhir Kumar (appellant No.1) and Jalbir Singh (respondent No.1), vide Gift Deed No.3303 dated 6.7.2004. On 17.11.2004, vide Ex.R-2, out of the property mentioned in para (a) above, Amar Singh transferred 2 kanals 2 marlas in favour of Balbir Singh (appellant No.2) vide Gift Deed No.7883 dated 17.11.2004. On 12.1.2005 vide Ex.R-3, Amar Singh also transferred land measuring 1 kanal 3 marlas out of the property mentioned in para (a) above in favour of respondent No.1 Jalbir Singh, in essence more land, i.e., Bara was transferred in favour of Jalbir Singh (respondent No.1) vis-a-vis the land transferred in favour of the appellants. Accordingly, a dispute arose

the transfer of excess property to Jalbir Singh and an arbitration agreement dated 30.11.2005 (Annexure A-1) was entered into between Amar Singh (who died on 7.7.2006), Sudhir Kumar and Baldhir Singh (appellants), which was signed by all three and witnessed by Shailender Singh RW3. As per the agreement, Telu Ram RW-8 (brother-in-law of Amar Singh), was appointed as sole arbitrator to divide the properties between the parties. On 1.12.2005 (Annexure A-2), Telu Ram gave his award, which reads thus:-

- “i) Sudhir Kumar and Baldhir Singh (appellants) became owners in possession of land measuring 10K-7M i.e. 217/656th share each in Khewat No.65;
- ii) Land measuring 8K-5M was left under the ownership of Amar singh in Khewat No.65 for transferring to Jalbir Singh to whom he had already transferred land measuring 2K-17M vide Gift Deeds dated 6.7.2004 and 12.1.2005;
- iii) Bara measuring 10M situated at Village Narkatari was left under the ownership of Amar Singh;
- iv) Land comprised in Khewat Nos.1083 and 150 fully described in para (c) (i) & (iv) were given to Sudhir Kumar and Baldhir Singh (appellants) in equal shares;
- v) The remaining land situated in Village Kaul, District Kaithal described in para (c) (i)(iii)(iv) and (v) were given to Amar Singh for transferring the same to Jalbir Singh as and when he required;
- vi) The property mentioned in para (d) was left as joint

property. No party was given the right to alienate the same. However, a right was given to every party to reside in the said house.”

On 13.12.2005, the award was registered. On 27.1.2006, appellant No.1 Sudhir Kumar filed Objection Petition No.2 of 2006 against Telu Ram-Arbitrator, Amar Singh and Baldhir Singh by stating that the Bara situated in Village Narkatari comprised in Khewat No.29 was liable to be partitioned between the parties and despite the award, Amar Singh attempted to negotiate with third party by alienating the entire property, including the share of Sudhir Kumar. The aforementioned objection petition was contested by Amar Singh by stating that he never appointed Telu Ram as Arbitrator, much less denied the agreement containing the arbitration clause.

Amar Singh also filed objections under Section 34 of 1996 Act before the Additional District Judge, Kurukshetra alleging that he had received copy of empty envelope, allegedly posted by Arbitrator, namely, Telu Ram on 16.12.2005 and on making enquiries, he learnt that Sudhir Kumar and Baldhir Singh had conspired with Telu Ram and prepared a fabricated and fictitious award dated 1.12.2005 on the basis of the alleged agreement dated 30.11.2005.

On 27.2.2006, a statement was suffered by the counsel for

Amar Singh for withdrawing the objection petition, which, according to

him was to be filed before the District Judge, Kurukshetra and the same was permitted to be withdrawn vide order dated 27.2.2006. Thereafter, on 3.3.2006, Amar Singh filed an application seeking review of the order aforementioned for ordering return of objection petition, to be filed in the competent court. On 7.3.2006, Arbitration Petition No.10 of 2006 was filed by Amar Singh, original objector. The aforementioned petition was contested by filing a separate written statement by Baldhir Singh, but Amar Singh died on 7.7.2006 before his statement could be recorded.

