

**(1996) 08 DEL CK 0022**  
**In the Delhi High Court**  
**Case No : F.A.O. 146 of 1976**

Maya Motor Company

APPELLANT

Vs

Shri Hari Kishan Sharma

RESPONDENT

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**Date of Decision :** 07-08-1996

**Acts Referred:**

**Citation :** (1996) 08 DEL CK 0022

**Hon'ble Judges :** Manmohan Sarin, J

**Bench :** Single Bench

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## Judgement

Manmohan Sarin, J.—This appeal is preferred by M/s. Maya Motor Company, Motor and General Financiers, against the order passed by Shri P. R. Thakur, the then Civil Judge, dated 19.5.1976 by which he allowed the objections of the respondents against the Award made by Shri O. P. Kapur, Advocate, dated 4.2.1970 and set aside the Award.

2. The appellant had entered into a hire-purchase agreement with respondent No. 1 as the hirer and respondents 2 and 3 as guarantors. The hire-purchase agreement provided for arbitration by the named arbitrator, Shri O. P. Kapur, Disputes had arisen which were referred by the petitioner, who after entering upon the reference made and published the award on 4.2.1970. As noted, respondents had filed objections which were allowed.

3. The main ground on which the objections were allowed by the learned Civil Judge was misconduct by the arbitrator. The arbitrator, it was contended by the respondents, had illegally proceeded ex parte against them and failed to provide any reasonable opportunity to defend the case. It is the admitted position that the registered envelopes containing the notice sent to respondents namely Shri Khairati Lal, Shri Hari Kishan Sharma and Shri Karnail Singh were received back undelivered with the remarks, "family members refused to give the whereabouts"; "not known" and "refused" respectively. The arbitrator however, while noticing the above relied on Clause No. 18 of the agreement, which reads as under :

"Any letter, notice or other communication dispatched to the Hirer or the Guarantor whether through Post Office or through Representative at the address last notified to the owners by the Hirer or the Guarantors shall be deemed to have been received by them respectively although returned with the remarks "refused". Undelivered "whereabouts not known" or words to that effect, or for any other reason whatsoever."

The arbitrator acting upon the above clause, held that the respondents duly served and proceeded ex parte.

4. Mr. Monga contends that the parties had specifically agreed that dispatch of notices by registered post at the addresses mentioned in the agreement would be regarded as sufficient service and, Therefore, the action of the arbitrator in proceeding ex-parte against the respondents was justified.

5. The learned trial court while dealing with this plea has rightly observed that principles of natural justice required that the arbitrator should have re-issued the notices to the respondents and not acted with undue haste and proceeded ex parte. Substantial compliance with principles of natural justice was required notwithstanding any agreement to the contrary between the parties. Moreover, the Trial Judge has found that one of the registered notices was even wrongly addressed.

6. Learned counsel for the appellant has further urged that the failure to bring the legal representatives of one of the respondents on record was not fatal to the arbitration proceedings as the arbitral award could be enforced against the remaining respondents. Further the Trial Judge had erred in holding that the appellant's representative, who was not authorised. It is not necessary for me to go into these two submissions as the objections were bound to be allowed on the ground of misconduct of the arbitrator in proceedings ex parte against the respondents and not giving them an opportunity to defend themselves before him.

7. I find no error or infirmity in the order of the Trial Court. The appeal is accordingly dismissed. No costs.