

**IN THE COURT OF SH. GURMOHAN SINGH,
ADDITIONAL DISTRICT JUDGE,
MANSA.
(UID NO.PB-0573).**

PBMN010030522018



Presented on : 18-09-2018
Registered on : 18-09-2018
CIS No. : ARB/25/2018
Decided on : 01-08-2024

1. Jagmail Singh aged about 57 years,
2. Bara Singh aged about 56 years, legal heirs of deceased Gurdev Singh son of Diwan Singh, both residents of village Tahlian, Tehsil Budhlada, District Mansa.
3. Kulwinder Kaur aged about 51 years, legal heir of deceased Gurdev Singh, resident of village Tahlian, now wife of Karam Singh son of Jeet Singh, resident of village Phaphre Bhaike, Tehsil and District Mansa.

.....Petitioners/Objectors

Versus

1. The Mansa Central Co-operative Bank Ltd. Branch office village Bareh, Tehsil Budhlada District Mansa through its Branch Manager,
2. Darshan Singh, Branch Manager, The Mansa Central Co-operative Bank Ltd. Branch office village Bareh, District Mansa, son of Sh. Gurdev Singh, resident of village Tahlian, Tehsil Budhlada District Mansa.

.....Respondents

3. Jethu Singh, PCS-II (Retd.) Assistant Registrar, Co-operative Societies, Budhlada District Mansa.

.....Arbitrator

Petition under section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the impugned Award dated 24.12.10 passed by the Arbitrator-respondent No.3 for an amount of Rs.4,06,803/- in arbitral reference moved before him by the respondent No.1 Bank.

Present; Sh. L.K. Arora, Advocate, Id. counsel for petitioners.
Sh. S.P.S. Mander, Advocate, Id. Counsel for respondents No.1 and 3.
Sh. G.S. Mann, Advocate, Id. Counsel for respondent No. 2.

Order:-

Present petition has been filed by the petitioners under Section 34 of the Arbitration and Conciliation Act with the prayer for setting aside the impugned Award dated 24.12.2010 passed by the respondent No.3 Arbitrator.

2. Brief facts of the case in hand which is objections filed by the petitioners being aggrieved against the order passed by the sole arbitrator respondent No.3, is that deceased Gurdev Singh was account holder in the bank of respondent No.1 and as per said account, he was having credit limit (RCC) of ₹2,00,000/-. The case of the respondent No.1 qua which the arbitration proceedings have been initiated is that the said Gurdev Singh (Deceased) alongwith respondent No.2 Darshan Singh in-collusion has misappropriated the amount of the bank and said

respondent No.2 Darshan Singh has sanctioned the loan exceeding the limit. The said amount has neither been deposited back by Gurdev Singh (Deceased) nor by the respondent No.2. Thereafter, left with no other option and in light of the statutory provision of the Punjab Co-operative Societies Act under Section 55 and 56-A, respondent No.3 Assistant Registrar has been appointed as sole arbitrator and after initiating the proceedings, the impugned Award has been passed on 24.12.2010 by holding that said Gurdev Singh (Deceased) and Darshan Singh are responsible for misappropriation of the amount and deposit the said amount alongwith requisite interest with respondent No.1. Aggrieved against the said impugned Award, petitioner alleging themselves to be the successor has filed the present petition.

3. On notice, respondents No.1 to 3 appeared through their counsel.

4. Ld. Counsel for the petitioners submits that the present petition being filed on 18.09.2018, is well within limitation period as the present petitioners have got received the certified copy of the said impugned Award on 30.08.2018. Ld. Counsel submits that petitioners are the Lrs/ successor of Gurdev Singh(deceased), against whom the Award has been passed on 24.12.2010. Further submits that said Gurdev Singh has expired on 18.10.2011 and petitioners have become owners of the property of the Gurdev Singh(deceased).

5. Ld. Counsel further submits that the Award has been passed on 24.12.2010, but the deceased Gurdev Singh has never been supplied the original signed copy of the impugned arbitration Award till date. Further submits that the petitioners being the successors of the said Gurdev Singh (Deceased) has applied for the certified copy on 24.08.2018 and got received the same on 30.08.2018 and thereafter has filed the present petition on 18.09.2018 within the time period of 90 days as per the Act. Ld. Counsel further submits that the Award passed by the Arbitrator/respondent No.3 is illegal, invalid and arbitrary due to the fact that said respondent No.3 was biased officer and was not capable or fit to act as Arbitrator. Ld. Counsel further submits that the Award passed by respondent No.3 suffered from various short comings as the reference alleged to be made by respondent No.1 under Section 55 and 56 stated to be in the Award is not maintainable as per law. Further submits that reference could be made only if the disputes touching the constitution, management or business of the co-operative societies, whereas in the present case said reference could not be made as there is allegations of misappropriation of the funds by the deceased Gurdev Singh and respondent No.2. Ld. Counsel further submits that dispute which has been arisen either in criminal or civil matter of recovery, but no concern with the arbitration. Even bank has also got registered a criminal case against accused persons. Ld. Counsel further submits that the Award passed by respondent No.3 in arbitration is without jurisdiction.

