

FAO No. 1875 of 2020

2023:PHHC:062282

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 1875 of 2020

Date of decision: 1st May, 2023

Indiabulls Financial Service Ltd.

Appellant

Versus

Anil Kumar Garg and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mrs. Kiran Bala Jain, Advocate for the appellant.

AVNEESH JHINGAN, J (Oral):

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is filed aggrieved of allowing the objections under Section 34 of the Act filed by the respondent.

2. The brief facts are that the respondents availed loan facility of Rs.20,00,000/- from the appellant. They defaulted in repayment and the appellant appointed a sole arbitrator as per arbitration clause 14.7 of the loan agreement. The proceedings culminated in an *ex parte* award dated 31.7.2010. The objections under Section 34 of the Act filed by the respondents were allowed on 6.11.2019. It was held that no postal receipts were produced to prove the service of notice sent by the arbitrator to the respondents and arbitration record was not produced.

3. On 14.7.2022, this court passed the following order:

“Learned counsel for the appellant prays for some time

to place on record any document to show that notice of arbitration proceedings was in fact served upon the respondents.

At request, adjourned to 21.11.2022.”

4. Learned counsel for the appellant on instructions submits that the arbitrator appointed by the appellant expired during the pendency of the proceedings. She contends that Annexure P-9 annexed with the appeal establishes that the respondents had knowledge of the arbitration proceedings. She argues that even if the impugned order is to be upheld, the matter be remanded.

5. The scope of interference under Section 37 of the Act is limited. Reference in this regard is made to the decision of the Supreme Court in ***Haryana Tourism Limited v. M/s Kandhari Beverages Limited, 2022(3) SCC 237.***

6. The arbitrator was appointed by the appellant and after his death arbitral record is not available. There is no basis for this court to reverse the factual finding recorded in the impugned order that no notice of arbitration was served upon the respondents.

7. The contention of learned counsel for the appellant that the matter be remanded back to the arbitrator is noted to be rejected in view of the judgment of the Supreme Court in ***Dr. A. Parthasarathy and others v. E. Springs Avenues Pvt. Ltd. and others, 2022(2) RC (Civil) 329,*** wherein it has been held that remand to the arbitrator for fresh decision is not permissible unless parties consent to it. The two options available with the court are either to consider the matter on merits on the basis of material

available on record but within the limited scope of interference or to
relegate the parties for fresh arbitration.

8. No case is made out for interference.
9. The appeal is dismissed.

[AVNEESH JHINGAN]

JUDGE

1st May, 2023
mk

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No