

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

F.A.O.No.5970 of 2010 (O&M)
Date of Decision: August 13, 2015

M/s Jain Rice Mills, Dhuri, District Sangrur

...Appellant

Versus

**The Punjab State Cooperative Supply and Marketing Federation Ltd.,
Sangrur & 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.Mukand Gupta, Advocate,
for the appellant.**

**Mr.Rakesh Gupta, Advocate,
for the respondents.**

AMIT RAWAL, J. (Oral)

The challenge in the present appeal is to the order dated 3.8.2010 passed by the District Judge, Sangrur, whereby the objections filed on behalf of the appellant-miller under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") have been rejected on the ground that the same have not been accompanied by an affidavit.

Mr.Mukand Gupta, learned counsel appearing on behalf of the appellant submits that before the arbitrator, Markfed had filed the claim of

₹22.00 lacs and thereafter supplementary claim was filed by reducing the claim to ₹16.00 lacs, but, however, vide order dated 08.10.2002, the supplementary claim was withdrawn. In essence, the Markfed restricted the claim to ₹22.00 lacs. The arbitrator, instead of pondering upon this aspect, decided the reference by taking into consideration the supplementary/revised claim which was withdrawn. The said claim was assailed by filing objections and the Court below remanded back the matter to the arbitrator to decide the matter afresh by taking into consideration the main claim. He further submits that despite being a specific direction in the order, the arbitrator has again, vide award dated 19.12.2006, taken into consideration the withdrawn/revised/supplementary claim and objections have not been decided on merits, but have been rejected on the ground that the same were not accompanied by affidavit.

Mr.Rakesh Gupta, learned counsel appearing on behalf of the respondents submits that it is second round of litigation at the behest of the miller and amounts to adoption of delaying tactics, which should not be permissible. The award is in consonance with the claim and rightly so, the objections have been filed. Even otherwise, the objections, as per the High Court Orders and Rules, much less, provisions of the Act, were required to be accompanied by an affidavit.

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

The Division Bench of this Court in **M/s Punjab State Industrial Dev.Corporation Ltd. Versus Sunil K. Kansal, 2013(7) R.C.R. (Civil) 2606** while pondering upon a question arose for

determination as to whether the Court entertaining the objections under Section 34 of the Act should frame the issues or not or whether the provisions of Order 14 Rule 1 of the Code would apply. This Court, while answering the question, observed this:-

“30. In view of the above, we answer the question of law framed as follows:-

(i) The issues, as required under Order 14 Rule 1 of the Code as in the regular suit, are not required to be mandatorily framed by the Court. However, it is open to the Court to frame questions which may arise for adjudication.

(ii) The Court while dealing with the objections under Section 34 of the Act is not bound to grant opportunities to the parties to lead evidence as in the regular civil suit. The jurisdiction of the Court being more akin to the appellate jurisdiction;

(iii) The proceedings before the Court under Section 34 of the Act are summary in nature. Even if some questions of fact or mixed questions of law/or facts are to be decided, the court while permitting the parties to furnish affidavits in evidence, can summon the witness for cross-examination, if desired by the other party. Such procedure is keeping in view the principles of natural justice, fair play and equity.

In view of the question of law having been answered, the matter be placed before the learned Single Judge, on 31st October, 2012 for decision according to law. Reference answered.”

On perusal of the observations aforementioned, it is irresistibly concluded that the proceedings filed under Section 34 of the Act are summary in nature. If even such mixed questions of law and/or facts are involved, the Court can adopt a procedure by summoning the witnesses in

view of the principles of natural justice, fair play and equity. The ground on which the objections filed under Section 34 of the Act have been rejected as the same were not accompanied by an affidavit, in my view, is not sustainable, much less, tenable. The Court was enjoined upon an obligation to examine the record of the arbitrator, whereby the parties, who were alive to the situation, had led evidence supported by documents and the objections are confined to the provisions of Section 34 read with Sections 28(1) and 31(3) of the 1996 Act.

The reasoning assigned by the Court in declining the objections that the same were not accompanied by the affidavit, should not come in the way of the objector, particularly in view of the fact that after remand by the previous Court, arbitrator has decided the claim, which, according to the appellant had already been withdrawn, though disputed by the Markfed. Be that as it may, I am of the view that the matter requires to be decided on merits instead of harbouring hyper-technicalities .

In view of what has been observed above, the matter is remitted back to the District Judge, Sangrur to decide the objections afresh. In essence, the objections are restored to its original number.

The parties shall be free to file their respective affidavits in support of the objections/reply.

It is expected that the District Judge, shall decide the objections as expeditiously as possible, preferably within a period of six months from the date of receipt of certified copy of this order.

The parties, through their counsel, are directed to appear before the District Judge, Sangrur on 2.9.2015.

The record of the arbitration and as well as the District Judge
be sent back forthwith.

The appeal is disposed of accordingly.

August 13, 2015
ramesh

(AMIT RAWAL)
JUDGE