IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 27.11.2015

1. FAO-2309-2008 (O&M)

Punjab State Coop Supply and Mkt. Fed. Ltd. and another

... Appellants

Vs.

M/s Vohra Brothers and co. and another

... Respondents

2. FAO-2310-2008 (O&M)

Punjab State Coop Supply and Mkt. Fed. Ltd. and another

... Appellants

Vs.

M/s Vohra Brothers and co. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Deepali Puri, Advocate
for the appellant (in both cases).

Mr. Parvez Chugh, Advocate
for respondent No.1 (in both cases).

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of abovementioned two FAOs bearing FAO-2309-2008 and FAO-2310-2008 filed at the instance of Markfed.

Ms. Deepali Puri, learned counsel appearing on behalf of the

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appellant submits that the Arbitrator on the basis of the oral and documentary evidence awarded the amount of Rs.98,510/- in favour of the Markfed. The objecting Court set aside the order on the premise that the two witnesses namely HS Bains and S.S. Uppal filed their affidavit before the Arbitrator but did not appear for cross-examination and set aside the entire award. She submits that the objecting Court has committed illegality and perversity in not examining the contents of the award inasmuch as the miller, had admitted at least three claims for which no evidence was required. In essence, the award vis-a-vis the claim admitted by the miller should be upheld.

I have gone though the order which is under challenge as well as the awarded. On going through the award, three claims had been admitted by the miller, the relevant portion of the award is extracted hereinbelow: -

> *"The respondent has not denied that its left with 13963 gunny bags out of the paddy shelled. The value of the above gunny bags at Rs.14 per bags including sales tax comes Rs.195482. The respondent has also not dened that a quantity of 182.65 qtls of paddy common is physically lying with the miller equivalent to custom milled rice is 127.855 which @ Rs.686 per qtl amounts to Rs.87734/- while corresponding bardana comprising 281 bags @ 22.50 makes an amount of Rs.6323/- making total recoverable for physical balance of paddy remaining with the miller along with bardana cost Rs.94057/-."*

The claimant-appellant is also entitled to a sum of income tax Rs.3390/- vis-a-vis the other entire claim of the appellant.

Mr. Parvez Chugh, learned counsel appearing on behalf of respondent submits that there was no illegality and perversity as the award is not

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separable and has to be set aside as a whole. No doubt the award is not separable but such principle is applied where parties are different and separate objections have been filed. On perusal of the award it is evident that the miller had admitted three claims therefore the objecting Court ought not to have set aside the award qua such admission rather such findings tantamount to judgment on admission. As regards the liability of the miller qua payment of income tax the contents agreement leave no manner of doubt, thus Markfed is also entitled to income tax as ordered by the Arbitrator vis-a-vis other claims I am in agreement with the judgment rendered by the objecting Court as the witnesses of the corporation did not offer for cross-examine and therefore rightly so other claims (disputed) have been set aside.

With the abovementioned observations, the order of the objecting Court is modified to the extent that the claims admitted by the miller as per the award are upheld in essence the Markfed is entitled to claim the abovementioned amount and vis-a-vis rest of the amount, the findings of the objecting Court is upheld.

With the abovementioned observations, FAOs are partly allowed.

[AMIT RAWAL]
JUDGE

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