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(Sanjeev Kumar vs. M/s Sriram Transport Finance Company Ltd.)

**IN THE COURT OF SHRI BALWINDER KUMAR,
ADDITIONAL DISTRICT JUDGE, FATEHGARH SAHIB.**

CIS No.Arb.-15-2016

Date of Institution: 19.12.2016

CNR No.PBFG010039752016

Date of Decision : 06.09.2021

Sanjeev Kumar aged about 41 years s/o Sudesh Kumar R/o Harnam Nagar Tehsil and Distt. Fatehgarh Sahib.

.....Applicant

Versus

M/s Sriram Transport Finance Company Limited, having its registered Office at 3rd Floor, Mookambika Complex No.4, Lady Desika Road, Mylapore, Chennai-600004 and having its Branch Office at 2813, Ist Floor, Ranjit Tower, Pakhowal road, Ludhiana through its Authorized signatory/Authorized representative Sh. Rahul Maini, Retainer Advocate.

.....Respondent

**Application under Section 34 of the
Arbitration and Conciliation Act, for setting
aside the ex-parte Award dated 11.02.2016
passed by the Arbitrator.**

Present: Shri M.S.Salana & Shri T.S.Salana, Advocates for applicant.
Shri Vishal Sharma Advocate for respondent.

ORDER

Heard on the application under Section 34 of the Arbitration and Conciliation Act for setting aside the exparte award dated 11.02.2016 passed by the arbitrator, moved by the applicant. It is

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mentioned in the application that applicant came to know on 15.10.2016 on receipt of summons of execution application about exparte award, which is based upon surmises and conjectures and applicant was never served in any manner in the alleged arbitration proceedings. It is further averred that as per rule, opportunity of hearing must be provided to opposite party in every case, but the award in question has been passed exparte without serving any notice regarding any arbitration proceedings. It is further averred that respondent No.1 has cleverly circumvented the filing of proper remedy in such cases i.e. the filing of recovery suit by affixing needed court fee, which has been avoided and only suit for recovery is maintainable in the present case. It is further averred that arbitration agreement is not valid under law and no proper notice of the appointment of arbitrator and arbitration proceedings was given to the applicant. It is further averred that the claim of respondent No.1 is beyond limitation and there was valid contract between the parties. It is further averred that alleged claim of respondent was beyond limitation and the same was time barred and sole arbitrator had to decide the question of limitation first. It is further averred that the arbitrator has not conducted the proceedings as per law and the award

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suffers from non application of mind and the same is liable to be set aside. It is further averred that there was no valid contract between the parties and as such, question of arbitration clause being operative between parties does not arise. It is further averred that the award is non-speaking and arbitrator has failed to discuss as to how and on what basis, the amount of Rs.6,14,417/- was awarded and the award has not been proved in accordance with law, as no marginal witness has been examined. It is further averred that respondent has failed to prove its case by leading cogent and convincing evidence and even no list of witnesses or document is relied upon by the arbitrator. It is further averred that trucks in question are recovered and sold by the respondent and in this way, the arbitration proceedings are not maintainable under law and moreover the amount claimed by the respondent is an exaggerated amount and respondent has no right to recover any amount from applicant. Hence, the application.

2. Notice of the application was given to respondent to appear and answer the claim of the applicant. Respondent appeared through counsel and filed reply. During proceedings of the case, counsel for respondent also produced on record photocopies of the record of the

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arbitration proceedings, regarding which counsel for applicant has made no objection for consideration of the same.

In reply, the claim of applicant is opposed on the ground that the same is not maintainable and is filed malafidely in order to delay the execution proceedings. It is further averred that arbitrator has rightly passed the award against applicant by adopting due procedure and notice was properly sent to the applicant and as such the applicant has full knowledge of the arbitration proceedings. Remaining averments were denied and it is prayed that application may be dismissed.