6. Ld. Counsel further submits that as the signed copy of the Award has not been supplied to Gurdev Singh(deceased), so present petition is within limitation being filed after receiving the certified copy. Further submits that even the respondent No.2 Darshan Singh has also categorically admitted that Gurdev Singh(deceased) has no concern with respect to the over draft amount nor he appended his thumb impression. Further submitted that the said Anil Kumar in whose account the amount has been alleged to be transferred has never been made party to the arbitration proceedings. Ld. Counsel submits that even the liability of the deceased Gurdev Singh(deceased) is limited only upto 2 Lacs, the limit fixed and not above the same and charge of misappropriation has been wrongly stated to be made against deceased Gurdev Singh. Further submits that the statutory procedure with respect to Section 24(3) has not been complied with and even Section 31(5) has not been complied with. Ld. Counsel further submits that the present petitioners have inherited the property of the Gurdev Singh(deceased) against whom the Award has been passed. Thus, prays that present petition is well within limitation and impugned Award passed by the respondent No.3, Arbitrator is illegal and against law and is liable to be set aside and it is humbly prays that Award dated 24.12.2010 may kindly be set aside.

7. Ld. counsel for the respondents No.1 and 3 submits that the impugned award has been rightly passed after considering the facts and circumstances of the case. Further submits the the present petition is filed

beyond period of limitation as provided under the statutory provision of the Act. Further submits that there is huge delay of about 8 years in filing the present petition which is totally barred under the statutory law. Ld. Counsel further submits that at the time of passing of the Award, copy must have been supplied and the presumptions raised by the present petitioners is unbelievable. Further submits that no application for the certified copy has been filed by the said Gurdev Singh (Deceased) within period of limitation and the petitioners are silent on the said fact. Thus, prayed that present petition is barred under the limitation and may kindly be dismissed.

8. Ld. Counsel for the respondent No.2 submits that the impugned Award suffers from grave illegality and liable to be set aside. No recovery is to be got effected from the petitioners and thus, prayed that petitioner's claim may kindly be accepted.

9. After hearing ld. Counsel for the petitioners and the perusal of the record, it reflects that petition under Section 34 of the Arbitration and Conciliation Act has been filed by the present petitioners alleged to be the Lrs or successor of the Gurdev Singh(deceased) against whom Award dated 24.12.2010 has been passed by the respondent No.3, Arbitrator. The present petition has been filed on 18.09.2018 and it is alleged by the petitioners that the certified copy of the same has been delivered to them on 30.08.2018. It is pertinent to mention that petition is accompanied with an affidavit of petitioner No.1 Jagmail Singh son of

Gurdev Singh and the reply has been filed by respondent No.2 Darshan Singh Ex-Manager of the respondent No.1. In the said reply, respondent No.2 has categorically put the entire allegations stating that respondent No.1 is in connivance with respondent No.3 and the impugned Award has been passed. Further it is stated that copy of the Award has not been supplied ever to the respondent and deceased Gurdev Singh. Further it is stated that with respect to the dispute a criminal complaint was filed and vigilance also filed its report and the SSP Mansa had directed to get register the FIR. Further it is alleged that the higher authorities of the bank has stated that in the account of the said Gurdev Singh(deceased) and other persons namely Bahadar Singh, Baldev Singh must be made some entries so as to tally with the daily balance credit amount. It is further stated that in the reply that the Award has been passed in an illegal manner and is arbitrary and unjust and liable to be set aside.

10. It is pertinent to mention that photocopy of death certificate of Gurdev Singh(deceased) has been attached which reflects that said Gurdev Singh has died on 18.10.2011. Further it is fact as stated by the petitioners that they applied for the copy of the Award on 24.08.2018 and same has been prepared and delivered to them on 30.08.2018 and limitation period of three months starts from the date i.e. 30.08.2018. Ld. Counsel for the petitioner has relied upon statutory provision of Section 34(3) and Section 31(5) and submitted that signed copy of the Arbitration Award is to be delivered to each party and as per section 34(3),

application for setting aside may not be made after three months have elapsed from date on which the party making application had received the Arbitral Award. Ld. Counsel for the petitioners submits that the petition is well within limitation as it has been filed within period of 3 months from receipt of the Award. The counsel for the petitioners has relied upon judgment passed by the Hon'ble Apex Court in *Benarsi Krishan Committee and Ors. Vs. Karmyogi Shelters Pvt. Ltd. 2012(4) RCR (Civil) 584* with respect to the point of limitation.

