



FAO-5445-2023 (O & M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

113

FAO-5445-2023 (O & M)

Date of decision:28.08.2024

SURESH KUMARI @ SURESH SAINI

...APPELLANT

VERSUS

M/S PUNJAB KASHMIR FINANCE LTD AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. K.S. Dhillon, Advocate for the appellant.

SUVIR SEHGAL, J.

1. Instant appeal has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”) assailing order dated 13.04.2023 passed by the learned Additional District Judge, Jalandhar, whereby application, Annexure A-2, filed by the appellant, seeking condonation of delay in filing objections, Annexure A-1, under Section 34 of the Arbitration Act, has been dismissed.

2. In brief, facts leading to the filing of the appeal are that a loan agreement dated 31.12.2016, was entered into between respondent No.1 and respondent No.2, whereby respondent No.1 financed a vehicle bearing No.PB-03-AC-9483 purchased by respondent No.2. The loan amount extended to respondent No.2 was payable in 45 installments as per the schedule appended with the loan agreement. The appellant as well as respondents No.3 to 5 stood guarantors for the payment of the borrowed amount. On default in payment of the installments, respondent No.1 invoked



FAO-5445-2023 (O & M)

-2-

the arbitration clause and respondent No.6 was appointed as an Arbitrator, who entered upon the reference and issued notice to the parties. He passed an *ex parte* award on 14.09.2019, Annexure A-3, in favour of respondent No.1. Appellant filed objections, Annexure A-1, under Section 34 of the Arbitration Act alongwith an application, Annexure A-2, for condonation of delay. After contest, the application and consequently the objections have been dismissed by the learned Additional District Judge, Jalandhar, vide order impugned herein.

3. Counsel for the appellant has urged that the learned Additional District Judge, has gravely erred in rejecting the prayer for condonation of delay without considering that the appellant never received the signed copy of the award in terms of Section 31(5) of the Arbitration Act. He submits that appellant became aware of the passing of the award on 28.04.2021 and addressed communications dated 29.04.2021 and 28.05.2021 to the Arbitrator by registered post. A copy of the award was supplied to her on 26.06.2021 and immediately thereafter, within the prescribed period laid down under the Arbitration Act, objections were filed, which have been rejected without noticing the factual position.

4. I have heard counsel for the appellant and considered his submission besides examining the material placed before this Court.

5. The sole question for consideration is as to whether the provision of Section 5 of the Limitation Act, 1963, are applicable to objections filed under the Arbitration Act, 1996. This issue is no longer *res integra* and has been answered by the Supreme Court in a plethora of cases.

6. Section 34 (3) of the Arbitration Act provides a period of limitation of three months for preferring objections from the date of receipt



of the signed copy of the award by the appellant, which can be extended by another period of 30 days, if the party challenging the Award is able to show sufficient cause. In **Union of India Versus M/s Popular Construction Company, 2001 AIR (SC) 4010; M/s Consolidated Engineering Enterprises Versus Principal Secretary, Irrigation Department and others, (2008) 7 SCC 169; M/s Simplex Infrastructure Limited Versus Union of India, 2019 (1) RCR (Civil) 205 and Mahindra and Mahindra Financial Services Limited Versus Maheshbhai Tinabhai Rathod and others, (2022) 4 SCC 162**, Supreme Court has held that limitation for filing objections is prescribed under Section 34 of the Arbitration Act and the extent to which it can be condoned is also circumscribed. It has been clarified that Section 5 of the Limitation Act, 1963, is not applicable to condone the delay beyond the period specified under Section 34 (3) of the Arbitration Act. The result is that application under Section 5 of the Limitation Act, 1963, is ousted by proviso to Sub-Section 3 of Section 34 of the Arbitration Act.

7. Adverting to the factual position in the instant case, respondent No.1 has brought material on the record to show that a copy of the award, Annexure A-3, passed by the Arbitrator was sent to the appellant by registered post on 27.09.2019 at her residential address of village Muradpur Jattan, P. O. Dhanoya, Tehsil Mukerian, District Hoshiarpur. Under Section 27 of the General Clauses Act, 1897, there is a presumption of service of the registered post, in case it is not received back within 30 days of its dispatch. Although, the presumption is rebuttable, but no contrary evidence has been led by the appellant. It is, therefore, presumed that the signed copy of the award was delivered to the appellant in the month of October, 2019. The



the appellant on 09.08.2021, which were barred by more than 1½ year. An application for condonation of delay no doubt has been moved by the appellant, but in view of the settled legal position as has been noticed above, the delay could not be condoned as the application was not maintainable. This Court, therefore, does not find any illegality or infirmity in the impugned order passed by the learned Additional District Judge, Jalandhar, which is affirmed.

8. Appeal being bereft of merit, is dismissed with no order as to costs.
9. All pending applications are disposed of.

28.08.2024

(SUVIR SEHGAL)
JUDGE

sheetal

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No