

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO No.33 of 2017(O&M)

Date of Decision:-12.07.2017

Harjeet Kaur & Anr.

.....Appellants.

Versus

Magma Fincorp Ltd. & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Shakti Mehta, Advocate for the Appellants.

JASWANT SINGH, J. (ORAL)

Appellant no.1-Harjit Kaur and appellant no.2 Karam Singh are the daughter and husband of late Harbans Kaur, who is stated to have died on 28.10.2008. Both the appellants being her legal heirs have filed the present appeal directed against the order dated 22.09.2016 passed by the learned Additional District Judge, Patiala whereby their objections under Section 34 of the Arbitration and Conciliation Act, 1996 have been dismissed on the ground of lack of jurisdiction.

Admitted facts are that home equity loan for a sum of Rs.2,65,000/- was granted on 18.10.2006 to Harbans Kaur and her two sons Rajwinder Singh and Gurmeet Singh by the respondent-finance company. The loan was disbursed against mortgage of residential house owned by Harbans Kaur by depositing the title deeds with the finance company. The three borrowers had become defaulters of the payment of monthly

installments led the finance company to invoke the arbitration proceedings under Clause 12 of the Agreement dated 18.10.2006. The proceeding were initiated before the Sole Arbitrator at Delhi in terms of the relevant clause of the said agreement dated 18.10.2006. Notices issued by the Arbitrator were duly served through registered posts upon Rajwinder Singh and Harbans Kaur while service upon Gurmeet Singh was presumed to be properly effected on account of his summons being dispatched at the same address as of respondent nos.1 & 2. None of the respondents-borrowers appeared before the Arbitrator. An order dated 08.11.2010 was passed declaring the respondents to be ex-parte. An ex-parte Award dated 31.12.2010 came about to be passed by the sole arbitrator whereby the judgment debtors were required to pay a sum of Rs.4,80,755.76/- with interest. Finance company filed execution of the decree before the Courts at Patiala by attachment and sale of the mortgaged property/residential house. Upon notice of the execution petition the present two appellants filed their objections under Section 34 of the 1996 Act which have been dismissed vide impugned order dated 22.09.2016.

It is averred that Harbans Kaur had died on 28.10.2008 leaving behind the present two appellants along with others as Class-I Legal Heirs.

Learned Counsel for the appellants submits that the service of the notices by the Sole Arbitrator on Harbans Kaur in October 2010 was not possible as Harbans Kaur had already died in 2008. It is thus stated that the whole proceedings have been conducted at the back of the judgment debtors and are liable to be set aside.

After hearing learned Counsel for the appellants no case for interference is made out as vide the impugned order the objections have

been dismissed on the ground of jurisdiction only. The said finding is in the light of the terms and conditions of the loan agreement executed between the company and the borrowers whereby it was agreed that in case of any dispute the arbitration proceedings will be conducted at Delhi as per Clause15 of the Agreement. Admittedly the arbitration proceedings were conducted at Delhi, therefore, the impugned order has been rightly passed on ground of jurisdiction by relying upon **M/s Bhandari Udyog Limited Vs. Industrial Facilitation Council & Anr. 2015(2) RCR (Civil) 918** and as such no interference is required.

In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

July 12, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>