



FAO-1630-2014(O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-1630-2014(O&M)

DATE OF DECISION : JANUARY 09, 2025

M/S HAQIQAT RICE MILL AND OTHERS ...APPELLANTS
Versus

PUNJAB STATE CIVIL SUPPLIES CORP. LTD. AND ANOTHER
...Respondents

CORAM : HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. G.C. Dhuriwala, Advocate
for the appellants.

Mr. Raj Partap Singh Brar, Advocate
for the respondents.

LAPITA BANERJI, J.(ORAL)

This is an appeal preferred against the order dated August 21, 2013 passed by the Additional District Judge, Chandigarh under Section 34 of the Arbitration and Conciliation Act, 1996 (for short '1996 Act').

2. Vide the impugned order, the application under Section 34 of the 1996 Act was dismissed on the ground of limitation. It was held that the burden was entirely upon the miller-respondents in the arbitration proceedings and the appellants herein to show that the award was not received by the miller-respondents within the time limit to prefer the application under Section 34 of the 1996 Act. The learned Additional District Judge was of the opinion that since the miller-respondent in the arbitration proceedings had raised the contention that the award was received much after the expiry of the time period for filing of the application under Section 34(3) of the 1996 Act, the

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burden of proof was on miller-respondents to prove that the same was received on the date when they were agitating to have received the same.

3. Instead of corroborating its argument with documentary evidence to show that the award was received beyond the period of challenge under Section 34 of the 1996 Act, the miller-respondents in the Arbitration had tried to shift the burden of proof on the claimants and argued that it was incumbent upon them to show that the award was received by the miller-respondents after the stipulated period for filing of the application for setting aside the *ex parte* award. Therefore, Additional District Judge, Chandigarh came to the finding that the delay in filing the application under Section 34 of the 1996 Act could not be condoned and the Section 34 application was clearly barred by limitation. She also recorded that no ground had been taken in Section 34 application that the miller-respondents had received the said award after statutory stipulated time for filing of the application,

4. Learned counsel appearing on behalf of the appellants submits that it was the duty of the claimants to show when and how the award was received by the miller-respondents.

5. Learned counsel appearing on behalf of the claimants in the arbitration proceedings and the respondents herein submits that no ground had been taken in the Section 34 application to show that the award was received beyond the time stipulated for filing of Section 34 application. Furthermore, no application for condonation of delay has been filed by the appellants.

6. This Court has considered the submissions of the learned counsel for the parties and perused the material on record.

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7. It is apparent that no ground had taken in the application under Section 34 of the 1996 Act filed by the miller-respondents-appellants herein to contend that the award was received beyond the stipulated time for filing the application under Section 34 of the 1996 Act. Furthermore, no application for condonation of delay in filing of the Section 34 application has been preferred by the appellants.

8. Learned counsel appearing for the appellants refers to judgments of the Hon'ble Apex Court passed in *Food Corporation of India Vs. Surendra, Devendra and Mahendra Transport Co.* reported in *2003(4) SCC 80* and *Vishwanath Sood Vs. Union of India and another* reported in *1989(1) SCC 657*. The first judgment refers to the issue of jurisdiction of the arbitral Tribunal in excluded matters. The said judgment was passed under Sections 20 and 34 of the Arbitration Act, 1940. Learned counsel for the appellants has not been able to show how the limitation stipulated under Section 34 application of 1996 Act can be overcome by citing this decision under the Arbitration Act, 1940. The second decision referred to by the learned counsel for the appellants, refers to Section 30 of the Arbitration Act, 1940 regarding the non-speaking award and also regarding the issue of construction of contracts by the arbitrator where time is made the essence of the contract. This Court again fails to see how the said decision supports or corroborates the case of the appellants in the instant case.

9. The next decision cited by learned counsel for the appellants is decision of Coordinate Bench passed in **CR No.1780 of 2001** titled **Shree Krishna Rice Mills Vs. The Punjab State Co-op Supply and Marketing Federation Ltd** on March 14, 2002. In that case, the Coordinate Bench came



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to the conclusion that the dispute in question was not required to be referred to arbitration since the Arbitrator himself had observed in his order that as the original agreement for arbitration or the certified copy thereof, had not been produced before him, the reference was not valid. The Coordinate Bench came to the conclusion that the disputes regarding economic cost and award of interest were issues covered under Clauses 5 and 6 read with Clause 18 of the Agreement and could be decided by the Managing Director, Punjab State Co.op Supply and Marketing Federation Ltd. (MARKFED) and there was no need to refer the same to the Arbitrator.

10. This Court again fails to see how this judgment supports and corroborates the argument of learned counsel for the appellants on the issue that the period of limitation for filing an application under Section 34 of the 1996 Act can be extended beyond the stipulated period without any evidence being brought on record to show that the award was supplied to the appellants beyond the time stipulated for preferring an application under Section 34 of the 1996 Act.

11. In the light of the discussion made hereinabove, the present appeal being FAO No.1630 of 2014 is **dismissed**.

12. Pending application(s), if any, shall also stand disposed of.

(LAPITA BANERJI)
JUDGE

JANUARY 09, 2025
Prince

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No