

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

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**CM No.21825-CII of 2012 in/and
FAO No.4939 of 2012 (O&M)
Date of Decision : 16.05.2018**

Kotak Mahindra Bank Ltd.

..... Appellant

Versus

Mahabir Singh and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. A.S.Virk, Advocate
for the appellant.

None for the respondents.

AJAY TEWARI, J. (Oral)

CM No.21825-CII of 2012

For the reasons recorded, the application is allowed. Delay of 18 days in re-filing the appeal is condoned.

FAO No.4939 of 2012

None has entered appearance on behalf of the respondents despite service. The respondents are proceeded against ex-parte.

This appeal has been filed against the judgment dated 03.03.2012 passed by Additional District Judge, Jind entertaining and allowing the application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') filed by respondent No.1 and setting aside the award and the execution petition filed by the appellant seeking execution of the Award dated 11.08.2009 at New Delhi.

The brief facts are that the respondent No.1 had got financed a truck from the appellant. Since he did not pay the installments to the appellant the truck was repossessed and sold. Even thereafter the entire monies due to the appellant were not realized and consequently the appellant appointed the arbitrator as per clause 10.16 of the contract. The respondent No.2 is the guarantor. The arbitrator summoned the respondents but they did not appear and were consequently treated as ex-parte. Award was passed, signed and sent to the respondents at their address. No objection was filed. Ultimately the execution was filed at Jind where the respondents resided. In response to the Execution petition they filed a composite application pertaining objections to execution and also objections under Section 34 of the Act. The same having been allowed the appellant-Bank is before me.

Learned counsel has argued that the objections were filed much beyond the period prescribed under Section 34 of the Act and the allegations of the respondents that they only came to know about the proceedings from the notice in the Execution application is clearly unwarranted because they were served with regard to the execution on the same address on which the notices and the award was sent by registered post. He has further argued that the Court erred in holding that merely because the appellant had the right to repossess the vehicle the dispute became non-arbitrable.

In my considered opinion, both the arguments of the learned counsel for the appellant have to prevail. Once the respondents were served with the execution on the same address on which the earlier

communications were sent the onus lay upon them very heavily to prove that they had not been served with a copy of the award. Not only they have not discharged the onus there was also no evidence which had been led about the same. In the circumstances, the objections filed after such a long time would have to be barred by limitation. As regards the second argument also it can not be said that the mere right to repossess the vehicle would obliterate the dispute referred to in clause 10.16 of the contract. There may be a case where after repossessing and sale of the vehicle the full dues are not recovered or, conversely the vehicle is sold for an amount which was higher than the amount which was owed to the lender. In both these cases it would be illogical to say that the remaining dispute is not arbitrable. Resultantly the finding that the dispute in the present case was not arbitrable is also set aside.

Appeal is allowed. In the end, the matter is sent back to the Executing Court. The Executing Court will now proceed further in the execution application.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

16.05.2018
Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No