

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

FAO No.4535 of 2009 (O&M)

Date of decision : 11.09.2015

District Manager, Punjab State Warehousing Corporation, Faridkot

...Appellant

Versus

M/s Bhullar Mini Rice Mill and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Vikas Singh, Advocate for the appellant.

Mr. P.S. Brar, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the impugned order dated 25.02.2009, whereby objections filed under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') against the award dated 13.09.2004, have been dismissed on various premises and one of the reason was that it was premature, owing to the findings of the Arbitrator had, while exercising the power under Section 39(1) of the Act, withheld the operation of the award on account of non-payment of his statutory dues/fees.

Mr. Vikas Singh, learned counsel appearing on behalf of appellant submits that this Court vide order dated 08.01.2014 already expunged the aforementioned/operative part of award and, therefore, the matter is not

required to be remanded back to the Lower Court, much less, fresh arbitration proceedings are required to be initiated as the Arbitrator was seriously prejudiced against the appellant for non-payment of the statutory fees. The order dated 08.01.2014 be read thus:-

“When the fee of the Arbitrator was fixed by the Managing Director of the appellant-Corporation at Rs.4000/- consolidated plus Rs.100/- secretarial charges per sitting before the proceedings commenced and hearing started the Arbitrator had accepted this fee arrangement and entered arbitration proceedings and rendered the award which is appealed against by the Corporation.

In the impugned award, the Arbitrator has put a condition that the arbitration award will not be enforceable before the Court in case his demand for extra fee beyond the arbitration fee fixed by the Managing Director is not paid to him. The Arbitrator has agitated this fee matter after accepting without demur the fee fixed by the Managing Director of the Corporation which he had then readily accepted. If there was a new beginning of his claim for enhanced fee as imagined by the Arbitrator then before proceeding further and passing award he could have exercised his jurisdiction under S. 31 of the Arbitration & Conciliation Act, 1996 (for short "the Act") and to have fixed his fee according to procedure laid down. He chose not to do that. It is neither fair nor reasonable nor judgelike for him now to rake this issue after virtually closing the arbitral proceedings to await award by putting on hold hearing of the application before the District Judge/Additional District Judge under S. 34 and consequently upon this Court exercising appellate jurisdiction under S. 37 of the Act. The Arbitrator cannot create a situation where an award is left hanging in limbo and to stall the right of a party to object against the award. If that would be the intention of the Arbitrator then it may give occasion for this Court to quash

the award itself and remit the matter back to a fresh Arbitrator by either showing it the door of S.11 of the Act or for this Court to exercise its jurisdiction to appoint an Arbitrator and fix his terms including fee for a fresh arbitration. However, this course is not being adopted which would unnecessarily delay the matter and work against the interest of the parties to resolve the disputes between them through arbitration.

Consequently, the impugned demand is declared wholly unjust and unreasonable. The Arbitrator would not be entitled to any fee other than what stands paid. Having done so, this Court would proceed to hear the parties on merits. Both the learned counsel pray that for this a fresh date may be given so that they are prepared to address arguments on merits.

List on 01.04.2014.”

Mr. Brar, learned counsel for the respondent-Miller submits that there is no illegality or perversity in the impugned order and it does not warrant any interference as objections were not within parameters of Section 34 of the 1996 Act.

I have heard learned counsel for the parties and appraised the paper book.

The relevant part of the award, whereby Arbitrator had given the observation with regard to the withholding of the fees be read thus:-

“I make an award for Rs.10,63,901/- (Rupees ten lakhs sixty three thousand nine hundred and one only) plus interest @18% p.a. simple interest from the dates as awarded on counter claims up to 28.02.03, and for the period from 02.03 to the date of award and 18% p.a. simple interest on other claims from date of award and plus interest as per Section 31 (7)(b) on the principle as total awarded amount on the date of award, till realisation less deduction of Income tax as per law in favour of the respondent. In case the payment of the

awarded amount up to the date of award is made within three months, the interest @ 18% from the date of award will stand remitted.

Order under Section 38 and 39 of the Arbitration and Conciliation Act, 1996:-

Under Section 39(1) the sole arbitrator has a lien on the arbitrator award for the unpaid costs of arbitration. I am making and delivering the award and not with-holding it till the payment of fee and cost though the fee and cost had not been paid by the parties. I decide under Section 39(1) that the above award will be operative in competent Hon'ble Court only in case when the fee and cost fixed by the arbitrator is paid and no objection from the arbitrator is obtained and attached with objections application or execution petition filed under Section 34 or 36 of the Arbitration and Conciliation Act, 1996. The claimant had not paid the fee amounting to Rs.56,700/- and Rs.34,500/- (56,700-2,200) by the respondent as fixed by the arbitral tribunal, the sole arbitrator, though demanded in each proceeding. I further hold that in case the other party elects to pay the said fee and cost, the said party is allowed to pay the said amount as recoverable amount from the defaulting party, by draft, so as to have a "No Objection Certificate" from the said arbitrator in order to enable the said party succeed in filing his case before the court in order to enforce his right and entitlement as per the award under Section 34 or 36 of the Arbitration and Conciliation Act, 1996.

The non-judicial stamped paper for Rs.120.00 was supplied by the claimant for making and announcement of award. The original award has been retained by me and copies of the award duly signed in ink supplied to the parties in the matter of reference.

Award announced and made on this 13th day of September, 2004 in the presence of the parties or by post and

duly signed copies provided to each party.”

The appellant filed objections against, the aforementioned award and the objections have been dismissed by the Courts below. The relevant part of the order be read thus:-

“Further, the objection petition filed by the Corporation is also liable to be dismissed being pre mature, as the Arbitrator has withheld the original award due to non payment/deposit of his arbitration fee and costs, as assessed by him, by the objector Corporation before filing the application/objection petition. The objections filed by the Objector, are liable to be dismissed on that ground also.”

Since, this Court as noticed has already expunged the operative part of the arbitration award, whereby Arbitrator had withheld the award by exercising the power under Section 39(1). The Arbitrator apparently, in my view, was prejudiced/biased against the appellant, thus neither the award nor the impugned order, whereby objections to the award have been dismissed, are sustainable. The award also reveals non compliance of provision of Section 12 of 1996 Act.

Accordingly, the award and the impugned order are set aside.

Parties are relegated to seek the appointment of the Arbitrator in accordance with law.

Appeal is accordingly allowed.

11.09.2015

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**(AMIT RAWAL)
JUDGE**