

**IN THE COURT OF SHRI RAJNISH GARG
ADDL. DISTRICT JUDGE, GURDASPUR.**

CIS Arbitration File No.0000071 of 2015
Decided on: 18.1.2018

M/S SHRIRAM TRANSPORT FINANCE COMPANY LIMITED
HAVING ITS REGISTERD OFFICE AT 123 ANGAPPA NAICKEN
STREET, CHANNAI-6000001 AND HAVING ITS BRANCH
OFFICE AT Ist FLOOR, PLOT NO. 8/20, IMPROVEMENT TRUST
COLONY, SCHEME NO.1, BATALA ROAD, GURDASPUR
THROUGH ITS POWER OF ATTORNEY HOLDER SH SUMAN
SINGH.

- - - DH/Respondent

Versus:

1. Sh. Chander Shekhar son of late Sh. Babu Ram, resident of House No.64, Mohalla Geeta Bhawan, Gurdaspur, Tehsil and District Gurdaspur.

.....Objector/JD No.1

2. Sh. Kulwant Raj son of late Sh. Babu Ram, resident of House No.248/8, Geeta Bhawan, Talab Wali Gali, Gurdaspur Tehsil and District Gurdaspur.

..... JD No.2

Application for execution of Arbitration Award.

Present: Shri Vinod Harchand, Advocate, counsel for DH/respondent
Sh. H.S. Lakhanpal, Advocate counsel for Objector/JD No.1
Petition dismissed in default against respondent No.2 under
Order 9 Rule 2 CPC vide order dated 20.9.2016

JUDGMENT.

1. This judgment of mine shall dispose of Objection Petition filed by Objector/JD No.1 Chander Shekhar under Section 34 of the Arbitration and Conciliation Act, 1996 (herein after to be referred as the Act) for setting aside Arbitral Award dated 8.5.2015 passed by Sh. Shobhit Seth, Advocate, Jalandhar.

2. Brief facts leading to filing of present objection petition are that objector/JD No.1 Chander Shekhar approached respondent/DH M/s Shri Ram Transport Finance Co. Ltd for getting financed one Truck LPT 2515 bearing registration No. PB 02-AP-9713. A proposal was submitted by him which was accepted by respondent/DH. Accordingly respondent/DH advanced loan amount of Rs.6,50,000/- to objector/JD No.1 for purchasing commercial vehicle TATA LPT 2515. Accordingly, agreement dated 15.9.2011 was executed between the parties and JD No.2 Kulwant Raj stood as surety to objector/JD No.1 Chander Shekhar. As per the terms of the agreement, objector/JD No.1 was to return an amount of Rs. 9,44,267/- to respondent/DH against loan amount of Rs. 6,50,000/- alongwith interest in 43 monthly installments i.e. first installment of Rs.22616/-, second installment of Rs. 23259/- and remaining 41 installments of Rs. 21912/- each. As per agreement dated 15.9.2011 entered into between the parties, in case of any dispute between the parties, matter was to be referred to the learned Arbitrator as per Clause 15 of the same. Subsequently, there were certain defaults in the payment of installments on behalf of objector/JD No.1. Accordingly, respondent/DH terminated loan agreement on 16.12.2014 and issued a notice to JDs calling upon them to make payment of Rs. 1001041/- within 7 days of the receipt of the same, failing which, matter was to be referred to the Learned Arbitrator. JDs failed to make the payment as

demand by respondent/DH and accordingly matter was referred to Sh. Shobhit Seth, Adv. Jalandhar for arbitration of dispute between the parties. Notice of the proceedings was issued to JDs but they failed to appear despite service. Accordingly, they were proceeded against Ex-parte.

3. After taking evidence of respondent/DH and going through record of the case, learned Arbitrator passed Award dated 8.5.2015. On the basis of said Award, respondent/DH filed execution petition for enforcement of the Award dated 8.5.2015 under Section 36 of the Arbitration and Conciliation Act, 1996 (here-in-after referred as the Act). Notice of the execution petition was issued to JDs. Objector/JD No.1 appeared through his counsel and filed present objection petition whereas petition was dismissed under Order 9 Rule 2 CPC against respondent/JD No.2 Kulwant Raj vide order dated 20.9.2016.

