

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

FAO No.2843 of 2015

Date of Decision:20.05.2019

Sukhdev Ram

....Appellant(s)

Versus

Mahindra & Mahindra Financial Services Limited and another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr.Jasbir Rattan, Advocate for the appellant.

Mr.Nitin Thatai, Advocate for the respondents.

JAISHREE THAKUR, J.(ORAL)

1. This is a first appeal that has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (The Act of 1996 for short) seeking to challenge the order of the Addl. District Judge, Patiala dated 03.11.2014 whereby objections filed by the appellant under Section 34 of the Act, 1996 has been dismissed on the ground that the petitioner has failed to prove that he has filed the objections within limitation. Aggrieved against the dismissal of the objection petition, the instant appeal has been filed.

2. Learned counsel appearing on behalf of the appellant stated that the learned Additional District Judge, Patiala erred in dismissing the objection petition under Section 34 of the Arbitration and Conciliation Act. It is contended that Sukhdev Ram s/o Sukhdev Singh had availed of loan facility from Mahindra and Mahindra Financial Services Limited in the year 2007 for purchase of Mahindra Champion Vehicle for commercial purpose.

The loan agreement was executed between the parties but during the continuance of the said agreement, a dispute arose between the parties and respondent No.1 appointed respondent No.2 as a sole Arbitrator without serving any notice to the appellant on his correct address and obtained a fraudulent ex-parte Arbitrator award dated 04.02.2012. It is further contended that he had not received any copy of award except copy of the same which was appended with summons of execution petition received by him on 30.01.2013 as such petition has been filed by him within limitation after receipt of summons.

3. Per contra learned counsel appearing on behalf of Mahindra and Mahindra Financial Services Limited i.e. respondent No.1 contends that the service was rightly affected upon Sh. Sukhdev Ram and on his failure to appear the award was passed by the Arbitrator. It is contended that the petitioner himself in para No.4 of the petition stated that he had received notice from respondent No.1 on 25.01.2011 and even summons of the execution petition produced by the petitioner as Ex.P-1 had been issued on the same address and his father's name had been mentioned as Hari Singh in the said summon. Award in this case was passed on 04.02.2012 whereas petition was filed on 05.02.2013 i.e. after more than one year of passing of the award and petitioner has failed to explain the delay in filing the petition.

4. Counsel for the respondent argued that the law is well settled in **Union of India Versus M/s. Popular Construction Co. 2002 (1) RCR (Civil) 124** wherein it is stated that a petition under Section 34 of the Act must be filed within the limitation period as provided under section 34(3) of the Act and a petition filed beyond that period is liable to be rejected. It has further been observed by the Hon'ble Apex Court in the said case that even

provision of section of the Limitation Act are not applicable to a petition under section 34 of the Act .

5. I have head counsel for the parties and gone through the record of the petition and find no infirmity in the impugned order of learned Addl. District and Sessions Judge, Patiala which may call for interference of this Court. The appellant has not been able to satisfy this court as to why he did not appear before the arbitrator despite service. There is a vague reference in the petition under Section 34 of the Act of 1996 that he did not receive a copy of the award, but the argument would not be sustainable since he received a copy of the summons in the execution petition on the same address. The appellant now seeks to hide behind the argument that the father's name was wrongly reflected which is not permissible.

6. Dismissed.

(JAISHREE THAKUR)
JUDGE

20.05.2019

raman

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No