IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1659 of 2010 (O&M)
Date of decision : 14.09.2015

Guru Trading Company Jakhal Road, Budhlada & another ...Appellants

Versus

State of Punjab and ors. ...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. S.C. Chhabra, Advocate for appellants.

Mr. Rajesh Mehta, Addl. A.G. Punjab for the State.

Mr. J.S. Brar, Advocate for respondent No.2.

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AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the impugned order dated 07.09.2009, whereby objections filed against the award dated 03.12.2003 have been dismissed.

Mr. S.C. Chhabra, learned counsel appearing on behalf of appellants submits that as per the calculation arrived at by the Arbitrator, it has been proved on record that Miller had already paid a sum of ₹44,67,000/- as on 13.02.1997 and this fact has been accepted by witness in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') and yet the Arbitrator has awarded a compensation of ₹32,50,573/- plus another amount of ₹34,21,228/- as a interest from 01.04.1999 till its recovery. He further submits that there is illegality and perversity in the award, which is non-speaking and lacks reasons, for, of having not taken into consideration the payment of ₹44,00,000/- an odd amount, much less, even awarding of the interest is also on higher side. He further submits that impugned order and the award is thus liable to be set aside.

Mr. J.S. Brar, learned counsel appearing on behalf of MARKFED submits that before the Arbitrator, appellants appeared through Accountant and as well as Proprietor and, thereafter absented and did not lead any evidence, therefore, payment of ₹44,00,000/- (an odd amount) has been effected and would not have relevancy, for the reasons, as per award, Arbitrator has adjusted the aforementioned amount and awarded interest only from 1.4.1999, therefore, payment before 1.4.1999 would have no relevance to the dispute. He further submits that Objecting Court should have tried the objections by adopting summary process.

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

The Arbitrator had noticed the factum that on two occasions, the Accountant and as well as the Proprietor of the appellants had appeared and, thereafter they did not appear nor led any evidence in support of their case, in essence in case they had some reason, they could have led evidence to rebut the claim of MARKFED vis-a-vis the payment of ₹44,00,000/-, an odd amount. In the absence of rebuttal to the evidence brought on record by the MARKFED, no fault can be found with the finding rendered by the Arbitrator. There is another aspect of the matter,even the Arbitrator has taken note of such payment/amount deposited by Miller, which read thus:-

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1	Shortage of 8123.49 qtls of paddy and its economic cost @ Rs.758.17	Rs.61,58,986.00
2	Cost of 17733 gunny bags retained by the miller after milling of paddy @ Rs.15.51 plus sales tax i.e. Rs.16.19 per bag	Rs.2,87,140.00
3	Cost of 12498 bags of paddy found short @ Rs.25.85 plus sales tax being new bags	Rs.3,37,289.00
4	Quality cut recoverable	Rs.1,03,534.00
5	Interest due to non shelling of paddy upto 31.12.1998	Rs.0,79,968.00
6	Income tax deducted on milling charges	Rs.4,107.00
	Total 'A'	Rs.79,71,024.00
	Payable to the rice miller	
1	Milling charges	Rs.2,05,326.00
2	Double line machine stitching	Rs.18,125.00
3	Amount deposited	Rs.44,67,000.00
4	Security	Rs.30,000.00
	Total 'B'	Rs.47,20,451.00
	Net recoverable (A-B)	Rs.32,50,573.00
	Interest upto 31.3.99	Rs.1,70,655.00
	With interest @ 21% from 1.4.99 till its recovery	Rs.34,21,228.00

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The Arbitrator after taking into consideration the deduction, ordered net recoverable amount. As regards the payment of interest at the rate of 21% p.a., it has been pointed out by Mr. Brar, Advocate that it is agreed rate of interest as per the terms and conditions of the contract/agreement, therefore, the same has been awarded w.e.f. 01.04.1999.

There is limited scope in the interference in the objections under Section 34 of the Act.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal 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 or for want of reasons as statutorily prescribed under Section 31 (3) 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 substitution in its own 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 award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator or Committee is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

I do not find any infirmity and illegality.

Accordingly, present appeal is dismissed.

14.09.2015 **(AMIT RAWAL)**
pawan **JUDGE**