

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.982 of 2016 (O&M)
Date of decision:28.04.2016

Pali

... Appellant

Vs.

M/s Shri Ram Transport Co. & others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. B.D.Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant is aggrieved of the dismissal of the objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short "1996 Act") seeking setting aside of the ex parte award dated 25.04.2013.

Mr. B.D.Sharma, learned counsel appearing on behalf of the appellant submits that the appellant had taken a loan amounting to ₹1,18,000/- from respondent No.1 for purchase of second hand vehicle, which was required to be repaid in 47 equal monthly installments. As per the terms and conditions of the disbursement of loan, in case of dispute, resolution of the same was liable to be referred to the Arbitrator. Respondent No.1 sought the reference of the dispute owing to non-payment of the loan amount, though a sum

of ₹86,900/- has been paid. The Arbitrator has not acted in accordance with the provisions of 1996 Act, much less, not followed the principles of natural justice as notice of the arbitration proceedings was sent by registered post at the address of the appellant and report of receipt was not brought to the notice of the Arbitrator and he also ordered for service through publication and passed the award in utter haste. Even the vehicle hypothecated with the respondent has been repossessed by them, thus, urges this Court for settlement of the matter through Mediation and Conciliation Centre of this Court, as well as, any other resolution which this Court deems it appropriate.

I have heard learned counsel for the appellant and appraised the paper book and of the view that Arbitrator has recorded satisfaction that the appellant had been deliberately avoiding the service of the arbitration proceedings. Section 3 of 1996 Act, reads thus:-

3. Receipt of written communications.—

(1) Unless otherwise agreed by the parties,—

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is

sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority.

Notice of the arbitration proceedings was sent through registered post at the address of the appellant. No documentary evidence has been placed on record before the Objecting Court by relying upon the provisions of Section 34(4) of 1996 Ac, inviting interference by calling upon the report of the Arbitrator with regard to the service on the registered address. Even otherwise, sending of notice through registered post carries presumption of truth as per Section 27 of General Clauses Act, yet the Arbitrator ordered for service upon the appellant through publication. Despite that, the appellant did not appear which culminated into passing of ex parte award dated 25.04.2013 and the objections have been filed after few days, i.e., on 15.05.2013. The appellant would have come out with some proof before the Objecting Court to call upon the opposite party. No steps have been taken. For the first time, plea has been taken in the grounds of appeal which is not permissible in law.

In my view, the objections were not falling within the realm of Section 34 of 1996 Act, much less, no ground is made out for

interference as the Court cannot sit on the chair of Arbitrator and re-appreciate the evidence.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 28, 2016
savita