

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

FAO-3087-2018 (O&M)
Date of Decision:-22.08.2023

Ram Piari

... Appellant

Versus

M/s Shri Ram Transport Finance Company and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Satbir Rathore, Advocate, for the appellant.

None for the respondents.

GURVINDER SINGH GILL, J.(Oral)

1. The appellant assails order dated 4.1.2018 passed by learned Additional District Judge, Chandigarh, dismissing objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to be as 'the Act') against *ex parte* award dated 3.10.2014 (Annexure A-1).
2. In nutshell, the dispute amongst the parties arose from a loan which the appellant had raised for purchasing a vehicle. Since, the appellant, as per the respondent was found to be defaulter, the arbitration proceedings were

invoked wherein the appellant was proceeded against *ex parte* and an *ex parte* award dated 3.10.2014 (Annexure A-1) was passed. The appellant upon coming to know about the said *ex parte* award, filed objections (Annexure A-6) under Section 34 of the Act before the District Judge on 15.1.2015 which have been dismissed vide impugned order dated 4.1.2018.

3. Learned counsel for the appellant submits that the learned Additional District Judge fell in error in holding that the objections filed under Section 34 of the Act had been filed beyond the period of limitation of 90 days whereas the same, as a matter of fact had been filed within 90 days from the date of award in question had been communicated to the appellant which was received by him on 18.10.2014.
4. Learned counsel has further submitted that the award in question, in any case deserves to be set aside as the same has been passed on the grounds of limitation as well as on merits and that such practice had been deprecated by the Hon'ble Supreme Court in S.V. Matha Vs. Lal Chand Meghraj and others, (2007) 14 SCC 722. Learned counsel further submits that the aforesaid judgment of Hon'ble Supreme Court has been followed by this Court as well in FAO-2750-2015, FAO-2405-2021 and FAO-2898-2021.
5. Although, the respondent had been duly served and Mr. Manish Kumar, Advocate had put in appearance on behalf of the respondent No.1 on 17.7.2019, but he has not caused appearance thereafter. As such, it is apparent that he is not interested in contesting this appeal.
6. The award in question admittedly was passed on 3.10.2014. As per the case of the appellant, the award in question had been sent at his native place i.e. village Nathal, Post Office, Goyala, Tehsil Kasauli, District Solan, Himachal

Pradesh, whereas the appellant at that point of time was serving in Army School at Dagshai. Learned counsel in this regard has drawn the attention of this Court to copy of envelop (Annexure A-5). While the envelop is addressed to the appellant by mentioning his address of Village Nathal, P.O. Chandi, Tehsil Kasauli, District Solan (HP), but there are remarks on the left side recorded that the addressee resides at Dagshai Army School. The said report is dated 15.10.2014. The said envelop also shows that the same was received at the Post Office, Dagshai on 18.10.2014, as would be evident from seal impression affixed therein. The Court of learned Additional District Judge while holding that the objections had been filed beyond limitation had made the following observations:

“7. The objector/applicant has preferred the objections under section 34 of the Act against the Award dated 3.10.2014 passed by the respondent no.2 the sole Arbitrator. The applicant has preferred the objections before this court on 15.1.2015. Admittedly, the objections have not been preferred within time as envisaged in the Arbitration and Conciliation Act, 1996. In the application for condonation of delay, it has been averred by the applicant that the copy of award was received by the applicant on 18.10.2014, hence the delay, if any occurred, may be condoned. To my mind, the applicant/objector in order to show any bonafide on her part, has not placed on record any copy of the receipt which could justify her plea.”

7. A perusal of the application for condonation of delay (Annexure A-6) which had been filed by the appellant before learned Additional District Judge along with objections under Section 34 of the Act would show that a specific plea with respect to the aforesaid dates has been raised therein. Para No.4 of the said application is reproduced hereunder:

“4. That the application under Section 34 of the Arbitration and Conciliation Act, 1996 is well within the period of limitation as the award passed on 03.10.2014 which was posted through Reg. Post No.RP307549342IN dated 08.10.2014 which was forwarded at the address of the applicant on 18.10.2014 by the postal authorities which was received by the applicant on 18.10.2014.”

8. The respondent filed reply to the said application wherein he has simply denied the said assertions. The relevant extract from reply filed on behalf of respondent is reproduced hereunder:

“4. That contents of para no.4 are wrong and hence denied. The award as challenged in the present application is time barred and hence deserves dismissal.”

9. Having regard to the aforestated position wherein it is apparent that the appellant had not received copy of award before 18.10.2015 on account of the appellant having moved from his native village to Dagshai School and a specific plea having been raised, the lower Court ought to have given some opportunity to the appellant to substantiate the said plea rather than simply observing that the appellant had not placed on record a copy of the receipt. In any case, given the fact that neither the reply filed by the respondent to the delay condonation application has the effect of negating the plea nor even the respondent had put in appearance to show anything to the contrary, this Court is of the opinion that a lenient view ought to have been taken in the matter with regard to the appellant not having placed on record copy of the receipt. It is evident that the objections were well within limitation given the fact that copy of the award was served on 18.10.2014.

10. Another material aspect of the matter is that the learned Court of Additional District Judge, while passing the impugned order has dismissed the

objections on the ground of limitation and has also returned its findings on merits which is against the ratio of judgment rendered by Hon'ble Supreme Court in S.V.Matha's case (Supra), the relevant extract of which is reproduced hereunder:

“We, however, feel disinclined to go into the merits of the controversy, as we are of the opinion that the Division Bench ought to have confined its decision only to the question dealt with by the learned Single Judge viz. The question of limitation. The Division Bench has dealt with the issue of limitation in paragraphs 18 and 19 of the impugned judgment and from a reading thereof, we observe that Application Nos. 1106-1108/2000 filed by the assignees in which notice had been issued on 19.4.1999 for 10.6.1999 by the Master were dismissed by the learned Single Judge by order dated 3.7.2000 without notice to the applicants i.e. the assignees. In this situation, the Division Bench was justified in holding that the order of the learned Single Judge was not sustainable. The learned counsel for the appellant, has, however, urged that no particulars had been spelt out in the application justifying the condonation of a delay of 971 days. We are of the opinion, however, that the applicants have explained the delay and we accordingly endorse the observations of the Division Bench on this aspect. As noted above, the learned Single Judge had dismissed the applications by order dated 3.7.2000 wholly on the ground of limitation. By the impugned judgment, the Division Bench has not only condoned the delay but taken a decision on merits as well. We are of the opinion that the second exercise was not justified as the only issue before the Division Bench was the question of limitation. We, accordingly, set aside the judgment of the Division Bench to the extent that it goes on to the merits of the controversy but maintain it in so far that it deals with the question of limitation. *Ipso facto* the matters are restored to a re-hearing on merits.”

11. The aforesaid judgment has been followed by this Court in FAO-2750-2015 and FAO-2405-2021 wherein under similar circumstances the impugned orders have been set aside. In view of the ratio of judgment in S.V.Matha's

case (Supra), the impugned order can not sustain and deserves to be set aside. As such, the appeal is hereby accepted and the impugned order dated 4.1.2018 is set aside. The matter is remanded back to the Court of learned Additional District Judge with a direction to proceed afresh with the matter and to decide the objections filed under Section 34 of the Act afresh in accordance with law. The parties to appear before the Court of Additional District Judge on 27.9.2023.

22.08.2023
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No