11. This Court is of the considered opinion that before hearing the submission on the merit of the Award, first point to be considered is the point of limitation. Ld. Counsel for the petitioners has categorically submitted the arguments that the petition is well within limitation.

12. That for the proper adjudication of the point in consideration, the copy of the award attached with the petition is to be minutely perused. To the said fact, certified copy of the Award which attached with the present petition, reflects that in the same it is categorically mentioned that *“today 24.12.2010 the case is fixed for hearing and Sh. Harbans Singh Branch Manager CCB Barre has appeared for first party alongwith record. The second party Gurdev Singh (Deceased) son of Diwan Singh and Sh. Darshan Singh Branch Manager Barre (under suspension) are present. During hearing of the case, Sh. Gurdev Singh (Deceased) son of Diwan Singh has recorded his statement that he has got fixed his RCC limit at ₹ 2 lacs with the bank and kept using the same and he does not*

know with regard to the extended limit beyond ₹2 Lacs which has been shown. Sh. Darshan Singh Branch Manager CCB Branch Barre (under suspension) also got recorded his statement that Gurdev Singh (Deceased) son of Diwan Singh village Tahlian has no concern with the extended/ over draft RCC limit and nor his thumb impression is correct. The said amount has been deposited in the current account No.19 of Anil Kumar son of Bishabar Diyal. The statements of both the parties have been recorded and the arguments have been heard.”

13. Thus, the above said contents of the Award categorically reflects that the said Gurdev Singh(deceased) was very well present before the Arbitrator alongwith respondent No.2 and has got recorded his statement. Further it has also been mentioned in the Award that the respondents No.1 and 2 are liable to pay the amount to the first party i.e. Bank and the details have been mentioned with respect to the Principal amount, interest, expenses and the total amount at the rate of 15.5% p.a. It is also mentioned in the Award that the Award has been passed against second party in presence of first party and the second party.

14. So, the above said contents of the Award means that the said impugned Award dated 24.12.2010 has been passed by respondent No.3, the Arbitrator, well within the presence of the said Gurdev Singh(deceased) and respondent No.2. Thus, mere version of the petitioners that said Gurdev Singh (Deceased) has not got received the signed copy of the Award till his death in the year 2011 is unbelievable

fact. The Award has been passed against the party in his presence. So, it cannot be presumed that he has not received the copy of the Award, rather this Court is of the opinion that the parties are well aware of the law that the Award is to be challenged within period of three months and during this period even if it is presumed as alleged that copy is not supplied then the parties must have applied the certified copy well within time. It is well settled law that **"Ignorance of law is no excuse"**. In the present case, it cannot be presumed that Gurdev Singh(deceased) was illiterate, so, he could not get the copy or could not apply for the same. The person who has got fixed his credit limit from Bank is deemed to be taken as well aware of the fact that he is using the amount of the bank on credit for his purpose which he has to repay. Further it is pertinent to mention that respondent No.2 Darshan Singh who was the Branch Manager at the relevant time is none other than the real son of the Gurdev Singh(deceased). It is further pertinent to mention that respondent no.2 Darshan Singh son of Gurdev Singh (Deceased), then Branch Manager, has not only got the RCC limit of Gurdev Singh(deceased) over drafted, but has also got done the same with the credit limit account of his uncle Baldev Singh and Bahadar Singh qua whom Award has also been passed on the same date i.e. 24.12.2010. Further it is also pertinent to mention that present Award has been passed on the same date against Gurdev Singh (Deceased) who is the father of the respondent No.2 Darshan Singh, then Branch manager and after his death his Lrs Jagmail Singh, Bara Singh and Kulwinder Kaur has filed the

present petition under Section 34 of Arbitration and Conciliation Act. It is also pertinent to mention here that it is alleged by the petitioners that Gurdev Singh(deceased) has died on 18.10.2011 means after about one year of Award which has been passed in his presence. There is no justified reason brought on the record that why Gurdev Singh(deceased) remains silent for one year. Further, even there is nothing brought on record that how the present petitioners came to know about the award after the gap of 8 years. Thus, it means that Gurdev Singh(deceased) against whom Award has been passed, in his presence and whose real son is the respondent no.2 Branch Manager of the said Central Co-operative Bank was well aware of the Award and law nowhere gave any such occasion to presumed that the signed copy of the Award has not been provided to the Gurdev Singh(deceased) at the time of passing an Award.

