

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

FAO No.1361 of 2011 (O&M)

Date of decision : 04.07.2016

Kuldeep Singh

...Appellant

Versus

Harbhajan Singh and others

...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. Bikramjit Arora, Advocate for the appellant.

Mr. Aditya Dassaur, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant is aggrieved of the dismissal of the objection filed under Section 34 of 1996 Act seeking setting aside of the ex parte award dated 09.09.2006.

Mr. Bikramjit Arora, learned counsel appearing on behalf of appellant submits that respondents had converted the thumbmarked stamp papers into alleged agreement to sell dated 04.05.2004 in respect of the land measuring 14 kanals 17 marlas for total sale consideration of ₹7,25,000/- against the receipt of the earnest money of ₹6,00,000/-. Even the Arbitrator did not comply with the principles of the natural justice, much less, only sent solitary registered notice for appearance. No effort has been made to serve the

appellant/alleged vendor to contest the arbitration proceedings. In fact the appellant is an agriculturist who had not supplying the agricultural produce to the respondent, admittedly being a commission agent. In view of the good faith, blank signed stamp papers were obtained. In fact, those aforementioned thumb impression was obtained under the police pressure. There was no compliance of provision of Sub-Section 5 of Section 31 of 1996 Act. The market value of the land on the alleged date was much higher. The ingredients of Section 16(c) of Specific Relief Act has not been complied with and, therefore, the Arbitrator could not have exercised the discretion under Section 20 of the Specific Relief Act. The agreement to sell does not contain the clause of settlement of dispute through arbitration except by note appended at foot and, therefore, arbitrator did not have jurisdiction to decide the controversy but Objecting Court dismissed the objections on two grounds i.e. on merits and as well as being barred by law of limitation. Since there is no compliance of provision of Sub-Section 5 of Section 31, therefore, as per the judgment laid down by Hon'ble Supreme Court in *State of Maharashtra and ors. Vs. M/s Ark Builders P. Ltd. 2011(4) SCC 616*, limitation would start from the date of receipt of the arbitration award and, therefore, objections were falling within the limitation, in essence, knowledge of the award acquired only in the execution proceedings and, therefore, findings rendered by the lower Appellate Court vis-a-vis objections being barred by law of limitation are not sustainable in the eyes of law and thus urges this Court for setting aside of the impugned award and order under challenge.

Mr. Aditya Dassaur, learned counsel appearing on behalf of respondents-Vendee contends that Arbitrator had sent legal notice dated 08.06.2006 calling upon the appellant to appear before the office of Sub-

Registrar to perform his part of the agreement to sell but he did not appear. Even prior thereto, legal notice dated 07.02.2006 was also sent calling upon the appellant/Vendor to perform his part of the agreement to sell, including various notices but the registered envelope of notice dated 07.02.2006 Ex.P8 was refused. The approach of the appellant had been callous and did not perform his part of the agreement to sell. Even though objection under Section 34 have to be decided summarily. Objecting Court framed the issue and gave the opportunities to lead evidence to belie the thumb impression, thus, it would be farcical exercise in remanding the matter back to the Arbitrator for initiation of the arbitration proceedings afresh and thus urges this Court for upholding of the award.

Mr. Arora, Advocate in rebuttal relies upon the judgment rendered by Hon'ble Supreme Court of India in *Union of India Vs. Tecco Trichy Engineers & Contractors 2005(2) RCR (Civil) 420*, in respect of the objections being within the period of limitation.

I have heard learned counsel for the parties and appraised the paper book and of the view that submissions of Mr. Arora is not able cut an ice. Prior to entering into reference by the Arbitrator, a registered notice as noticed above was sent by respondents but the appellant refused to accept the same. In fact such conduct of the vendee-respondent showed the readiness and willingness. Nothing prevented appellant to lead evidence to belie the thumb impression before the Objecting Court as noticed above. It is too late in a day to raise such technical pleas. I am in agreement with the submission of Mr. Arora, vis-a-vis objection being within the period of limitation in view of ratio decidendi culled out by Hon'ble Supreme Court of India in *Ark Builders (Supra)*, therefore, the findings of the Objecting Court qua dismissal of the

objections are hereby set aside. As regards the readiness and willingness, Arbitrator, had already as noticed above has sent the notice calling upon the appellant to appear before the office of the Sub-Registrar and to give explanation for non-appearance. Since appellant had refused to accept the notice dated 07.02.2006 and subsequent notice dated 08.06.2006, the intention was clear that appellant did not want to perform its part of the contract. Had there been so, he would have made complaint to the police or taken all possible steps. No sane person would sit idle in case arguments of Mr. Arora is accepted.

No ground for interference is made out.

Dismissed.

04.07.2016

pawan

(AMIT RAWAL)
JUDGE