By giving preface of the matter, Mr.Sarin has raised manifold submissions, which are summarised as under:-

- 1) Both the arbitration proceedings titled as Sudhir Kumar Versus Telu Ram and Amar Singh Versus Sudhir Kumar etc. were consolidated. It was ordered that all the proceedings were to be recorded in Arbitration Petition titled as Amar Singh Versus Sudhir Kumar etc.
- 2) The Court below framed the following issues:-
 - a) Whether the alleged reference dated 30.11.2005 and award dated 1.12.2005 registered on 13.12.2005, are liable to be set aside in view of the grounds mentioned in the objection petition? OPP
 - b) Whether the arbitration award dated 1.12.2005 is liable to be set aside to the extent of properties, as mentioned in clauses (b) & (d) of para no.1 of the

petition and same is liable to be modified by declaring the petitioner Sudhir Kumar and respondent no.3 Baldhir Singh to be joint owner in possession to the extent of 1/3rd share each in the said properties, without disturbing the other portion of the award? OPR-Sudhir Kumar.

c) Whether objection petitions are time barred? OPR

d) Whether the objection petition has not been filed by the original applicant Amar Singh, now deceased, if so, its result? OPR

e) Whether the objector is estopped from filing the present objection petitions? OPR

f) Whether the petition under Section 34 of Arbitration is not maintainable? OPR-Amar Singh.

g) Whether the Court has no jurisdiction to entertain and try this petition? OPR-Amar Singh.”

3) The Court below did not decide the objections issue-wise and, therefore, there is a falsity, much less perversity;

4) During the course of the hearing, Misc.Application bearing No.9597-CII of 2012 was filed for impleading the L.Rs of Rajwanti-respondent No.2. Mr.Ajay Kaushik, Advocate has put in appearance on behalf of the L.Rs.

5) Both the parties to the lis are none else but brothers and the matter was referred to the arbitration twice, earlier

by the Judge and thereafter by this Court, but did not yield any result.

6) Amar Singh had lodged an FIR against the appellants, who had been convicted on the basis of the findings rendered by the Objecting Court while allowing the objections, which could not be the basis of conviction of Sudhir Kumar and Baldhir Singh. 3rd son Jalbir Singh had also been convicted for causing murder of his mother Smt.Rajwanti. In support of his submission, relies upon the findings rendered by the Hon'ble Supreme Court in **Union of India Versus K.V.Lakshman and others**, AIR 2016 SC 3139 to contend that the FAO in the instant case in view of the law was to be treated as the first appeal and it should not have been dismissed in the manner and mode, i.e., in limine;

7) The Objecting Court has gone in the realm of conjectures as the judgment under challenge has far reaching consequences, which will seriously affect the adjudication of the appeal filed by the appellants against their conviction;

8) The Objecting Court has not given issue-wise findings. In fact, the order under challenge amounts to jumbling of all the issues;

9) Amar singh had actually entered into an agreement and referred the matter to the arbitration to resolve the controversy amongst the siblings;

10) The award was in consonance with the first Will dated 9.5.1988 executed by Amar Singh in favour of all the three sons. The objections cannot be allowed on the basis of doubt and suspicion. There has to be element of fraud, in essence objector has failed to lead any evidence or bring out any suspicious circumstance to bring the objections within the realm of Order 6 Rule 4 CPC. Vis-a-vis decision on all the issues together, he also relied upon the ratio decidendi culled out in **Karnataka State Road Transport Corporation Versus Smt.Asmathunnisa and others, 2001**

(1) PLR 234 (Paras 4 & 5);

11) The objections were not maintainable as Amar Singh had withdrawn the same and there is no order with regard to review;

12) Specific preliminary objection No.5 was taken in the written statement, but there is no replication to the same;

13) There are no specific findings on the allegations of fraud and misrepresentation. It is only on doubt and

suspicion. In fact, there is no discussion. He has also relied upon the judgment rendered in **M/s Machhi Ram Kishan Singh Sidana Rice Mills Versus Sham Singh and others, 2015 (4) PLR 582** to submit that in the absence of pleadings and evidence qua fraud, the objections were liable to be dismissed;

14) The Court below failed to appreciate that agreement Ex.A1 was entered into only because there had been unequal distribution of the property between the sons of Amar Singh;

15) In order to prevent further dispute and resolve the same amicably, Amar singh had chosen his brother-in-law as arbitrator;

16) The Court below has further failed to appreciate that Amar Singh wanted to settle the matter between his children and that is why he divided the property equally vide Will dated 9.5.1988 (Ex.R1), which was scribed by a regular deed writer and witnessed by Sohan Singh, Nambardar. Two Wills, Ex.AW3/B dated 30.9.2005 and Ex.AW3/C dated 8.2.2006 set up by respondent Jalbir Singh are patently forged and fabricated and an effort to grab the property as the Will dated 30.9.2005 did not mention about the earlier

