

**223 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO-7096-2018

Date of decision: 12th May, 2023

Naresh

... Appellant

Versus

M/s Shri Ram Transport Finance Co. Ltd and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sant Kashyap, Advocate for the appellant.

AVNEESH JHINGAN, J (Oral):

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

2. The brief facts are that appellant availed loan facility of ₹7,50,000/- from respondent for purchase of a vehicle. The loan was to be repaid in 30 monthly installments. The appellant defaulted in repayment of loan. The arbitration proceedings initiated at the instance of respondent culminated in an *ex-parte* award dated 25th February, 2015. The appellant was held liable to pay ₹7,54,062/- along with interest at the rate of 18% per annum. The objections filed by appellant were dismissed on 31st May, 2018, hence the present appeal.

3. Learned counsel for the appellant submits that no notice under Section 21 of the 1996 Act for appointment of Arbitrator was served on the appellant. The transaction was result of fraud. There was no valid

agreement for initiation of the arbitration proceedings. It is further submitted that the respondent had not produced the certificate from postal authorities to prove that the notice issued by the arbitrator was served on appellants.

4. Heard learned counsel for the appellant and perused the pleadings and the relevant record.

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 contention that the transaction was a result of fraud and that there existed no valid agreement was not substantiated in proceeding under Section 34 of 1996 Act and even now the position is similar .

7. From the impugned order, it is forthcoming that ground with regard to non-service of notice under Section 21 of the 1996 Act was not pressed in objections under Section 34 of the 1996 Act. In award, it is recorded that on 25th October, 2014, a notice was sent to appellant through registered post which was not responded. The contention that the respondent failed to produce the proof of delivery of notice sent by the arbitrator to the appellant lacks merit.

8. Before proceeding further, it would be relevant to analyse Section 27 of the General Clauses Act (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.”

9. Section 27 of the GC Act deals with service by post, there is presumption of service of a document, if it is posted by registered post, after pre-paying, properly addressing and containing the document. 10.

It is not being disputed that notice was sent by arbitrator through registered post, after pre-paying, on the address given in agreement and containing the document. There is no averment or pleading before this court for rebutting the presumption raised under Section 27 of GC Act.

11. No case is made out for interference, the appeal is dismissed.
12. Since the main case is decided, pending application, if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

12th May, 2023
Parveen Sharma

- | | | |
|-------------------------------|---|-----|
| 1. Whether speaking/ reasoned | : | YES |
| 2. Whether reportable | : | YES |