

CR-469-2016 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-469-2016 (O&M)
Date of decision : 09.01.2019

Anil Tayal

... Petitioner

Versus

Dhan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Nagar Singh, Advocate for
Mr. A.S. Virk, Advocate
for the petitioner.

Mr. Shiv Kumar, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 25.09.2015, whereby an application of the Bank for rejection of the plaint in view of the provisions of Section 8 of the Arbitration and Conciliation Act, 1996 (in short 'the 1996 Act'), has been dismissed.

Learned counsel for the petitioner submitted that the respondents-plaintiff, in a suit filed on 08.11.2004, sought the following relief:-

"14. That the plaintiff, therefore, prays that a decree of Mandatory Injunction directing the defendant to receive the actual and reasonable amount of installments of the said machine which is due against the plaintiff, from the plaintiff, and to hand over the physical possession of the machine with bucket & kit as detailed and described in para No.1 of

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the plaint to the plaintiff with immediate effect, may kindly be passed in favour of the plaintiff and against the defendant with costs of the suit. And/or any other relief which this Hon'ble court deems fit and proper may also be granted."

An arbitration award has already been passed, though *ex parte*, which has not been assailed as per the provisions of Section 34 of the 1996 Act. The application was not happily worded, but it was under the provisions of Section 8 of the 1996 Act. The trial Court erroneously dismissed the application by ignoring the fact that both the parties were alive to the agreement. The agreement containing the payment of installment and rate of interest was sacrosanct, much less, not in dispute.

Learned counsel for the respondent supported the impugned order and submitted that there was no compliance of the 1996 Act as neither the photocopy or certified copy of the agreement was attached with the application nor it was under the provisions of Section 8 of the 1996 Act, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that concededly the award has been passed, which has not been assailed so far. The aforementioned prayer reveals that the respondent had sought the indulgence of the Court under Section 39 of the Specific Relief Act for issuing injunction to the financial institution for accepting the reasonable amount. Such a breach of obligation cannot be enforced as it tantamounts to deviation from the terms and conditions of the agreement nor any declaration has been prayed for. The agreement envisaged the possession of the machinery, in case of non-payment of the installment. A defaulter cannot seek the intervention of the Court to pay the

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installment according to his own will and choice. The impugned order, under challenge, suffers from illegality and not sustainable in the eyes of law. The same is set aside. The respondents-plaintiffs shall be at liberty to avail the remedy in accordance with law.

Resultantly, the present revision petition stands allowed.

09.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**