Will;

17) The Court below erred in arriving at a finding that the agreement Ex.A1 was forged on a piece of paper which had the signatures of Amar Singh. The said finding is not supported by any oral or documentary evidence;

18) The objections were not falling with the realm of Section 34 of 1996 Act;

19) As per the provisions of Order 23 Rule 4 CPC, filing of the second objection petition is barred;

20) The impugned order is non-speaking;

21) Registration of the award Ex.A2 has not been challenged;

22) The Court below has erroneously been swayed away with the findings that Amar Singh did not accompany Telu Ram at the time of the registration and in this process, has lost sight of the provisions of Section 32 of the Indian Registration Act, 1987.

23) In support of his contention, relied upon the judgment rendered by the Hon'ble Supreme Court in **Karnataka State Road Transport Corporation (supra)** to contend that the

First Appellate Court has to consider all the relevant points

and give reasonable findings. On similar lines, he also relied upon the judgments rendered in **Smt.Harjit Grewal and others Versus Dr.Vinod Kumar Batra and others, 2010 (2) PLR 235, Union of India Versus M/s Chaturbhai M.Patel & Co., 1976 Current Law Journal (Civil) 166** and **M/s Machhi Ram Kishan Singh Sidana Rice Mills (supra)** to contend that the objector has miserably failed to establish the necessary ingredients of Order 6 Rule 4 CPC and, thus, urges this Court for setting-aside of the order under challenge.

Mr.Arun Jain, learned Senior Counsel assisted by Mr.Arnab Kumar Sood, Advocate for the respondents in the appeal submits that it is a clear cut case of forgery at the behest of the appellants and the same has been proved to the hilt, which is evident from the report of the Forensic Science Laboratory, Haryana, Madhuban (Ex.A12) as the specimen and disputed signatures of Amar Singh were sent to the said Laboratory and as per the report, it has been concluded that the document marked P3, i.e., arbitration agreement is a built up document and has been prepared with pre-existing signature marked Q1 on it, which might have been executed after 10.9.1975 and prior to 25.9.2003, i.e., prior to

the period when involuntary tremor has developed in the signatures of

person concerned. He has also submitted that even the Handwriting Expert of the objector, i.e., Dr.Inderjit Singh-RW2, in cross-examination, admitted that the specimen signatures show more tremors than the disputed signature Q-1.

Mr.Jain has also drawn the attention of this Court to the statement of appellant Baldhir Singh RW-1, who, to a specific question in cross-examination admitted that he is M.A. L.L.B and had got the licence for practising as Advocate, i.e., had enrolled himself in the year 1989, but he joined service in 2003. He further submitted that the said witness admitted that his father had executed a Will dated 9.5.1988 in which all the three sons were given properties in equal shares and also to a specific question admitted that when he recorded his statement in the contempt petition, he had admitted that his father had executed three Wills dated 9.5.1988, 30.9.2005 and 8.2.2006, vide which he debarred his two sons from the estate.

Mr.Jain further submitted that when the aforementioned witness was asked about the purchase of the stamp papers, he submitted that he himself had purchased the stamp paper for reference at the instance of his father, though his father was not present at the time of purchasing of the stamp paper at about 10/10.30 AM. It was on two papers, whereas agreement is on three papers. The last page does not

have the stamp paper. In fact, the last page having signature of Amar Singh in Urdu had been cut at the bottom and attached with the stamp papers to convert the same into agreement as the 1st and 2nd pages do not bear the signatures of either of the parties, whereas in the present era, all the pages of the agreement bear the signatures of the executant.

He further submitted that even the proceedings of the arbitration are not present. The award has been written allegedly at the house of Telu Ram and the stamp papers were purchased from Nilokheri, whereas Telu Ram is resident of Village Lathron. He further admitted that a criminal case under Section 420 IPC at the instance of the father Amar Singh was registered against him and his brothers. He feigned ignorance as to how his father had got scribed the Salasnama on the stamp papers purchased by him. He further submitted that he had reached the house of his maternal uncle at about 8.15 PM. He and his brother remained there for about 30-45 minutes.

