

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

Date of Decision: May 12th, 2016

1. **F.A.O. No.5988 of 2012 (O&M)**

Kanwar Jaspreet Singh

...Appellant

Versus

M/s Citi Financial Consumer Finance Indian Ltd., New Delhi

...Respondent

2. **F.A.O. No.6395 of 2012 (O&M)**

Gurchaman Singh Gill & another

...Appellants

Versus

M/s Citi Financial Consumer Finance Indian Ltd., New Delhi & others

...Respondent

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

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?

**Present: Ms.Puja Chopra, Advocate,
for the appellant in FAO No.5988 of 2012.**

**Mr.Vikas Kumar, Advocate,
for the appellants in FAO No.6395 of 2012.**

**Mr.D.K.Singal, Advocate,
for the respondent in both the appeals.**

**Mr.Nitin Grover, Advocate,
for applicant-Kotak Mohindra Bank.**

AMIT RAWAL, J. (Oral)

**CM No.25699-CII of 2014 in FAO No.5988 of 2012 &
CM No.25671-CII of 2014 in FAO No.6395 of 2012**

Prayer in the applications is for substitution of M/s Kotak

Mahindra Bank Ltd. As respondent in place of M/s Citi Financial Consumer Finance India Ltd.

Allowed subject to just exceptions.

Applications stand disposed of.

FAO Nos.5988 and 6395 of 2012

By this order, I intend to dispose of two F.A.O. Nos.5988 of 2012 and 6395 of 2012 as the common questions of law and fact are involved in both the appeals.

Appellant-loanee in FAO No.5988 of 2012 and appellant-guarantor in FAO No.6395 of 2012 are aggrieved of the dismissal of their objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") after return of the same by the Delhi High Court seeking setting-aside of the award dated 28.6.2010.

Ms.Pooja Chopra and Mr.Vikas Kumar, learned counsel appearing on behalf of the appellants submit that there is no compliance of provisions of sub-section (5) of Section 31 of 1996 Act. The award is silent with regard to the compliance of the statutory provisions. The objections were filed in Delhi High Court on 24.11.2010 when the copy of the award was found at the residence of the appellant on 18.11.2010. The Delhi High Court returned the objections vide order dated 2.2.2011 and thereafter the same were filed on 8.3.2011 at Patiala. The Objecting Court has failed to consider the statutory provisions of law and as well as the ratio decidendi culled out by the Hon'ble Supreme Court in **State of Maharashtra and others Versus M/s.Ark Builders Pvt.Ltd., AIR 2011 (SC) 1374**, wherein it has been held that the limitation would not start from the date of the passing of the award but from the date of receipt of copy of the same and if

the award is lacking material particulars of compliance of provisions of sub-section (5) of Section 31 of 1996 Act, the limitation has to be from the date of receipt of copy of the award. All these factors have not been considered by the Objecting Court. Ms.Chopra submits that an application has been moved with regard to “No Objection Certificate” having been issued by the erstwhile financial institution.

Mr.D.K.Singal and Mr.Nitin Grover, learned counsel appearing on behalf of the M/s Citi Financial Consumer Finance India Ltd. And Kotak Mahindra Bank Ltd.-subsequent assignees of the loan transaction, submit that the Objecting Court noticed the factum of sending of the arbitration award by registered post by the Arbitrator and on 31.7.2010, the endorsement made is “unclaimed” and, therefore, it was in the knowledge of the appellants, but they chose to remain silent in not availing the remedy under the law and, therefore, the objections have rightly been dismissed being barred by limitation and, thus, urge this Court for affirming the findings rendered by the Objecting Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the view expressed by the Objecting Court is not only incorrect but against the mandate of ratio decidendi culled out by the Hon'ble Supreme Court in **M/s.Ark Builders Pvt.Ltd., (supra).** The award does not itself convey the compliance of provisions of sub-section (5) of Section 31 of 1996 Act. The endorsement “unclaimed” on the registered envelope does not amount to refusal or delivery of the award, whereas on the other side, it is a categoric averment in the objections filed in the Delhi High Court that copy of the award was found lying, in the envelope, in the house of the appellant, i.e., loanee on 18.11.2010 and the

objections thereafter were filed on 24.11.2010. The Objecting Court, after having entertained the objections, should have excluded the period of limitation as the appellants had availed the remedy at Delhi High Court, which found that the objections were barred by law of limitation. Thus, the view aforementioned is not correct.

In view of the foregoing reasons, the impugned order is hereby set-aside. The matter is remitted back to the Objecting Court. Liberty is granted to the appellants to place on record the documents with regard to alleged payment and if not offered, the proposal shall be considered by the Objecting Court and decide the objections in accordance with law, preferably within a period of six months from the date of receipt of certified copy of order. The respondents would be at liberty to raise the plea with regard to the assignment, authenticity and genuinity of the NOC, proposal and account statements regarding their alleged payment made in pursuance of the term loan.

Appeals stand disposed of.

May 12th, 2016
ramesh

(AMIT RAWAL)
JUDGE