

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.696 of 2014 (O&M)

Date of Decision: September 30th, 2016

M/s Kohinoor Autos, Jalandhar & another

...Appellants

Versus

H.M.T.Limited, Pinjore & another

...Respondents

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

Present: Mr.S.P.Soi, Advocate,
for the appellants.

Mr.Vaibhav Sahni, Advocate,
for respondent No.1.

AMIT RAWAL, J.

Civil Misc.No.2188-CII of 2014

For the reasons mentioned in the application, which is supported by an affidavit, delay of 36 days in refiling the appeal is condoned.

CM stands disposed of.

Civil Misc.No.2189-CII of 2014

Prayer in the application is for permission to make good deficiency in the court fees.

Allowed subject to all just exceptions.

FAO No.696 of 2014

Appellants are aggrieved of the impugned order dated 6.8.2013, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") for setting-aside the *ex-parte*

award dated 8.9.2010, have the dismissed.

Mr.S.P.Soi, learned counsel for the appellants submits that respondent No.1, being the manufacturer of various kinds of tractors, had appointed the appellants as dealer in the year 1992 for the sale of tractors and its spare parts in the area of Tehsil Jalandhar, Phillaur District Jalandhar and Tehsil Phagwara, District Kapurthala. The Memorandum of Undertaking was signed for the year 2004-05, but the same ceased to exist w.e.f. 31.3.2005. There was no provision of charging the interest in the Memorandum of Undertaking, upto the year 2002-03. Respondent No.1 sent the Dealership Agreement for the year 2003-04 and 2004-05, in which provision of charging interest was made, but since from the date of inception of dealership, there was no provision for charging interest, they refused to sign the same. The officials of the HMT Ltd. used to visit for promotion of the sale to the office of the appellants and ordered to pay various incentives, but respondent No.1 started charging interest at the rate of 18% per annum by applying penal and compound interest. They started threatening to utilise the blank cheques taken as security from the appellants at an appropriate stage. Respondent No.1 is not maintaining the accounts properly.

He further submits that the arbitration proceedings initiated by the HMT resulted into passing of the *ex-parte* award. No service was effected on the appellants. They came to know only when the execution seeking implementation of the award was filed and, thus, urges this Court for setting-aside the impugned order and the award by giving opportunity to the appellants to defend the claim of the HMT-respondent No.1.

Per-contra, Mr.Vaibhav Sahni, learned counsel for respondent

No.1-HMT submits that the notices were sent by the Arbitrator, much less many registered notices were sent. Notice was also served through publication in the newspaper “Indian Express”, but the appellants did not appear and, therefore, the filing of the objections is nothing but an attempt to delay the execution and overreach this Court 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 the Arbitrator, while conducting the arbitration proceedings, noticed the fact that on many occasions, registered notices were sent, but the same came back with the report that the proprietor of the firm is not available. Even on 20.12.2008, an attempt to serve the appellants through the Principal Civil Court at Jalandhar was made, but the report came that they were avoiding the service. Even the registered cover was sent on 28.11.2009, but the same came back as “unclaimed”. Realising the aforementioned fact, the publication was also caused to effect the service in the daily newspaper, i.e., Indian Express, but yet the appellants did not appear and, therefore, proceeded *ex-parte* on 19.1.2010. The address given in the appeal, objections and before the Arbitrator is the same. No explanation, much less cogent has come forth as to how the service was not effected. Notice sent through registered cover and A.D. is deemed to be served as per the provisions of Section 27 of the General Clauses Act. Once the publication was effected, the appellants have not been able to prove that the address was incorrect, I am of the view they were validly served and intentionally did not contest the aforementioned proceedings.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Additional District Judge, Panchkula, whereby the

objections have been dismissed. The same are affirmed.

Appeal stands dismissed.

September 30th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No