Mr.Jain further has drawn the attention of this Court to the statement of Telu Ram RW-8, Arbitrator, who admitted that he is 8th Class pass and resident of Village Lathron, District Karnal. He also said that he got the award prepared from an Advocate, but he could not tell his name. Amar Singh was not in a position to scribe the contents of the award as there was trembling in his hand. He further submitted that the

Arbitrator, through a specific question in cross-examination, stated that he could not identify the signatures of Master Amar Singh because he used to sign in Urdu and he did not understand Urdu.

As regards the maintainability of the petition, Mr.Jain submitted that a statement was suffered by the counsel for withdrawal of the objection petition. It was specifically stated that statement was suffered that the petition be permitted to be withdrawn with permission to file the same in the competent court of law. In support of his contention, he relied upon the judgment rendered by this Court to contend that where the statement is made to withdraw the petition and the Court does not pass an order, it is an implied permission. He submitted that in proceedings under Section 34 of 1996 Act, the issues are not required to be framed. In support of his contention, also relied upon the judgment of the Hon'ble Supreme Court in **Fiza Developers and Inter-Trade Private Limited Versus AMCI (India) Private Limited and another, 2009 (17) SCC 796.**

He further submitted that once the award is prepared contrary to the provisions of the 1996 Act, it cannot be enforced. In this regard, also relied upon the judgment rendered by the Hon'ble Supreme Court in **Oil and Natural Gas Corporation Ltd. Versus SAW Pipes**

Ltd., AIR 2007 SC 2629.

As regards the question of limitation, Mr.Jain said that it is a mixed question of fact and law, though the fraud requires the complete particulars in the pleadings. In fact, the objection petition clearly envisages the compliance of provisions of Order 6 Rule 4 CPC and, thus, urges this Court for dismissal of the appeal.

Mr.Jain has also drawn the attention of this Court to the statement of Yashpal Chand Jain, Hand-writing Expert examined by them as AW-4 to contend that there was a tremor of the specimen signatures given by Amar Singh on 18.3.2006 and the execution of the agreement on 30.11.2005 is just four months back and the tremor was long time back, therefore, the disputed signatures did not have the striking, much less any iota of trembling.

Mr.Keshav Partap Singh, learned counsel appearing for the petitioners in CWP No.3238 of 2011 submitted that the order of the Financial Commissioner is not valid in law. The observations of the Financial Commissioner are against the material available on record and against the pleadings inasmuch that the Will, on the basis of which the mutation is to be sanctioned, is in due course of favour of Jalbir Singh and Rajwanti, widow of Amar Singh. The proceedings could not have been adjourned sine-die. In fact, the Financial Commissioner ought to have decided the case independent of the findings rendered by the

Objecting Court, much less could not have kept the order in abeyance for awaiting the decision of this Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Sareen and the appeal is liable to be dismissed.

RW-1 Baldhir Singh in his testimony admitted that in proceedings initiated for contempt of the interim order, he suffered a statement, wherein admitted that his father had executed three Wills dated 9.5.1988, 30.9.2005 and 8.2.2006. On going through the Will dated 30.9.2005 and the alleged agreement, there is a stark difference of trembling in the signatures of Amar Singh in Urdu. It is settled law that the Expert always toe to the lines of the client who engages him, but in the instant case, both the Experts though have given the reports in favour of their clients, but this Court cannot remain oblivious of the fact Dr.Inderjit Singh, Hand Writing & Finer Prints Expert of objectors admitted in his cross-examination that in the specimen signatures given on 18.3.2006 by Amar Singh, there were tremors. For the sake of brevity, the relevant portion of his cross-examination reads thus:-

“It is correct that the specimen signatures show more tremors tan the disputed signature Q-1.”

The statement of Baldhir Singh RW-1 with regard to execution of three Wills reads thus:-

“My statement was also recorded in the contempt petition in this very Court. I had earlier given statement that my father had executed three Wills dated 9.5.1988, 30.9.2005 and 8.2.2006 and one Salshi Faishla.”

The concluding part of the Forensic Science Laboratory, Haryana, Madhuban Ex.A-12 leaves no manner of doubt that there was a tremor and the disputed signatures on P3 were existing after 10.9.1975 and prior to 20.9.2003. Relevant portion of the report reads thus:-

“Cumulative consideration of opinion ‘a’ to ‘f’ it is concluded that the document marked P3 is a built up document and has been prepared with pre-existing signature marked Q1 on it which might have been executed after 10.09.75 and prior to 25.09.2003 i.e. prior to the period when involuntary tremor has developed in the signatures of person concerned.”