4. Objection petition was filed by Objector/JD No.1 claiming that Ex-parte Award dated 8.5.2015 passed by Ld. Sole Arbitrator against the objector is not sustainable in the eyes of law on the following grounds:-

I. That the claimant as alleged is a registered company. Hence, as per the provisions of law, a company can sue only through its Managing Director, but the present claim, Company has not filed claim through its Managing Director or through any of his Director. Hence the claim is not maintainable.

ii. That the claimant company has not produced the certificate of incorporation, memorandum of articles and articles of association and no other document was produced. So it is can

not be presumed that the company is juristic a person.

iii. That claimants have not produced the original agreement, so in the absence of original agreement, the arbitrator can not even proceeds, as such the award passed by the Ld. Arbitrator is liable to be set aside.

iv. That the Ld. Arbitrator has not given any detail of account on the basis of which the award for Rs. 10,71,111/- including interest @ 9% from the date of claim petition i.e 22.12.2014 is passed. As such, the award is non speaking and is opposed to the public policy.

v. That the ld. Arbitrator has awarded interest at the exorbitant rate of 9% which is again against the public policy.

vi. That the ld. Arbitrator have gone beyond the scope of the agreement. The award in hand is an exparte award. It is settled principle of law that no body can be condemned unheard. As such, the award is not sustainable in the eyes of law.

Vii: That applicant/objector No.1 handed over the possession of the vehicle to the respondent who sold the same in open auction without intimating the applicant/objector No.1. When one the vehicle is handed over to the respondent by applicant/objector No.1, there exists no liability of the applicant/objector No.1 to pay the amount to respondent.

It has been further pleaded that Award was passed by learned Arbitrator at the back of objector. No intimation or notice was served upon the objector regarding initiation of arbitration proceedings before the Arbitrator which clearly shows that Award was procured by respondent/DH for its own benefits and according to its own version. Ld. Arbitrator was appointed by the Decree Holder without consent of the objector. Thereby a prayer has been made for dismissal of execution application filed by decree holder and setting aside the Arbitral

Award.

5. Upon notice, respondent/DH filed reply to the objection petition taking preliminary objections that objection petition is not maintainable, objection petition is time barred and that this court has no jurisdiction to try and entertain the objection petition. On merits, it was not disputed that Ld. Arbitrator had passed Ex-parte Award against objector/JD No.1 and JD No.2. However, rest of the contents of the objection petition were specifically denied. It was further pleaded that Id. Arbitrator had passed Ex-parte award as objector and JD No.2 failed to join proceedings despite receiving notices issued by the Arbitrator. The execution was filed through a duly authorized representative of the company. Ld. Arbitrator had passed a speaking award and award passed by him was not beyond scope of the agreement. In fact, objector/JD was proceeded against Ex-parte in the Arbitration proceedings as he had willfully and intentionally not joined the proceedings before the Arbitrator despite sending him notices of reference and Arbitration proceedings. Notice was also given to objector and JD No.2 through publication. Rather, JD was well aware of arbitration proceedings as well as Award dated 8.5.2015 from the very beginning. As such, objections filed by objector /JD are barred by limitation and objection petition has been filed just to delay execution of the Award. It was further pleaded that proper notices qua appointment of Sole Arbitrator as well as arbitration proceedings were issued to

objector/JD. Notice for sending the matter to Arbitrator dated 22.12.2014 was sent to him and JD No.2 calling upon them to make the payment or matter would be referred to the Arbitrator. Notices were also sent to them during arbitration proceedings to appear before the sole Arbitrator but they failed to appear despite due service. Accordingly, they were ordered to be served through publication in Daily News Paper. Notice was duly published in said News Paper but despite that JDs did not appear before learned Arbitrator and were proceeded against Ex-parte. Accordingly Arbitral Award dated 8.5.2015 was passed by learned Sole Arbitrator after taking Ex-parte evidence of respondent/DH. JDs were well aware of Arbitration proceedings and Award passed by Ld. Arbitrator on 8.5.2015 as same was sent to them through registered post and was also received by them. Despite that, JDs did not file any objection against the Arbitral award nor they filed any objection before the arbitrator. As such, objection petition is liable to be dismissed. Thereby a prayer has been made for dismissal of objections/petition.

