

FAO No. 3236 of 2016(O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 3236 of 2016(O&M)
Date of decision : June 1 , 2016

Parmod Goel and others

..... Appellants

Versus

Cholamandalam Investment and Finance Company and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Samir Rathaur, 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. 11741-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 54 days in refiling the appeal is condoned.

The application stands disposed of.

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Notice of motion.

Ms. Sunint Kaur, Advocate for the respondents who is present in Court accepts notice.

The appellant-loanee is aggrieved of the dismissal of the

objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter after referred to as 'the Act') seeking setting aside of the ex-parte award dated 3.11.2014.

Learned counsel appearing on behalf of the appellant submits that Home Equity loan was obtained from the respondents for a sum of ₹1,45,00,000/- on 29.2.2012. However, there was some loss in the business. Since the contract envisage the resolution of dispute through an arbitrator, the matter was referred to the arbitrator. The arbitrator did not record satisfaction in sending the notice. Accordingly, appellants were proceeded ex-parte. On acquiring knowledge of the same in execution proceedings realizing the aforementioned fact, the objections under Section 34 of the Act have been filed.

The objecting court has not taken into consideration the aforementioned fact, thus the appellant has been prevented to present his case in view of Section 34 (2) (a) (ii) of the Act.

He further submits that he is ready to settle the account with the respondent-Financial institution by paying ₹5 lacs per month towards arrears and thereafter regularly continue to pay installments.

Learned counsel appearing on behalf of the respondents submits that the appellant made a default of payment since April, 2013 and a very small amount has been paid and more than ₹1,49,73,034/- is outstanding towards arrears. More over the arbitrator sent a notice which was received back with a report “refused”, the arbitrator was left with no other option but to proceed the appellants ex-parte, thus urges this Court for affirming the award.

I have heard learned counsel for the parties and

appraised the paper book and of the view that the arbitrator had sent a registered notice at the address of the appellant which came back with a report 'refused'. It is not the case of the appellant that the address given in the Memo of Parties was incorrect once they have received the execution proceedings at the same address. The offer is not acceptable to the financial institution.

In my view the objections were not falling within the aforementioned provisions to make out the objections within the realm of Section 34 of the Act.

I do not intend to differ with the finding rendered by the arbitrator and that of the objecting court. There is no illegality or perversity in the award as well as order of the objecting court. The award of the arbitrator and order of the objecting Court are upheld.

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

(AMIT RAWAL)
JUDGE

June 1 , 2016
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