The proceedings of the arbitration have not seen the light of the day. The arbitration agreement is dated 30.11.2005 and the award is of 1.12.2005. The alleged stamp papers were concededly purchased by appellant-Baldhir Singh, who is a law graduate and had obtained the licence for doing practice. The stamp papers were purchased at Nilokheri, whereas the Arbitrator is resident of Village Lathron, District

Karnal. The stamp papers were allegedly purchased from Ram Kumar Stamp Vendor, Thanesar, who has not been examined.

Sudhir Kumar AW-1 admitted that his father used to append his signatures in Urdu. In cross-examination, he submitted that at that time, he, his Bhanja (sister's son), Baldhir Singh and father were present in the house of Shailender Singh, which is in Sector 3, Urban Estate, Kurukshetra and the talk of appointment was initiated at 8/8.30 PM on 30.11.2005. If the aforementioned version is to be accepted, then the stamp papers from the Stamp Vendor had also been purchased on 30.11.2005. How could the stamp papers be purchased in the morning as per the statement of Baldhir Singh, who said that he purchased the stamp papers at 10.00 or 10.30 AM, whereas the decision to refer the dispute to the Arbitrator was taken at 8/8.30 PM on 30.11.2005. For the sake of brevity, relevant portion of the cross-examination of Sudhir Kumar reads thus:-

“The house of Shailender is in Sector-3, U.E.Kurukshetra. The talk of appointment was initiated at 8/8.30 P.M. On 30.11.2005.”

It is not the case that Amar Singh was an illiterate. He was a teacher as per admission of Sudhir Kumar.

Sudhir Kumar to a specific question in cross-examination

admitted that there was small trembling to some extent in the hand of his

father during the period of said ailment. All these factors lead to an irresistible conclusion that the alleged Salasnama/arbitration agreement, particularly containing three pages, contained the signatures of Amar Singh when he was suffering from tremor. There is no dispute to the proposition of law laid down in the judgment cited supra, but the fact remains that the objection petition clearly envisages the ingredients of fraud having been played upon Amar Singh, which even resulted in cancelling the previous Will dated 9.5.1988 and execution of another Will dated 8.2.2006. In the Will dated 8.2.2006, there is a specific recital regarding the fraud having been played by the appellants.

The sole issue before the Objecting Court was whether there was an arbitration clause or not and, therefore, there was no need to return the findings separately on all issues.

The objections were not being tried as an appeal under Section 96 CPC. The arbitration agreement contained three pages. 1st and 2nd pages were stamp papers. 3rd page was blank one. 1st and 2nd pages do not bear the signatures of Amar Singh or other persons, who had agreed to refer the dispute to the Arbitrator. All these factors take me to a particular pointer that a fraud had been played upon Amar Singh.

Telu Ram, alleged Arbitrator, is 8th Class pass. He feigned ignorance with regard to the Advocate from whom he got the award

written. He did not even take Amar Singh for registration of the award. All these aspects show that everything was done at the back of Amar Singh.

There is no force in the submission of Mr.Sarin that Amar Singh had withdrawn the objections without taking the permission of the Court to file the same in the competent court of law, whereas the statement given by the counsel leads to an irresistible conclusion that the element of filing the objection petition again was sought and, therefore, as per the ratio decidendi culled out in the judgment cited supra, the permission is deemed to have been granted and, therefore, the rigors of provisions of Order 23 Rule 3 CPC would not come into play.

The award was got registered on 13.12.2005 and the same was allegedly sent by Telu Ram to the parties through registered post on 16.12.2005, therefore, the limitation would start from 16.12.2005 and not before 16.12.2005. In my view, the objections were rightly filed before the Principal Court within time and the objector clearly proved that Telu Ram was never appointed as an Arbitrator.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Objecting Court. The Objecting Court has rightly appreciated the evidence threadbare and found that Amar Singh had never agreed for arbitration clause, therefore, the execution of the

arbitration agreement and consequently rendering of award was nothing but an act of aggrandizement at the behest of the appellants. The judgment under challenge is perfectly justified and based upon appreciation of oral and documentary evidence.

Appeal stands dismissed.

CWP No.3238 of 2011

Since I have dismissed the appeal, the matter is remitted back to the Financial Commissioner to decide the question of mutation afresh.

The writ petition is disposed of in the aforementioned terms.

September 2nd, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No