

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

CR No.3233 of 2018(O&M)

Date of decision: 30.10.2019

Kapil Dalal

.....Petitioner

vs.

Kotak Mahindra Bank and others

.....Respondents

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: - Mr. Abhimanyu Singh, Advocate,
for the petitioner.

Mr. Vipul, Advocate for
Mr. Paras M. Goyal, Advocate,
for respondent No.1.

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Sanjay Kumar, J. (ORAL)

This civil revision, under Article 227 of the Constitution of India, was instituted in relation to an Arbitral Award. The petitioner assails the Arbitral Award dated 15.07.2017 passed by the Arbitral Tribunal of Sh. Kamaljit Singh, Sole Arbitrator, in Arbitration Case No.29/49/ACQ of 2015, titled 'Kotak Mahindra Bank Limited vs. Kapil Dalal and others', on the ground that he was not put on notice prior to the passing of the said Award. The petitioner was the first respondent in the arbitral proceedings.

2. This Court finds that the Arbitral Tribunal noted in para No.4 of the Award that notice was ordered to be issued to the respondents by registered post on 09.08.2016 but the same was neither returned back served or unserved nor was there any indication that it had been refused by the respondents. It appears that the claimant informed

the Arbitral Tribunal that as per its record, there was no change of address of the respondents and its records showed the very same addresses to which the notices were sent.

3. By the impugned Award, the Arbitral Tribunal directed the respondents therein to pay to the claimant a sum of ₹3,91,797.67/- along with interest. The claimant was also held entitled to repossess the agreement tractor and dispose of the same for recovery of its dues. In the event any amount still remained payable, the claimant was held entitled to recover it separately.

4. By order dated 15.05.2018, while directing notice of motion, this Court restrained respondent No.1-claimant from auctioning the agreement tractor subject to the petitioner, the first respondent in the arbitration case, depositing a demand draft for a sum of ₹2,00,000/- with the Registry of this Court. In the event the said demand draft was produced within the time stipulated, the restraint order was to operate.

5. Mr. Abhimanyu Singh, learned counsel representing the petitioner, would state that the demand draft was duly deposited on 19.05.2018. However, Mr. Vipul, learned counsel representing Mr. Paras M. Goyal, Advocate for respondent No.1, would inform this Court that the tractor was put to sale on 27.04.2018 itself, well before the passing of the order by this Court on 15.05.2018. He would further state that after adjusting the proceeds arising out of the sale of the tractor, a sum of over ₹2,00,000/- still remains due. He would place reliance on the Constitution Bench judgment in '**M/s S.B.P. & Co. vs.**

M/s Patel Engineering Ltd. & another, 2005(4) RCR (Civil), 747' in support of his contention that this revision under Article 227 of the Constitution of India would not lie in relation to arbitral proceedings.

6. As the issue of maintainability of this revision has been raised, it would be appropriate to address the same in the first instance.

7. Perusal of the judgment relied upon by the learned counsel and more particularly, para 44 thereof, would demonstrate that the Supreme Court frowned upon the approach of some of the High Courts in entertaining petitions under Articles 226 or 227 of the Constitution of India in relation to orders passed by the Arbitral Tribunal during the course of arbitration. The Supreme Court specifically observed that under Section 34 of the Arbitration & Conciliation Act, 1996 (for short, 'the Act'), the aggrieved party has an avenue for ventilating his grievances against the Award, including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. Therefore, when the Supreme Court held to the effect that orders passed during the arbitral proceedings would not be amenable to the jurisdiction of the High Court under Articles 226 or 227 of the Constitution of India, there can be no doubt that the Arbitral Award, ultimately passed by the Arbitral Tribunal, would not be liable to challenge under the aforesaid Articles. Separate machinery is provided under the Act in relation to any challenge that may arise against such an Award under Section 34 of the Act and it is for the party aggrieved to take remedial measures thereunder in accordance with due

procedure. This Court therefore finds merit in the submission of learned counsel for respondent No.1 that this civil revision is not maintainable. However, as the petitioner erroneously approached this Court against the subject Arbitral Award, he would be entitled to take remedial measures even at this stage in accordance with due procedure. Leaving it open to him to do so, this civil revision is dismissed. The demand draft (bearing No. 025702 dated 19.05.2018) for a sum of ₹2,00,000/- deposited by the petitioner with the Registry of this Court shall be returned to the petitioner against proper receipt and identification.

No order as to costs.

(SANJAY KUMAR)
JUDGE

30.10.2019

rakesh

whether speaking/non speaking	:	Yes/no
whether reportable/non reportable	:	Yes/no