

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.6770 of 2015 (O&M)
Date of Decision : 16.05.2017.

Jitender Singh

.....Appellant

Versus

Indus Ind Bank Limited

..... Respondent

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr. Pankaj Middha, Advocate for the appellant.

ARUN PALLI, J. (Oral)
CM-21177-CII-2015

Allowed as prayed for.

CM-21179-CII-2015

For the reasons set out in the application, the delay of 56 days that has occurred in re-filing the accompanying appeal is condoned.

C.M. disposed of.

FAO-6770-2015 (O&M)

This is an appeal against the judgment dated 28.1.2015, rendered by the Additional District Judge, Jind, vide which the objections preferred by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the arbitral award dated 28.2.2009 have since been dismissed.

The appellant got a vehicle (truck No.HR-56E-1517) financed from the respondent-bank in the year 2006. A sum of ₹15,00,000/- were

lent to the appellant and one Mahinder Singh stood as guarantor. The loan agreement was executed at Delhi and the appellant was required to re-pay the loan with interest in 46 installments. For, the appellant defaulted in payment of certain installments the respondents invoked the arbitration clause. Record shows that the registered notices with acknowledgement due were sent to the appellant by the Arbitrator on his village address i.e. Gosai Khera. And his father's name and house number were also correctly depicted upon the notices. So much so, the same address, at which the notices were sent, also finds mention in the objection petition preferred by the appellant and even in the arbitration agreement. The notices sent to the guarantor i.e. Mahinder Singh on 5.1.2009 were received back, for, he refused service. That being so, the learned Additional District Judge, concluded that there was nothing on record to show that the appellant indeed resided at another place. Thus, the appellant was deemed to have been served. But he on his own volition chose to abstain from the arbitration proceedings. The grievance of the appellant; that he was never served in the proceedings before the Arbitrator. And he had actually acquired knowledge of the arbitral award when he was served in the execution proceedings was also found to be mis-conceived. For, even otherwise, the appellant-objector had appeared before the executing Court on 5.11.2011 as was made out from Ex.R14 and, he even moved an application for supplying certain particulars. Though his counsel appeared on the subsequent dates i.e. on 17.12.2011, 21.1.2012, 10.3.2012 and 21.04.2012, as evident from the orders Ex.R13, Ex.R12, Ex.R11 and

Ex.R10. Therefore, ex facie, the appellant had a concrete and conclusive knowledge of the arbitral award on 5.11.2011, but he filed the objections after more than 8 and half months i.e. on 28.7.2012. Whereas the provisions of Section 34 of the Act envisaged that the objections against the arbitral award could be filed within 90 days, though the said period is extendable by another 30 days, provided the Court is satisfied that the objector was prevented by sufficient cause from filing the objections within the specified time. Therefore, the objections preferred by the appellant were held to be grossly barred by time. Even otherwise, it was not disputed that the appellant had obtained loan from the respondent and he had defaulted in payment of installments. Even the vehicle in question was re-posessed by the respondent under the orders of the Court. And after adjusting the auction amount towards loan, the respondent had lodged a claim for the balance amount. Further, a bare perusal of the award revealed that the Arbitrator had assigned reasons for each of the claims that was awarded. It could not be shown that the finding arrived at by the Arbitrator was either perverse or un-reasonable. Therefore, it was held that the objections preferred by the appellant were not even within the purview of Section 34 of the Act.

That being so, the only and the inevitable conclusion that could be reached was; that the objections filed by the appellant were liable to be dismissed. Despite being pointedly asked, learned counsel for the appellant could not show as to how the conclusions arrived at by the Arbitrator as also the learned Additional District Judge were either contrary to the record or suffered from material illegality.

Thus, the appeal being devoid of merit is dismissed.

CM Nos.21178 and 21180-CII-2015

For, vide order of an even date I have already dismissed the appeal on merits no formal order is necessary or required to be passed in these applications.

16.05.2017

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No