6. Issues were not framed in this case as per law laid down by Hon'ble Supreme Court of India in case titled as **Fize Developer Pvt. Ltd. Vs AMCI (1) Inter-Trade Pvt. Ltd. and another 2009 (4) R.C.R. (Civil) 288.** However, both the parties were afforded an opportunity to support their respective case by filing affidavits.

7. In order to prove his case, objector/JD No.1 Chander

Shekhar himself stepped into the witness box as OW-1 and tendered into evidence his affidavit Ex. OW1/A. Thereafter he closed his evidence.

8. On the other hand, respondent/DH did not adduce any evidence, despite availing several opportunities and ultimately its counsel closed the evidence on its behalf.

9. I have heard learned counsel for the parties and have carefully gone through the file of Ld. Arbitrator with their able assistance.

10. Impugned award in this case was passed on 8.5.2015 whereas present petition was filed on 20.1.2016 i.e. after more than 8 months of the passing of impugned Award. As per Sub Section 3 of Section 34 of the Act, a petition under Section 34 of the Act is to be filed within three months from the date of receipt of copy of Arbitral Award and this period can be extended by another 30 days by the Court in case of sufficient reasons furnished by the petitioner. In view of these circumstances, the first and most material question to be determined in this case is whether objection petition filed by petitioner is within limitation or not. It has not been specifically claimed by objector/JD No.1 in his objection petition that he did not receive signed copy of award of the Arbitrator and as such, he could not file the objection petition within limitation after passing of the Award or that he has filed the same within limitation from the date of knowledge of the award. Perusal of

record of Arbitrator shows that copies of award were sent to objector/JD as well as JD No.2 through registered post on 14.5.2015. Perusal of record further shows that registered cover sent to Objector/ JD Chander Shekhar received back with report of refusal which means that he intentionally did not receive copy of Arbitral award. In view of these circumstances, copy of Arbitral Award could not have been supplied to him in any other manner and he can not take benefit of his own wrongs by not accepting the registered cover containing copy of Arbitral Award sent to him. It is not even the case of objector/JD that his address was wrongly mentioned in Arbitral Award or execution proceedings. Rather, he appeared in the Court from the same address during the execution proceedings. Further more, it was admitted by objector/JD in his cross examination that he is residing at the same address since after obtaining loan from respondent/DH till the filing of objection petition. In view of these circumstances, only presumption which can be raised against objector/JD is that he must have received notice sent to him by the Arbitrator through registered cover on 4.2.2015 for appearing before the Arbitrator on 27.2.2015. Thus, he was also aware of arbitration proceedings and passing of the Award. Thereafter he did not intentionally accept copy of the Award sent to him through registered post and filed the objection petition only when he received summons regarding the execution petition. In view of these circumstances, objection petitioner

was required to file objections under Section 34 of the Act within 90 days of passing of impugned award on 8.5.2015 but as discussed above present objection petition was filed by him on 20.1.2016. Thus, present objection petition was not filed by objector/ JD No.1 within 90 days of coming to know about the Arbitral Award. No reason has been given by objector for filing the objection petition beyond limitation and as such, additional period of 30 days to file the objection petition can not be granted to the objector/JD. Petitioner has also filed his affidavit Ex.OW1/A in support of his case but it has nowhere been stated in the affidavit as to when he came to know about the Impugned Award.

