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

FAO-518-2012

Date of decision : 02.02.2016

Indusind Bank Ltd.

...Appellant

Versus

Rajender and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Manoj Makkar, Advocate
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellant-Indusind Bank is aggrieved of the order dated 02.09.2011 whereby the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act'), filed against the ex parte award dated 15.10.2008, have been allowed.

Mr. Ashwani Talwar, learned counsel appearing on behalf of the appellant submits that during the arbitration proceedings, despite sending of the notices, the respondents did not appear

which resulted into passing the ex parte Award dated 15.10.2008. The Arbitrator sent the copy of the Award by complying with the provisions of Section 31 (5) of the 1996 Act and the same was received back with the refusal report dated 04.11.2008. The copy of the same has been annexed as Annexure A-3, whereas the objections have been filed on 08.06.2009 which are not falling within the period of $90+30 = 120$ days. This fact has not been noticed by the Objecting Court, rather the Objecting Court has found that from the date of the receipt of the knowledge of the Award, the objections have been held within the limitation and ex parte Award has been set aside.

Mr. Manoj Makkar, learned counsel appearing on behalf of respondent No.1, submits that there is no illegality and perversity in the order as the order has been passed by taking the provisions of sub-Section 5 of Section 31 of the 1996 Act. No sincere efforts had been made by the Arbitrator in communicating the Award except by sending it through Registered Post.

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

I am of the view that the appeal deserves to be allowed for the following reasons:

From the perusal of the refusal report Annexure A-3, it is ascertainable that the respondents have refused to receive the envelop containing the ex parte award dated 15.10.2008. The Arbitrator had complied with the provisions of sub-Section 5 of

Section 31 of 1996 Act. The execution petition was filed on 16.03.2009. Notices were issued for 25.04.2009 on which the date respondent No.2 was proceeded ex parte. The respondent No.1 appeared on 22.05.2009 and filed the objections on 08.06.2009 by taking the period of limitation from 25.04.2009. Such objections taking the period of limitation from 25.04.2009 are not correct as there was a refusal of the receipt of the ex parte award way back in the month of November 2008. No explanation has come forth in not filing the objections, during this period. Objections, in my view, were barred by law of limitation as per the provisions of sub-Section 3 of Section 34 of the 1996 Act. This aspect has not been taken into consideration by the Objecting Court by accepting the objections.

Keeping in view the aforementioned facts, the impugned order dated 02.09.2011 under challenge, allowing the objections, is hereby set aside and the Award is restored back.

With the aforesaid observations the appeal is allowed.

02.02.2016
yogesh

(AMIT RAWAL)
JUDGE