Abhay Singh Vs IndusInd Bank Ltd. and Another

None

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 21, 2010

Acts Referred:
Arbitration Act, 1940 â€" Section 34#Limitation Act, 1963 â€" Section 5

Citation: (2010) 159 PLR 99

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Jain, J.
This order shall dispose of two appeals bearing FAO No. 2024 of 2010 titled as Abhay Singh v. IndusInd Bank

Ltd and Anr. and FAO No. 2025 of 2010 titled as Abhay Singh v. IndusInd Bank Ltd and Anr. Both these appeals are being taken up together

on the statement of learned Counsel for the appellant that questions of law involved in them are similar and the facts are also almost identical. In

both the appeals, Abahy Singh is the borrower, whereas in FAO No. 2024 of 2010, Joginder Singh is the guarantor and in FAO No. 2025 of

2010, Balwant Singh is the guarantor.

2. In FAO No. 2024 of 2010, vide his arbitral award dated 2.1.2009, the arbitrator had held as under:

It is, therefore, as concluded above the respondents have committed breach of loan agreement by default in making payment of instalments and

liable to pay the claimant a sum of Rs. 2,16,867/-. As regards the entitlement of interest on the sum due, though the loan agreement constitutes the

contractual rate of interest in the event of delay/default, this Tribunal arrives at a conclusion that interest at 18% p.a. on the sum outstanding i.e. Rs.

1,90,791/- as per the statement of account viz. Ex.A10 would be reasonable from the date of claim petiton till its realisation.

3. In FAO No. 2025 of 2010, vide his arbitral award dated 2.1.2009, the arbitrator had held as under:

It is, therefore, as concluded above the respondents have committed breach of loan agreement by default in making payment of instalments and

liable to pay the claimant a sum of Rs. 4,18,575/-. As regards the entitlement of interest on the sum due, though the loan agreement constitutes the

contractual rate of interest in the event of delay/default, this Tribunal arrives at a conclusion that interest at 18% p.a. on the sum outstanding i.e. Rs.

3,78,692/- as per the statement of account viz. Ex.A10 would be reasonable from the date of claim petiton till its realisation.

4. In both the cases, objections u/s 34 of Arbitration and Conciliation Act, 1996 (for short, the Act) were filed, which have been dismissed vide

the impugned order dated 08.3.2010 passed by Addl. District Judge, Rewari. Howeve, for the sake of convenience, facts are being extracted

from FAO No,.2024 of 2010.

5. Appellant Abhay Singh (hereinafter referred to as the borrower) obtained a loan from IndusInd Bank Limited (hereinafter referred to as the

Bank) by way of loan agreement dated 04.2.2006 and Joginder Singh stood as guarantor (hereinafter referred to as the guarantor). The loan

amount was Rs. 14,34,530/- which was required to be repaid in 45 monthly instalment. The borrower paid Rs. 7,32,500/- but was in continuous

default, as a result of which the vehicle was repossessed by the bank and sold on 2.6.2008 for a sum of Rs. 4,50,000/- but even after adjusting the

sale proceeds, there existed liability of Rs. 2,16,867/- for which the borrower and guarantor were jointly and severally liable. A sole arbitrator was

appointed in terms of Clause 23.0 of the loan agreement, who served notices upon the borrower and guarantor about the arbitration proceedings,

but on their refusal to accept the notices, they were proceeded against exparte. After taking into account the exparte evidence, the claim set up by

the bank was awarded vide arbitral award dated 2.1.2009 as indicated above.

6. The appellant filed objection u/s 34 of the Act on 27.2.2010 against the arbitral award dated 2.1.2009.

7. After issuance of notices in the objections, learned Counsel for the parties had appeared. The learned Civil Court recorded an order dated

08.3.2010, which reads as under:

Learned Counsel for the parties stated that they are ready with their arguments on the application and the same should be decided without framing

any issue etc. Arguments heard. Vide separate judgment of even date, the application/appeal has been dismissed. File be consigned to the record

room

8. In terms of the aforesaid statement suffered by learned Counsel appearing on behalf of the appellamt, learned Civil Court observed that there is

no need to frame issue and the objections were decided on the basis of material available before the Court much-less on the ground that the same

were barred by limitation.

