IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.533 of 2014 (O&M)
Date of Decision: February 05, 2016

Mohinder Singh and others
...Appellants

Versus

Gurdarshan Singh & others
...Respondents

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: Mr.Rakesh Bakshi, Advocate,
for the appellants.

Mr.S.S.Dinarpur, Advocate,
for the respondents.

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AMIT RAWAL, J. (Oral)

The appellants are aggrieved of the dismissal of their objections filed for seeking setting-aside of the unreasoned award dated 29.7.2007.

Mr.Rakesh Bakshi, learned counsel appearing on behalf of the appellants submits that there was an agreement dated 1.4.1994 between the parties and all the parties are related to each other. As per the agreement, the partnership firm was carrying on the business of dealing in food grains and allied items. There were four partners, namely, Mohinder Singh son of Kartar Singh, Balbir Singh son of Kartar Singh, Jagir Kaur wife of Hakam Singh and Gurdarshan Singh son of Kehar Singh. First three partners gave the special power of attorney to their fourth partner for the purpose of carrying on the business of the firm as all the other three partners were old and illiterate. The aforementioned attorney used to take their thumb impression in good faith. Only in the month of August, 2008, they acquired the knowledge of *ex-parte* award dated 29.7.2007, when they received the summons from the Court of Shri R.C.Dimri, Additional District Judge, Ambala seeking execution of the same. On engaging the counsel, they filed objection petition before the Executing Court, which was dismissed vide order dated 7.9.2011 and the revision was also preferred, which was also dismissed on 3.9.2012 with the observation that since the award has not been challenged, the objections before the Executing Court could be entertained.

The agreement did not specify the names and number of arbitrators. The award has been made on plain paper and is unreasoned. It is not on a stamp paper. No notice of hearing of arbitration proceedings has been given and, therefore, the award is lacking compliance of provisions of Section 28 and sub-section (3)of Section 31 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act"). There is non-compliance of sub-section (5) of Section 31 and, therefore, the award is bad in law, much less vitiated.

Along with the objection petition, an application under Section 14 of the Limitation Act seeking condonation of delay in filing the objections from the date of acquiring the knowledge of the *ex-parte* award, i.e., 1.8.2008, was filed and the same has also been dismissed and, thus, prays for setting-aside of the award and as well as the impugned order, whereby the objections have been dismissed.

Mr.S.S.Dinarpur, learned counsel appearing on behalf of the respondents submits that no objection was taken in the objection petition seeking execution of the *ex-parte* award. The objection for having not sent the notice or having passed the award at their back has been taken at the first instance in their objections. No explanation has come forth in not filing the objections within 90+30=120 days from the date of the passing of the award and, therefore, the objections are barred by law of limitation.

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

It would be apt to reproduce the so-called award:-

> "*We (i) Ramdhan, Commission Agent, Shop No.94 (ii) Anil Kumar Commission Agent Shop no.9 on 20.05.2007 were appointed for division of accounts between the four partners of M/s Mohinder Singh Gurdarshan Singh & Co. Sh.Anil Kumar of Shop No.9 had been appointed on behalf of partners Mohinder Singh & Balbir Singh of M/s Mohinder Singh Gurdarshan Singh & Co. and Ramdhan of Shop No.94 had been appointed on behalf of Gurdarshan Singh of M/s Mohinder Singh Gurdarshan Singh & Co. After inspecting the accounts books of the firm, we have come to the conclusion that Rs.19,21,000/- (Rs.Nineteen Lacs Twenty one thousand only) is due from the Firm to Gurdarshan Singh. The bad debts qua which court cases are pending, in case any recoveries affected from them, then Gurdarshan Singh will have a right on 1/3rd of the amount recovered.*
>
> *Sd/-Anil Kumar* *Sd/-Ram Dhan*
> *29.07.2007* *29.07.2007"*

The award does not refer to compliance of provisions of sub-section (3) of Section 31, much less, sub-section (5) of Section 31 of 1996 Act. The Objecting Court has failed to notice the aforementioned facts, much less did not notice the fact the alleged Arbitrator had complied with the provisions of the Act. The appellants acquired the knowledge of the award only in August, 2008 and from that date, they had been approaching the Courts by filing objections and revision and ultimately the revision petition was dismissed on 3.9.2012. The objections were filed on 10.1.2012. The Objecting Court ought to have noticed this fact, vis-a-vis compliance of sub-section (3) of Section 31 of 1996 Act. I am in agreement with the contention of Mr.Bakshi that the appellants have not been informed and the award has been passed at their back.

Keeping in view the aforementioned facts, the award dated 29.7.2007 and as well as the order dated 3.1.2014 are hereby set-aside.

The appeal is accordingly allowed.

February 05, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**