15. It is pertinent to mention that the Hon'ble Apex Court through its various judgments has settled law with respect to the specific and statutory provision of Section 34(3) of the Limitation Act that delay beyond the said 90+30 days in filing an appeal or objections under Section 34 should not be allowed as it would defeat the over all statutory purpose of the arbitration proceedings. Further this Court is of the opinion that the statutory provision may cause hardship or inconvenience to a particular party, but the court has no choice but to enforce it giving full effect to the same. A legal magazine *dura lex sed lex* which means that "the law is hard but it is the law". Though it reflects that there is strict

statutory provision with respect to the limitation period regarding filing of objections, but the Court has very limited jurisdiction and said limitation period cannot be condoned as considered in the Section 5 of the limitation Act. Further statutory provision with respect to the supplying of the copy of the Award i.e. signed copy is just to make aware the existence of the award and its effect and import of the award. In the present case Award is admittedly passed in the presence of the parties. The said fact is not declined by the present petitioners also. Thus, mere presumption of the petitioners that signed copy of the Award has not been supplied to the said Gurdev Singh (Deceased) is mere presumption. Rather, this Court is of the opinion that the Award is passed in the presence of the parties, then signed copy must have been given at the said time though it can be presumed that 1 or 2 days delay could have occurred, but it cannot be presumed that the signed copy has never been delivered. The said Gurdev Singh deceased whose real son is respondent No.2, who is at that time Manager of the present respondent No.1 Bank was well aware about the procedure. Further, record nowhere reflects that there is any such application moved by said Gurdev Singh (Deceased) for getting certified copy within limitation period and the present petitioners are totally silent on the said fact. So, it is the fact that signed copy must have been delivered to said Gurdev Singh (Deceased), but no petition u/s 34 of Act has been filed by him till he was alive. So, limitation cannot be deemed to be condoned as per the strict statutory provision of the law. Further, this Court is of the

considered opinion that presumptions on which petitioners are relying upon has no values in the eyes of law. It is hardly believable that said Gurdev Singh (Deceased) remained silent for 1 year till his death, qua the passing of the Award and has never challenged the same. Further, petitioners alleging themselves to be Lrs/successor of said Gurdev Singh (Deceased) are not aware about the passing of the Award, is also not a believable fact. The Inactment and the statute categorically put some limitation period in order to avoid the unending litigation. In the present case as per statutory provision of section 34(3), the said limitation period to challenge the Award is three months which can be considered within next thirty days but not thereafter. It is also pertinent to mention that Gurdev Singh (Deceased) son of Diwan Singh is the person against whom Award has been passed and the said person is father of said Darshan Singh Branch Manager, who has over drafted the RCC limit of Gurdev Singh (Deceased), Baldev Singh and Gurdev Singh (Deceased).

16. So, in these circumstances, this Court is of the considered opinion that said Gurdev Singh(deceased) was very well aware about the passing of the Award as the same has been passed in his presence and as per statutory provision, signed copy is to be given and same mere on saying of the petitioners cannot be presumed that signed copy has not been provided to said Gurdev Singh (Deceased). Further, even there is no justification that what circumstances resist the said Gurdev Singh(deceased) to apply the copy of award in limitation period,

if the same is not supplied to him as alleged by the present petitioner. Further, Gurdev Singh(deceased) remained alive for 1 year after the passing of the Award, but has never challenged the same, to the reason best known to him or his son respondent no.2(Branch manager). The present Award has been challenged after the lapse of 8 years which is barred under limitation.

17. Accordingly, this court in light of the facts and circumstances of the case and as per above said observation, do not find any satisfactory ground being justified to condone such long/huge delay of 8 years in filing the present petition. The law settled by the Hon'ble Apex Court is very much clear that petition under Section34(3) of the Act, is to be filed before the lapse of 3 months and can be extended by 30 days, if, there is sufficient cause shown by the applicant, but not later than that. Petition being filed after lapse of 8 years without any justification and the sufficient reason, so, present petition, being barred under limitation, is hereby dismissed. File be consigned to the record room.

Announced.

01.08.2024

Avinash Stenographer G-1

(Gurmohan Singh)

Addl. District Judge,
Mansa/PB0573.

Present; Sh. L.K. Arora, Advocate, ld. counsel for petitioners.
Sh. S.P.S. Mander, Advocate, ld. Counsel for respondents
No.1 and 3.
Sh. G.S. Mann, Advocate, ld. Counsel for respondent No. 2.

Arguments heard. Vide my separate detail order of even date,
present petition is dismissed being barred under limitation. File be
consigned to the record room.

Announced.
01.08.2024

Avinash Stenographer G-1

(Gurmohan Singh)
Addl. District Judge,
Mansa/PB0573.