IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 6071 of 2019 (O&M)
Date of decision: March 27th, 2023

Shamsher Singh

Appellant

Versus

HDFC Bank Limited and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. B. S. Mittal, Advocate for the appellant.

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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 dismissal of objections under Section 34 of the Act.

2. The relevant facts are that the appellant purchased a vehicle from Surjeet Motors, Sirsa. An account was opened in HDFC Bank, Sirsa (for short, 'the Bank') for financing the vehicle. The loan amount was to be paid in monthly installments. On default of repayment, the Bank initiated arbitration proceedings which culminated in award dated 19.3.2015. The appellant lodged FIR No. 420 of 2014, under Sections 420, 467, 468, 471 IPC at Police Station City Sirsa. The allegations were that blank papers and cheques were got signed from appellant and the bank account was opened with malafide intention. He also filed a civil suit against Surjeet Motors and Branch Manager of the Bank. The application filed by the Bank under Section 8 of the Act was dismissed on 24.4.2015. The objections filed by

the appellant were dismissed on 3.5.2019, hence the present appeal.

3. Learned counsel for the appellant contends that the award was passed at the back of the appellant and the arbitrator was appointed unilaterally by bank without informing him. It is submitted that the dispute was not arbitrable as there were allegations of fraud and the application under Section 8 of the Act was dismissed by the Civil Court. Reliance is placed upon the decision of the Supreme Court in ***N.Radhakrishna v. Ms. Maestro Engineers and others, 2009(3) Apex Court Judgments 643***.

4. In the impugned order, a finding was recorded that the letter regarding appointment of the arbitrator and notice intending to proceed ex-parte were sent to the appellant through registered post and postal receipt were on record. To prove this fact, deposition of Mohinder Sharma, Manager of the Bank was also relied upon. The contention that application under Section 8 of the Act was dismissed on 24.4.2015 was rejected noting the fact that the arbitral award was prior in time. The allegation that the appellant had not got the vehicle financed and bank account was fraudulently opened was rejected. The Court noted that the appellant himself made payments in ten monthly installments for repayment of the loan and had not raised any objection till ten installments were paid.

5. Before proceeding further, it would be relevant to analyse Section 27 of the General Clauses Act, 1897 (for short, 'GC Act'). Section 27 is reproduced below:

> *"**27. Meaning of service by post.**-Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve"or either of the expressions*

> *"give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."*

6. Section 27 of the GC Act deals with service by post. The term 'any other expression' used in the section widens the ambit of the Section. There is presumption of service of a document, if it is posted by registered post, after pre-paying, properly addressing and containing the document.

7. There is no quarrel on the proposition that presumption of service of the document is rebuttable. The onus lies upon the party denying receipt of a document. Reference in this regard is made to the decisions of the Supreme Court in ***Sunil Kumar Sambhudayal Gupta and others v. State of Maharashtra, 2011(2) SCC (Crl.) 375*** and ***Parimal v. Veena @ Bharti, 2011(3) SCC 545.***

8. No case was set up either in objections under Section 34 of the Act or before this Court for rebutting the presumption invoked against the appellant as per Section 27 of GC Act.

9. It would not be out of place to mention that the appellant is not denying his signatures on the loan agreement which provided for dispute resolution through arbitration. The judgment in case of ***N.Radhakrishna's case (supra)*** relied upon by learned counsel for the appellant to contend that in case of allegations of fraud, the matter can only be decided by the Civil Court was over-ruled in ***Vidya Drolia and others v. Durga Trading Corporation, (2021) 2 SCC 1.*** It was held that the allegations of fraud

relating to civil dispute can be a subject matter of arbitration, the exception being of a fraud which invalidates the arbitration clause. Para No. 78 of ***Vidya Drolia's case (supra)*** is reproduced below:

> "*78. In view of the aforesaid discussions, we overrule the ratio in N. Radhakrishanan inter alia observing that the allegations of fraud can (sic cannot) be made a subject-matter of arbitration when they relate to a civil dispute. This is subject to the caveat that fraud, which would vitiate and invalidate the arbitration clause, is an aspect relating to non-arbitrability. We have also set aside the Full Bench decision of Delhi High Court in HDFC Bank Ltd. which holds that the disputes which are to be adjudicated by the DRT under the DRT Act are arbitrable. They are non-arbitrable.*"

10. The dismissal of an application under Section 8 of the Act after the passing of the award in itself will not nullify the award. Moreover, the application under Section 8 of the Act was dismissed in presence of counsel for both the parties yet the fact of passing of arbitral award was not brought to the notice of the Civil Court.

11. No case is made out for interference under Section 37 of the Act.

12. The appeal is dismissed.

13. Since the main appeal has been dismissed, pending application, if any, is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

27th March, 2023
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No