9. Learned Counsel for the appellant has raised two fold arguments in these appeals (i) that the learned Civil Court has erred in law in not deciding

the objections after framing the issues in terms of the Punjab, Haryana and Union Territory, Chandigarh Arbitration and Conciliation Rules, 2003

(for short, the Rules) which provides that provisions of Code of Civil Procedure,1908 (for short CPC) would apply to the proceedings before a

Court which includes Order XIV of CPC. (ii). The borrower and the gurarantor have been illegally proceeded against exparte by the Arbitrator on

the basis of report of refusal and in the absence of the framing of issues, the same could not have been proved.

10. I have heard learned Counsel for the appellant at length and have perused the record with his able assistance.

11. Insofar as the first arguments raised by learned Counsel for the appellant is concerned, undoubtedly, the rules which have been referred to

have been framed u/s 82 of the Act by the High Court of Punjab and Haryana in relation to the proceedings before a Court under the Act which

provides that provisions of CPC namely, Order XIV would apply to the proceedings before the Court. On the basis of this rule, it is contended

that the Court should have framed the issues allowing the appellant an opportunity to lead evidence before deciding the objections filed u/s 34 of

the Act. In this regard, learned Counsel has placed reliance upon a decision of this Court in the case of Amrik Singh and Anr. v. Vardhan

Properties and Investment Ltd. 2006 (4) R.C.R.(Civil) 521 in which it has been held that as per rules, the parties are entitled to framing of issues

and lead evidence in respect of their claims.

12. The argument raised by learned Counsel for the appellant appears to be attractive but is lacking rigour in view of decision of the Supreme

Court in the case of Fiza Developers and Inter-Trade P. Ltd. v. AMCI (I) Pvt. Ltd and Anr. 2009 (4) R.C.R.(Civil) 288, wherein it has been held

that in case of challenge to award before Civil Court, framing of issues is not necessary as the ground for setting aside the award u/s 34(2) of the

Act are specific. In this regard, learned Counsel for the appellant has also argued that this judgment would not be applicable as it does not deal

with the the rules which have been framed by the High Court.

13. Be that as it may, the appellant cannot wriggle out of his statement which was recorded by learned Civil Court on 08.3.2010 and has been

reproduced here-in-above, in which the Court has recorded that the party has stated before him that they are ready with the arguments on the

objection which may be decided without framing any issue. The appellant has pleaded in the grounds of appeal and has also argued before this

Court that no such statement was made by their counsel that they do not require framing of issues. To my mind, this is an act of over-reaching the

Court after having lost before the Court below as the appellant cannot be allowed to contradict the record of the Court by way of a bold statement

and even without going before the same Court which had passed the said zimini order. In this regard, reference could be made to the decision of

the Supreme Court in the case of State of Maharashtra v. Ramdas Shrinivas Nayak and Anr. AIR 1982 Supreme Court 1249, it which it has been

held as under:

The Court is bound to accept the statement of the Judges recorded in their judgment as to what transpired in Court. It cannot allow the statement

of the Judges to be contradicted by the statement at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something

was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what

transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by

affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party,

while the matter is still fresh in the minds of the Judges to call the attention of the Judges who have made the record to the fact that the statement

made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is

taken, the matter must necessarily end there.

14. In view of the fact that right of seeking framing of issues was waived off by the appellant himself as recorded in the zimini order dated

08.3.2010 and no such application had been filed before the same Court contradicting the recording of zimini order in view of the judgment of the

Supreme Court in the case of State of Maharashtra (Supra), the argument raised by learned Counsel for the appellant that no such statement was

made before the Court for not framing issue is hereby rejected.

15. Insofar as second point is concerned, it is alleged by learned Counsel for the appellant that neither borrower nor guarantor had ever refused to

accept notice of the arbitrator and the report of refusal is manipulated. There is no evidence on record in this regard, therefore, it has to be

presumed that notice which had been sent by speed post, which is always presented for acceptance to the person to whom it is addressed, has

been refused by the same person. Moreover, objection has been dismissed by the learned Court below on the ground that the arbitral award was

passed on 2.1.2009 which should have been challenged within a period of 90 days with an extended period of 30 days, which cannot be further

extended with the aid of Section 5 of the Limitation Act,1963,whereas the objections have been filed almost after one year on 26.2.2010, despite

the fact that arbitral award was served upon the appellant, who again had refused to receive it on 15.1.2009. As a matter of fact, it appears that

the appellant was trying to avoid the Court proceedings under an impression that if he would not take the summon or notice, then no proceedings

would be carried out against him forgetting that in case of refusal of accepting summon/ notice, it is always deemed to have been served.

16. Thus, in the totality of circumstances mentioned here-in-above, I do not find any merit in both these appeals and the same are hereby dismissed

in limine. No costs.