

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 4502 of 2017(O&M)

Date of decision: 15.12.2017

Jagbir Singh

.....Petitioner

VERSUS

Indusind Bank Ltd. and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sandeep Lather, Advocate for the petitioner.

Mr. Ashwani Talwar, Advocate for respondent No.1.

REKHA MITTAL, J.(Oral)

Counsel for the petitioner would state that respondent No.1 is the contesting respondent and service of respondents No.2 and 3 may be dispensed with. Ordered accordingly.

The present petition directs challenge against order dated 16.07.2016 (Annexure P-2) and dated 09.05.2017 (Annexure P-4) whereby objections filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 were dismissed in default and the application for restoration of the objections also did not find favour with the Court below.

Counsel for the petitioner has submitted that the petitioner filed objections against an arbitral award by engaging Sh. Satyavir Vashisth, Advocate. The said Advocate suffered from an ailment and eventually passed away prior to 16.07.2016 resulting in dismissal of the objection petition. It is further argued that as soon as the petitioner came to know about dismissal of the objections, he filed the instant application on 06.09.2016 for restoration of the objections but the same has been

wrongly dismissed by the Court below without adverting to the submissions made in the application much less recording a finding that absence of counsel for the petitioner on 16.07.2016 was intentional or mala fide.

Counsel representing respondent No.1 would urge that the award in favour of the bank was passed on 06.10.2009 and the petitioner filed objections on 28.09.2011. The petitioner availed number of opportunities to settle the dispute with the Bank but he never approached the Bank for settlement. It is further submitted that due to pendency of the proceedings, the Bank is suffering and is at a loss qua the amount awarded in its favour along with interest thereon.

I have heard counsel for the parties, perused the paper-book particularly the order impugned.

Perusal of the operative para of the impugned order makes it evident that it does not advert to contention of the petitioner that since Sh. Satyavir Vashisth, Advocate representing the petitioner had passed away prior to 16.07.2016 i.e. the date fixed in the proceedings, there was no representation on behalf of petitioner who filed the application for restoration immediately on learning about dismissal of the objection petition. As per the settled position in law, a party must get effective opportunity for adjudication of its claim on merits unless he is guilty of approaching the Court with unclean hands or by concealment of material facts. In the case at hand, objection petition preferred by the petitioner was filed in September 2011 but has been dismissed for non-prosecution in July 2016. In case the petitioner is not allowed to get its decision on merits, entire effort of the petitioner to pursue his remedy for the past more than 4 ½ years would be rendered nugatory.

Counsel for respondent No.1 has not disputed that Sh. Satyavir Vashisht, Advocate, counsel for the petitioner passed away prior to 16.07.2016. In view of the above, order impugned cannot be allowed to sustain and liable to be set aside.

For the foregoing reasons, the petition is allowed. The impugned orders are set aside and the matter is remitted to the Court concerned for decision of the objections in accordance with law. Since the objections are pending since September 2011 and the respondent-Bank is unable to execute the award due to pendency of the objections, the Court below shall decide the objection petition within a period of three months from the parties putting in appearance on 18.01.2018.

Disposed of accordingly.

DECEMBER 15, 2017

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no