IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1056 of 2012 (O&M)
Date of decision : 02.06.2016

Surinder Singh and another

...Appellants

Versus

M/s Citi Financial Consumer Finance India Ltd. 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. P.C. Chaudhary, Advocate for the appellants.

Mr. Nitin Grover, Advocate for respondent Nos.2 and 3.

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AMIT RAWAL, J. (Oral)

CM No.4508-CII of 2012

The application is allowed as deficiency in Court fees has been made good subject to all exceptions.

Applications stands disposed of.

Main Case

The appellants-petitioners are aggrieved of the dismissal of the objections moved under Section 34 of the Arbitration and Conciliation Act, 1996 seeking setting aside of the award dated 22.03.2010.

Mr. P.C. Chaudhary, learned counsel appearing on behalf of appellants-petitioners submits that appellant had obtained a house loan from the erstwhile financial institution namely M/s Citi Financial Consumer Finance India Limited of ₹31,75,000/- at the rate of 13.5% per annum in lieu thereof mortgaged the residential house. There was certain defaults and since the loan agreement contained the element of dispute through Arbitrator, the matter was referred to the Arbitrator. The Arbitrator did not record the satisfaction and proceeded ex parte against the appellants resulting into passing of the ex parte award aforementioned. The alleged award was purported to have been sent by registered post on 30.03.2010. Same was returned back with the report on 03.04.2010 as unclaimed. The objection petition was filed under Section 34 on 27.09.2010. Same has been dismissed being barred by law of limitation as well as on merits. He further submits that during the pendency of execution application, compromise had been arrived at between appellant and erstwhile financial institution by suffering statement before the Executing Court on 31.05.2012, which reads thus:-

> *"Statement of Surinder Singh son of Sewa Sindh JD.*
> *I have compromised the matter with the decree holder and agreed to pay a sum of Rs.32,00,000/- towards full and final settlement of the DH, in seven installment as approved by the decree holder vide letter 31.5.12 copy of which is enclosed. I have also given draft No.987290 dated 4.4.12 drawn on Punjab National Bank for Rs.5,00,000/- towards installments.*
> *RO & AC*
> *Sd/- Surinder Singh Sd/- (Rajnish Garg)*
> *Sd/- In English ADJ, Patiala, 31.5.12"*

in lieu thereof, Judgment Debtor withdrew the execution application, which reads thus:-

> *"Statement of Ravi Sharda authorized representative of DH.*
> *I withdraw the present execution petition with the liberty to*

file fresh if the JDs do not make the payment as per the scheduled plan given to them.

RO and AC

Sd/- Ravi Sharda *Sd/- (Rajnish Garg)*

Sd/- In English *ADJ, Patiala, 1.9.12"*

He submits that as per the affidavit attached to application bearing No.2678-CII of 2014, the appellants continued to make the payments as under:-

"(i) Rs.5,00,000/- on 31.5.2012 vide draft No.987290 dated 4.4.12 drawn on Punjab National Bank, Patiala;

ii) Rs.40,000/- on 16.7.2012 vide draft No.364059 drawn on Oriental Bank of Commerce, Patiala.]

iii) Rs.4,60,000/- on 15.9.2012 vide cheque No.731386 dated 14.9.2012 drawn at Punjab National Bank, Patiala;

iv) Rs.5,00,000/- on 1.10.2012 vide cheque No.731385 dated 1.10.2012 drawn at Punjab National Bank, Patiala;

v) Rs.5,00,000/- on 15.10.2012 vide cheque No.731387 dated 15.10.2012 drawn at Punjab National Bank, Patiala."

However, in December 2002, the office of Financial Corporation has been closed. It is only on the receipt of the letter dated 08.05.2013 acquired the knowledge that the loan has been "assigned" to Kotak Mahindra Bank Limited-respondent No.2 which has been allowed to be impleaded vide order dated 19.02.2014 passed in CM No.2677-CII of 2014. In November, 2003, the aforementioned financial institution has also initiated proceedings under the SARFAESI Act and says that appellant undertakes to pay the entire balance of amount of ₹12,00,000/- along with compensation of ₹50,000/- within a period of four months i.e. ₹3,12,500/- per month.

Learned counsel appearing on behalf of Kotak Mahindra Bank submits that the appellant had been negligent in not pursuing the matter before the Arbitrator and has adopting all possible delaying tactics and should not be granted any concession as huge amount of public money is involved.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force in the submission of Mr. Chaudhary, Advocate. The whole purpose is to recover the amount. The predictament of the appellant was writ large as he was not aware of the assignment of the loan obtained from the erstwhile financial institution to Kotak Mahindra. It is only on 08.05.2013, acquired the knowledge that loan has been assigned to newly financial institution. In my view, it is unnecessary wastage of the public money particularly the fact that the matter has been compromised as noticed above. It is duty of the erstwhile institution to pass the information to the assignee to ascertain the information instead of taking all measures in law. In my view, it results into wastage of money and as well as harassment to the loanee.

Keeping in view aforementioned fact, appellant is granted 4 months time to deposit entire balance of ₹12,00,000/- along with compensation of ₹50,000/-. In case of default, award in question shall be come into force.

For the reasons stated above, impugned award and order are hereby set aside.

Keeping in view the aforementioned, appeal stands disposed of.

02.06.2016 **(AMIT RAWAL)**
pawan **JUDGE**