

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
CM No.1897-CII of 2016 in/and
FAO No. 2013 of 2015 (O&M)
Date of decision : February 1, 2016**

Amar Singh (deceased) through his L.R

..... Appellant

Versus

Mahender Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Aditya Jain, Advocate
for the appellant.

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).
CM No.1897-CII of 2016

This is an application under Order 41 Rule 19 read with Section 151 CPC for restoration of the above mentioned appeal which was dismissed for non-prosecution on 14.1.2016.

For the reasons stated in the application, application is allowed. The appeal is restored back to its original number and the same is taken on board for disposal.

CM No.6217-CII of 2016

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 58 days in refiling the appeal is condoned.

The application stands disposed of.

FAO No. 2013 of 2015 (O&M)

The appellant is aggrieved of the order dated 10.7.2014 whereby objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act') for setting aside of the award dated 18.10.2007 has been allowed..

Learned counsel appearing on behalf of the appellant submits that the matter was referred to the arbitrator for settling the dispute amongst the family members. Respondent No.1 had procured the award in collusion with defendant Nos. 2 to 6 whereas the appellants never entered into any arbitration agreement regarding plots in question. They acquired knowledge about the award only on receipt of notice of a petition filed under Section 9 of the Act but the court below did not notice the aforementioned facts and allowed the objections by holding that objections were falling within the purview of Section 34 of the Act.

He further submits that the objections were not sustainable as appellant was co-sharer in the property. The other co-sharers had entered into arbitration agreement, therefore, he was bound by the same. The objections were not falling within the parameters of Section 34 of the Act. The objector did not go to the office of Sub Registrar for performing his part of the agreement. The objecting court sat as a court of appeal and set aside the award.

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

It is a matter of record that the objectors were co-sharers, who have not been impleaded in the objection petition. The arbitration agreement should have been signed by both the parties. However in the instant case, Ex.P-3 has not been signed by the parties, therefore, the arbitrator ought not have entered into reference despite arbitration clause in agreement. The objector never sought reference to the arbitrator.

In my view, the finding rendered by the objecting court is perfectly legal and justified as the objections were falling within the parameters of Section 34 of the Act.

I do not intend to differ with the finding rendered by the objecting court which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned order.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

**(AMIT RAWAL)
JUDGE**

**February 1 , 2016
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