

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2392-2017 (O&M)

Date of decision: 22.07.2019

Harbhajan Singh

...Appellant

Versus

M/s Mahindra and Mahindra Financial Services Ltd. & Anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Onkar Singh, Advocate,
for the appellant.

Mr. Nitin Thatai, Advocate,
for respondent No.1.

Mr. Ravi Gakhar, Advocate,
for respondent No.2.

JAISHREE THAKUR, J. (ORAL)

1. This is an appeal that has been filed under Section 37 of the Arbitration & Conciliation Act, 1996 seeking to challenge the order dated 01.02.2017 passed by the Addl. District Judge, Hoshiarpur dismissing the objections filed under Section 34 of the Arbitration & Conciliation Act, 1996 for setting aside the award dated 18.07.2012.

2. In brief, the facts are that Parvinder Singh son of Didar Singh – respondent No.2 herein availed a loan facility for purchasing of Mohindra Scorpio bearing registration No. PB-07-U-9327 vide loan agreement dated 30.07.2008 and the appellant herein stood as a guarantor. On account of

default in repayment of the loan amount as per schedule, arbitration proceedings were initiated by respondent No.1 at Mumbai. Since the appellant and respondent No.2 did not put in appearance, ex parte proceedings were initiated and an award dated 18.07.2012 came to be passed. The appellant herein was served with a notice in the execution filed by respondent No.1 and coming to know of the award, moved an application under Section 34 of the Arbitration & Conciliation Act, 1996 for setting aside the award. It was contended that he was only a guarantor. Before the Addl. District Judge various grounds were taken by the appellant herein inter alia one of being that no notice was served upon him by the Arbitrator at any point in time and, therefore, the award that was passed was liable to be set aside on the principles of natural justice. It was also contended that he was never served with the copy of the award and, therefore, non-compliance of Section 31(5) of the 1996 Act. The Addl. District Judge, Hoshiarpur dismissed the said objections on the ground that his Court would have no jurisdiction to entertain the petition under Section 34 of the Act since exclusive jurisdiction had been given to the Courts at Mumbai. The Addl. District Judge relies upon a judgment rendered in ***M/s Bhandari Udyog Limited Vs. Industrial Facilitation Council and Anrother, 2015(2) R.C.R. (Civil) 918***. Aggrieved against the said order, the instant appeal has been filed.

3. Learned counsel appearing on behalf of the appellant lays stress on the fact that there was no notice served upon him either by the Arbitrator at the time of proceedings or thereafter when award was passed. It is argued that he was only a guarantor to the alleged agreement entered into between

M/s Mahindra and Mahindra Financial Services Ltd. and respondent No.2 and therefore, the award and the proceedings initiated before the Executing Court ought to be set aside.

4. Per contra, learned counsel appearing on behalf of respondent No.1 submits that there is no infirmity in the order of the Addl. District Judge since there was a clause in the agreement specifying that the Courts at Mumbai have exclusive jurisdiction.

5. I have heard learned counsel for the parties and I find no infirmity in the order so passed. The law is well settled in this regard that jurisdiction to entertain the petition under Section 34 of the Arbitration & Conciliation Act would only lie with the Courts where exclusive jurisdiction has been conferred. In the instant case there was an arbitration clause in the agreement which clearly confers jurisdiction upon the Court at Mumbai to deal with all disputes arising out of the agreement. The judgment rendered in ***Indus Mobile Distribution Pvt. Ltd. vs. Datawind Innovation Pvt. Ltd & Ors., 2017(7) SCC 678*** would squarely cover the dispute in the instant case, therefore, there is no occasion to interfere with the impugned order. However, while dismissing the aforesaid matter liberty is granted to the appellant to approach the Court at Mumbai along with an appropriate application seeking condonation of delay in filing the said appeal which would be considered in accordance with law.

22.07.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.