11. As such, it can be safely held that present petition was filed by objector/JD is beyond limitation. On the other hand, it has been specifically claimed by respondent/DH that certified copy of impugned award was sent to objector as well as JD No.2 immediately after passing of impugned award. Prior there to, notice regarding initiation of arbitration proceedings and notice to appear before Arbitrator were also sent to him through registered post at the address furnished by him in the loan agreement but despite that he did not appear before learned Arbitrator. Thus onus was upon objector to prove that he had not received copy of the impugned award and that present petition was filed by him within limitation from the date of knowledge of impugned award but he has failed to lead any

cogent and convincing evidence in this regard.

12. As discussed above as per Sub Section 3 of Section 34 of the Act, a petition under Section 34 of the Act is to be filed within three months from the date of receipt of copy of Arbitral Award and this period can be extended by another 30 days by the Court. But in the case in hand, petition was filed after about 8 months of the passing of impugned award. As such the same is hopelessly barred by limitation. Moreover, there is no provision in the Act for condoning delay in filing of a petition under Section 34 of the Act and even provisions of Section 5 of Limitation Act are not applicable to such a petition as has been held by Hon'ble Supreme Court of India in case titled as **Union of India Vs M/S Popular Construction Co., 2002 (1) R.C.R. (Civil) 124.** Similar were the observations of Hon'ble Punjab and Haryana High Court in case **M/S Daler Singh Vs District Food and Supplies Controller, Kurukshetra, 2010 (Suppl.) Civil Court Cases 088.**

13. Learned counsel for objector further submitted that objector has a strong case on merits as he never received any notice qua initiation of arbitration proceedings or pendency of the same.

14. As has been observed above, objection petition filed by objector is hopelessly barred by limitation and as such there is no question of going into other merits of the case. It has been so held by Hon'ble Supreme Court of India in case titled as

**Commissioner, Nagar Parishad Bhilwara Vs Labour Court,
Bhilwara, 2009 (1) R.C.R. (Civil) 893.**

15. In view of my findings above, objection petition filed by objector is not maintainable being barred by limitation. Consequent to my above observations, objection petition filed by objector/JD No.1 is without any merit and same is hereby dismissed with costs. Counsel fee is assessed at Rs.3000/-.

Memo of costs be prepared accordingly.

Pronounced in open Court,
Dt. 18.1.2018

(Rajnish Garg)
Addl. District Judge,
Gurdaspur

Prem Kumar
Stenographer-II

Present: Shri Vinod Harchand, Advocate, counsel for DH/respondent
Sh. H.S. Lakhanpal, Advocate counsel for Objector/JD No.1
Petition dismissed in default against respondent No.2 under
Order 9 Rule 2 CPC vide order dated 20.9.2016

Arguments concluded. Vide my separate judgment of even date,
objection petition filed by objector/JD No.1 has been dismissed with costs.
Counsel fee has been assessed at Rs.3000/-. Memo of costs be prepared
accordingly. Payment be now made on 24.1.2018. Ld. counsel for decree
holder is also directed to furnish list of property of respondent/JD No.1 on or
before the date fixed.

Pronounced in open Court,
Dt.18.1.2018

(Rajnish Garg)
Addl. District Judge,
Gurdaspur

Prem Kumar
Stenographer-II

IN THE COURT OF SHRI RAJNISH GARG
ADDL. DISTRICT JUDGE, GURDASPUR.
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M/s Shri Ram Transport Finance Co. Vs Chander Shekhar etc.

<u>Memo of costs</u>		
	Decree Holder	Objector/JD
1. Stamp on Petition	200-00	300-00
2. Stamp for power	10-00	10-00
3. Counsel fee	3000-00	3000-00
4. Service of process	50-00 ---	00-00
6. Miscellaneous	20-00 ---	20-00
Total	Rs.3280-00	Rs.3330-00

Given under my hand and the seal of the court, this 18th day of
January, 2018.

(Rajnish Garg)
Addl. District Judge,
Gurdaspur.