3. Learned counsel for the applicant while arguing in the lines of instant application under Section 34 of the Arbitration and Conciliation Act, which is supported by affidavit, contended that no notice for appointment of arbitrator was given to the applicant and even arbitrator was appointed on 12.11.2015, but as per notice received from the respondent/company dated 05.11.2015, seven days time was given for referring the matter, but without waiting or completion of time, the arbitrator was appointed on 12.11.2015.

Learned counsel for applicant next contended that as per record, notice was published in newspaper Uttam Hindu, but it was not

in circulation in Fatehgarh Sahib area and thus, learned counsel for applicant submitted that no proper notice as per guide lines of the Hon'ble High Court was issued to the applicant.

Learned counsel for applicant further contended that no proper address of applicant is mentioned in the postal receipt and no proper notice was therefore sent to the applicant and thus, learned counsel for applicant submitted that the application may be allowed.

4. Conversely, learned counsel for respondent contended that proper notice was sent to the applicant and even before initiation of proceeding by the arbitrator, notices were sent and even during the proceedings before the arbitrator, notice was sent by the arbitrator to the applicant and the notice was sent as per address given on the agreement between applicant and the respondent and thus, despite having knowledge of the proceedings, applicant did not bother to appear before the arbitrator and now is taking false pleas and thus, learned counsel for respondent contended that the application may be dismissed.

5. After hearing rival submissions, it has transpired that the instant application is moved to set aside the award in question passed in the present case, in respect of the vehicle loan. Section 34 of the

Arbitration Act provides for annulment of the award only on the ground affecting legitimacy of the process of decision as distinct from substantive correctness of the contents of the decision. It is settled law that award may be set aside, if the arbitrator has misconducted himself or arbitrator has failed to follow the procedure for conducting arbitration proceedings or conducted the same in a biased manner or has exceeded his powers or passed the award without consideration of any material before it or it is against the public policy of India. In any case, the court before whom it is challenged cannot act as appellate forum to reappraise the findings and conclusion contained in the award and court cannot interfere with the award merely because two views are possible when the arbitrator has taken one possible view. Although court can interfere if the award is unconscionable.

6. Now advertng to the present case, it is no where apparent where the procedure has not been followed by the arbitrator. Perusal of impugned award as well as proceedings reflect that due procedure has been adopted by the arbitrator. Apart from publication in news paper, separate notice to applicant through registered post was also sent. It is usually observed that in the postal receipt of registered post, in routine

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manner, full address of person to whom the letter/document is to be sent, is not mentioned, but that does not mean that such letter or document is not sent or delivered at the proper address and therefore, the impugned award, in any manner, cannot be said to be irregular or invalid or which shock the conscience of this court. Even otherwise, the factual aspect of the case cannot be re-appreciated in these proceedings being beyond the ambit of Section 34 of the Arbitration Act.

Besides, as per Section 34(5) of the Arbitration Act, it is provided mandatorily that an application under this section shall be filed by a party only after issuing prior notice to the other party, which in the present case has not been complied with by the applicant, which also debars applicant from seeking any relief in the present case.

The record reveals that appropriate and sufficient opportunities were afforded to the applicant to appear and put across his pleas by the arbitrator and there is no error apparent on the face of the record. The conclusion arrived at by the arbitrator is based on logical reasoning. As such, it cannot be said that award suffers from any error or the arbitrator has misconducted the proceedings by ignoring any material document or is against public policy. The version of applicant

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that he came to the knowledge of the passing of award during execution proceedings, is not believable as the address of the applicant in the present proceedings was the same, which found mention in the arbitration proceedings as well as execution proceedings and therefore it cannot be concluded that applicant was having no notice of the arbitration proceedings.

7. In view of the above discussion, finding no merit in the instant application, it is held that no interference is called for in the award passed in the present case. Resultantly, the application is dismissed without any order as to costs. Memo of costs be prepared and file be consigned to the record room.

Pronounced in open Court.

Dated: 06.09.2021

Jagjit Singh Batta EA/JW

"I attest to the accuracy and
authenticity of this document."

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