IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO:854 of 2016 (O&M)
Date of decision:23.07.2019.

Bhupinder Singh and others ...Appellants

Versus

GE Money Housing Finance and others ...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr.Jagnahar Singh, Advocate for the applicant-appellants.
Mr.Sushil Grover, Advocate for respondent No.4.

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JAISHREE THAKUR, J.

1. This is a first appeal that has been filed seeking to challenge the order of the Addl. District Judge, Chandigarh dated 12.08.2015, dismissing the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the impugned award dated 30.11.2010.

2. A few brief facts as required to be noticed are that the appellants availed of two loans from M/s. GE Money Housing Finance, IA Public Company and GE Money Financial Services Limited for a sum of Rs.23,80,000/- and Rs.14,70,000/- respectively. The first loan was to be repaid in 120 equated monthly installments of Rs.31,452/- whereas the

second loan was to be repaid in 120 equated monthly installments of Rs.19,426/-. On account of default in repayment of loan, Arbitration proceedings were initiated at the behest of M/s. GE Money Housing Finance, IA Public Company which proceedings were held at Delhi. Since the appellants did not respond to the notice issued to them to put in appearance before the Arbitrator, they were proceeded against ex-parte and an award came to be passed holding that the appellants herein were jointly and severally liable to pay a sum of Rs.37,39,589.52 along with interest computable at 13.08% and 12.24% with effect from 23.09.2010 till realization.

3. Aggrieved against the said award, objections were filed under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the impugned award dated 30.11.2010. Learned counsel appearing on behalf of the appellant herein *interalia* contends that the objections have wrongly been dismissed without taking into account that there was no effective service of the proceedings initiated by the Arbitrator. It is also contended that signatures were obtained without filling in the blanks in the loan agreement and therefore, the appellant herein stands cheated. It is also argued that the appellants were called upon by demand notice dated 16.04.2010 to clear the outstanding dues and simultaneously arbitration was invoked, therefore, without giving them adequate opportunity the award was passed.

4. *Per contra* learned counsel appearing on behalf of the respondent herein would contend that the M/s. G.E. Money Housing

Finance came to be renamed as M/s. Magma Housing Finance who in turn has been assigned the loan account of the appellant herein. It is also argued that the objections as filed by the appellant before the Addl. District Judge, Chandigarh would not be sustainable in view of the fact that there was specific clause in the loan agreement that all disputes would be settled through arbitration at Delhi. The award having been passed at Delhi, the objections ought to have been filed before the Courts at Delhi. It is also argued that after the loan was assigned on 29.03.2017 to the newly added respondents namely Asset Reconstruction Company (India) Limited (Aircil) proceedings were initiated under The Securitizations and Reconstruction of Financial Assets and Enforcement of Securities Interest **Act**, **2002.** The counsel for the respondent also points out that the appellant has obtained a stay order on 5.4.2019 by mentioning that execution proceedings are pending, which is factually incorrect. It is contended that the possession of the property had already been taken in proceeding initiated under Section 14 of SARFAESI Act of 2002 and not under the award dated 30.11.2010. Possession notice was issued on 7.5.2018 and physical possession taken on 13.2.2019. It is further contended that the appellant herein was aware of the proceedings that have been initiated under the Act of 2002 and the proceedings were challenged before the District Judge, Mohali which stand dismissed. It is further contended that no further appeal or revision has been filed against the order dismissing the objection filed nor they approached the Debt Recovery Tribunal challenging the proceedings under the Act of 2002.

6. I have heard learned counsel for the appellant as well as counsel for the newly added respondent Asset Reconstruction Company (India) Limited (Aircil) and find that there is no merit in the contention as raised by the counsel for the appellant. Firstly, the objections against the award of the Arbitrator would have to be filed before the Courts at Delhi considering the fact that there was clause in the agreement conferring exclusive jurisdiction upon the Courts at Delhi. In this regard reliance may be placed on the judgement ***M/s.Indus Mobile Distribution Pvt. Ltd. Vs. Datawind Innovations Pvt. Ltd and others, 2017 (7) SCC 678.*** Moreover, the proceedings had been initiated under Section 13 (2) by the assignee of the loan agreement under the SARFAESI Act of 2002 and possession taken on 13.2.2019 has been taken after following procedure under Section 14 of the Act of 2002, which fact was not brought to the notice of the court. The remedy of the appellant would be to challenge the proceedings as initiated under the Act of 2002, as also to approach the courts at Delhi under Section 34 of the Act of 1996.

7. In view of the above, the present appeal stands dismissed.

(JAISHREE THAKUR)
JUDGE

23.07.2019.
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No