

F.A.O.No.917 of 2013 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

F.A.O.917 of 2013 (O&M)

Date of Decision: September 06, 2016

Sukh Ram

...Appellant

Versus

Dadra Finance Corpn (Regd.), Jalandhar & others

...Respondents

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

Present: Mr.Pranav Aanda, Advocate for
Mr.R.S.Bajaj, Advocate,
for the appellant.

Mr.Siddhant Kant, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Appellant-loanee is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") seeking setting-aside of the award dated 10.8.2009.

Mr.Pranav Aanda, Advocate for Mr.R.S.Bajaj, learned counsel for the appellant submits that the award is vitiated in law inasmuch as that the financier-respondent has failed to place on record

the hire purchase agreement. The case set out by the financier was that

the loan was extended in the month of April, 2001, whereas the receipts placed on record are of 1998, i.e., Ex.A-2 to Ex.A-21, which show that the appellant had already paid a sum of ₹1,70,000/- against the loan of ₹2,80,000/-. In fact, the appellant had discharged the entire loan liability and the cheques given as a security have been presented, but the same were dishonoured and in this regard, even a complaint under Section 138 of the Negotiable Instruments Act was filed, which resulted into dismissal. Thereafter, the claim had been referred before the Arbitrator. In the absence of the hire purchase agreement or other evidence, the Arbitrator ought not to have passed the award. The Arbitrator had also remained the counsel of the respondent and, therefore, the allegation of biasness, much less compliance of Section 13 of 1996 Act is wanting. The objections were squarely falling within the realm of Section 34 of 1996 Act.

Mr.Siddhant Kant, learned counsel for respondent No.1 submits that copy of the hire purchase agreement and acknowledgment Ex.A-3 and Ex.A-4 have been brought on record. Not only this, even the statement of account was placed on record. The appellant was served through publication in the arbitration proceedings and appeared on 1.6.2007 and after obtaining two effective opportunities for filing written statement, much less imposition of costs was proceeded ex-parte on

13.9.2007. The award came to be passed on 10.8.2009. The audit balance sheet has also been placed on record. The claim lodged was for ₹2,80,000/- and with the passage of time by adding interest, an amount of ₹3,24,020/- and the interest @ 18% has been awarded taking into consideration the terms and conditions of the hire purchase agreement and, thus, submits that there is no illegality and perversity in the findings and the Objecting Court has rightly dismissed the objections in the absence of defence of the appellant and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of the learned counsel for the appellant as award reveals that the hire purchase agreement and acknowledgment have been proved on record as Ex. A-3 and Ex.A-4. No material has been placed on record to show that the loanee had discharged the financial/loan liability. The receipts, referred to above, are only four, which are before 2001. In fact, as per the Finance Company, the loanee had been dealing with the company prior to this loan and the receipts were of other loan transactions. The audit balance sheet has been placed on record, which has gone un-rebutted in the absence of the defence. The Arbitrator examined the ex-parte evidence and passed the award. I am of the view

that the objections at the behest of the loanee were not within the realm of Section 34 of 1996 Act as they were aware of the arbitration proceedings and intentionally proceeded ex-parte. The award is also in consonance with the provisions of Section 31 (7) of 1996 Act. No evidence has been led regarding alleged biasness.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Objecting Court. No ground for interference is made out.

Appeal stands dismissed.

September 06, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No