IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 6722 of 2015 (O&M)
Date of decision : April 8, 2016

M/s Berkeley Commodities Ltd.

.... Appellant

Versus

Manoj Ahuja and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Aman Bansal, Advocate
for the appellant.

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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. 20970-CII of 2015

This is an application under Section 149 read with Section 151 CPC for making good the deficiency in court fees.

The application is allowed.

Permission granted to make good the deficiency in court fee.

FAO No. 6722 of 2015 (O&M)

The appellant is in appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') being aggrieved against the dismissal of objections filed under Section 34 of the Act seeking setting aside of the award dated 10.9.2013.

Learned counsel appearing on behalf of the appellant submits that the case set up by the respondent was that in the year 2010 the respondent had opened an account number PN32 to trade in Multi Commodity Exchange of India Ltd. He was introduced by his friend's brother Mr. Rajat Gupta and his childhood friend Aaditya Gupta opened a new Company which dealt in commodities and was doing the business with his partners under the name M/s Ceres Financial Services, sub broker for respondent No.1. Mr. Aaditya Gupta without the knowledge of the respondent started trading at his own and was receiving e-mails regarding the trading details but no information regarding the loss was provided to respondent No.1. Respondent No.1 alleged that he lost all the money by September, 2010. The appellant contested the claim petition filed by the claimant/respondent. The aforementioned facts have not been appreciated by the arbitrator. The respondent-claimant had given authority to Aaditya Gupta to conduct the business therefore ignorance in transaction made by the authorized representative, without the consent of the claimant would pale into insignificance, therefore, the award of the arbitrator is wholly erroneous and perverse. Accordingly, the objections were filed under Section 34 of the Act.

I have heard learned counsel for the appellant and appraised the paper book and of the view that it is a matter of record that the arbitrator found that the appellant had no right in the money of the claimant in the manner it has been done. No pleading or any document, has come forth to show the interest of the claimant. The appellant failed to produce on record any log order book or other document to show that the orders were placed and respondent No.1 or his representative visited the office of the appellant. The objections, in the absence of any evidence, in my view were not falling with the purview of Section 34 of the Act.

The appellant has been ordered to pay ₹30,000/- within a period of one month along with interest @ 12% per annum.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme Court in catena of judgments wherein it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. J. M. Combines (2015) 5 SCC 698.** In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. The Arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise from the award. The award is perfect and justified and all the objections filed against the same were wholly misconceived.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

April 8, 2016
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