IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: October 16th, 2015

1. FAO No.5426 of 2009 (O&M)

The Punjab State Co-operative Supply and Marketing Federation Limited, Head Office at Chandigarh

...Appellant

Versus

M/s S.S.Gumber Rice Mills, Jalalabad (West), Tehsil Jalalabad (West), District Ferozepur & another

...Respondents

2. FAO No.5427 of 2009 (O&M)

The Punjab State Co-operative Supply and Marketing Federation Limited, Head Office at Chandigarh

...Appellant

Versus

M/s M.L.Rice Mills, Jalalabad (West), Tehsil Jalalabad (West), District Ferozepur & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Avinash Chander Jain, Advocate,
for the appellant in both the appeals.

Mr.S.K.Singla, Advocate,
for respondent No.1 in FAO No.5426 of 2009.

Ms.Navneet Kaur Sran, Advocate,
for Mr.Riffi Birla, Advocate,
for respondent No.1 in FAO No.5427 of 2009.

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AMIT RAWAL, J.

By this order, I intend to dispose of two FAO Nos.5426 and 5427 of 2009 as the common questions of law and facts involved in both the appeals are the same.

Markfed is in appeal against the order, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") against the award dated 30.9.2004 passed in favour of the Markfed, have been dismissed.

Mr.Avinash Chander Jain, learned counsel appearing on behalf of the appellant submits that the Objecting Court dismissed the objections without dealing with each and every objections, which were in consonance with the provisions of Section 34 of 1996 Act. The arbitrator has not granted agreed rate of interest, i.e., 21% on the amount due, i.e., shortage of the paddy and on account of un-milled rice. He further submits that arbitrator has misconducted the proceedings by holding that he has no jurisdiction to decide the matter regarding the charging of interest. The Markfed was deprived to use the amount and, therefore, the miller was liable to pay interest which has been charged at bank rate.

Mr.S.K.Singla, learned counsel appearing on behalf of the respondent-miller submits that there is no illegality and perversity in the impugned order. The scope of interference vis-a-vis the objections filed under Section 34 of 1996 Act is very limited as the objections were not within the parameters.

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

On perusal of the award, it is evident that the Markfed, during the pendency, had sought leave of the arbitrator to amend the original statement of claim and the request was granted as per the provisions of Section 23(3) of 1996 Act. The revised claim, in FAO No.5426 of 2009, stood crystalized at ₹30,45,775/-. The arbitrator, after taking into consideration the entire claim, found that the Markfed is entitled to a sum of ₹1,12,618/- and after deducting the security deposit and tender security of ₹50,000/- and ₹20,000/-, the net recoverable amount from the miller is ₹42,258/- along with interest @ 18% per annum for nine and one quarter years upto 30.9.2004 and thereafter future interest @ 9% per annum from 1.10.2004 till realisation or decree whichever is earlier.

In FAO No.5427 of 2009, the revised claim stood crystalized at ₹12,75,302/-. The arbitrator, after taking into consideration the entire claim, found that the Markfed is entitled to a sum of ₹1,76,782/- and after deducting the milling charges, double line stitching, amount adjusted/deposited and the security deposit, the net recoverable amount from the miller is ₹13,021/- with future interest @ 9% per annum from 1.10.2004 till realisation or decree whichever is earlier.

In the amended claim, the markfed had sought interest at bank rate and not at the rate of 21% agreed between the parties while entering into an agreement, therefore, the plea that the Markfed is entitled to interest as agreed is not tenable and is accordingly repelled.

It is now settled law that in what circumstances the award has to be interfered with. The question, which is now raised in the aforementioned appeals, has already been answered by the Hon'ble Supreme

Court in catena of judgments, wherein, it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 34 of the Act, the same cannot be interfered with. In this context, I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.** In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances, it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substituting its own view in support of the Arbitrator's view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute which was contemplated and was within its scope. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but vis-a-vis proceedings. In my view, the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator, who is expert, has dealt with the matter and decided the claim of respective claimants to the parties to the *lis*.

In my view, the award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

The appeals are accordingly dismissed.

October 16th, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**