

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

RA No. 92 of 2019 in
FAO No. 3778 of 2015
Date of decision: 12.7.2019

M/s OCM Retail Shop & Ors.

...Appellants

Versus

M/s Birla VXL Ltd.

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vivek Aggarwal, Advocate,
for the applicant/appellant.

JAISHREE THAKUR, J.

1. This is an application that has been filed under Order 47 Rule 1 read with Section 151 of the Code of Civil Procedure for reviewing the order dated 26.4.2019 passed in FAO No. 3778 of 2015.

2. Learned counsel appearing on behalf of the applicants/appellants seeks to recall/review of the order so passed, inter-alia, on the following grounds taken in the review application:-

“(1) *Because agreement for franchise was entered into for a period of five years ending on 26.8.1997 for selling the products of the respondent company. Apparently the 1940 Arbitration Act applied and not the 1996 Act and the clear intention of the parties was such. Thus, there is an inherent defect in the award.*

(ii) *Because arbitration proceedings were initiated. It is a matter of common knowledge that the Indian Limitation*

Act would apply. The limitation for filing arbitration proceedings was three years which expired on 25.8.2000. In support the case of Supreme Court of India in P. Manohar Reddy S Bros V. Maharashtra Krishna Valley Development Corpn 2 SCC 494 is cited wherein it has been categorically held that the period of limitation would be 3 years. Strangely, no application for condonation of delay before the arbitrator was filed. As per Section 3 of the Indian Limitation Act, it was the duty of the Arbitrator to dismiss the proceedings before him. Kindly refer to the citations quoted in para 8 of the instant FAO.

- (iii) *Because that as per the Clause No. 31 of the agreement between the parties at page 36 of this petition, the Arbitrator will be the president of OCM (Petitioner Company) and any other person appointed by him but the respondents have appointed their own Company's counsel namely Naresh Maini who was having no jurisdiction to decide the same as he was never appointed by OCM Company. It is pertinent to mention here that since the arbitration proceeding were initiated ex-parte against the petitioner therefore, petitioner was unable to file Section 16 Objections before Arbitrator regarding his jurisdiction to decide the dispute. Therefore, any Award/Order passed by him is non-est and having no value in the eyes of law as was violation of the agreement between the parties. It is pertinent to mention here that issue was also framed regarding jurisdiction of arbitrator by the Court of Sh. S.S. Dhaliwal, ADJ and on this score alone the present case can be remanded back to the Court below to decide the jurisdiction point at first stage.*

- (iv) *Because no notice of initiation of arbitration*

*proceedings was ever given to the appellant by the arbitrator. This is a violation of the principles of natural justice on the part of the Arbitrator besides being a serious misconduct on his part. Copy of award was also not sent by the Arbitrator to the petitioner which is violation of the provision of Section 31 (5) of the Arbitration Act, as held in the judgment passed by the Apex Court in case titled as **Benarsi Krishna Vs. Karmyogi 2012 SCC (9) 496.***

- (v) Because respondent company filed the execution proceedings for the implementation of said award before the court of the learned District Judge, Amritsar. The appellant herein had taken a specific objection that the award passed by the Arbitrator was an ex parte and the copy of the award was never received by the appellant. That on the basis of the objection in regard to the validity of the Award the learned District Judge was pleased to frame as many as seven issues.*
- (vi) Because during the pendency of those objections the respondents intentionally and deliberately to frustrate the objections taken by the appellant herein absented themselves and the case was dismissed for want of prosecution.*
- (vii) Because the learned District Judge Amritsar erred in clubbing the objections and the execution case together. There is an error apparent on the face of the record that instead of dismissing the execution petition, he has heard both the objections under Section 34 and the execution petition again together. Be that as it may, on the dismissal of the execution petition as aforesaid, by no stretch imagination can it be presumed that the objections raised against the award stood concluded in favour of the respondents herein.*

- (viii) *Because thereafter the respondent filed an application for the restoration/revival of their execution application. In a clandestine manner and with an intention, the said application was withdrawn without seeking any leave of the Hon'ble Court for seeking the same remedy again.*
- (ix) *Because it is respectfully submitted that the order of dismissal of the execution petition in the award passed by the learned sole arbitrator in the execution proceedings preferred by the respondent accordingly attained finality and became binding on the parties.*
- (x) *Because the order of the trial court dismissing the execution application of the respondent became final and as such operated as res judicata under Section 11 of the CPC the provisions of which is application to execution proceedings. It was the third execution applicatoin filed by the respondent in which the present impugned order has been passed. The trial court had dismissed the objection on the main ground that they were time barred without appreciating that the same was also barred by Section 11 of the Civil Procedure Code 1908 and Section 9 of the Civil Procedure Code 1908.*
- (xi) *because it is further stated that the learned District Judge Amritsar utter failed to appreciate the law laid down under Section 47 of the Procedure Code 1908.”*

3. I have heard learned counsel appearing on behalf of the applicants/appellants and find no merit in the arguments so advanced. The applicants herein are seeking to re-agitate all the points which were raised at the time arguments were addressed in the main appeal. Primarily, the applicants are aggrieved against the award of the Arbitrator and the execution proceedings that came to be initiated by the decree-holder. As already noticed by this Court, the applicants instead of challenging the

award passed by the Arbitrator and taking all the pleas as available under Section 34 of the Arbitration and Conciliation Act, 1996 chose to appear before the executing court and file their objections therein. These pleas ought to have been taken under Section 34 of the Arbitration and Conciliation Act, 1996.

4. The scope of interference in a review petition is limited. The error should be something more than a mere error and it must be one which has manifested on the face of the record. Rehearing on merits is not permissible. Mistake apparent on record, means that the mistake is self-evident and stares on the face of it. The law regarding review is well-settled in judgments rendered in **N. Anantha Reddy vs. Anshu Kathuria and others (2013) 15 SCC 534**, **S Bagirathi Ammal vs. Palani Roman Catholic Mission (2009) 10 Supreme Court Cases 464**, **Sasi (Dead) through Legal Representatives Versus Aravindakshan Nair and Others, (2017) 4 SCC 692**.

4. In view of the above, there is no ground to review the order dated 26.4.2019 passed by this Court. Finding no merit in this review application, the same is dismissed.

12.7.2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No