

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

CM No.8896-CII and
CM No.28903-CII of 2014 in/&
FAO No.92 of 2011
Decided on : 28.08.2015

M/s Savi Engg. Pvt. Ltd.

.... Appellant

vs.

Markfed Oil & Allied Industries etc.

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellant.

Mr. Rakesh Gupta, Advocate
for the respondents.

Amit Rawal, J.(Oral)

CM No.28903-CII of 2014

The application is allowed and Annexures R-1 to R-3 are
taken on record subject to all just exceptions.

CM stands disposed of.

CM No.8896-CII of 2015

Prayer in the application is for placing on record the reply
filed on behalf of appellant.

The application is allowed and reply, filed on behalf of
appellant, is taken on record subject to all just exceptions.

CM stands disposed of.

Main case

Challenge in the present appeal is to the impugned order
dated 19.08.2009 whereby the objections filed by the appellant/
objector/contractor against the award dated 22.12.2004 have been

dismissed on account i.e. barred by time.

Learned counsel for the appellant submits that though learned District Judge found that as per the terms and conditions of the agreement, Markfed was not entitled to charge interest on the advanced amount as there is no provision of claiming interest in the agreement. He further submits that Arbitrator was appointed in the year 1999 and the appellant participated in the arbitration proceedings and led evidence in support of his defence. The Arbitrator erroneously passed the award on 22.12.2004, however, as per the contents of the award, one copy of the award was sent to appellant herein, through registered post, and the original award was sent to the claimant -Markfed along with the file. He submits that the Arbitrator sent the copy of the award on 23.12.2004 through registered post at the private address of the Director of the Company and not at the address of the company and the said letter was returned with the mark "Firm closed left without address". He submits that the company did not receive the copy of the award as per provision of Section 31(5) of the Arbitration and Conciliation Act, 1996. He further submits that the appellant acquired the knowledge of the award on the publication of the same in the newspaper dated 27.10.2005 and thereafter the objections have been filed on 17.11.2005 and there was no delay on the part of the appellant. This aspect has not been dealt with by the District Judge. Thus, there is illegality and perversity in the order.

Learned counsel for the respondent submits that the appellant/objector had acquired the knowledge of the award when a legal notice dated 04.06.2005 (Annexure R-2) was served upon the company and there is no explanation much less reasons in filing the

objections after the legal notice. He further submits that this aspect has been noticed by the District Judge (Annexures R-3 to R-11) and thus, no interference is warranted and there is no illegality or perversity in the impugned order.

I have heard learned counsel for the parties and perused the record with their assistance.

It is a matter of record that the letter dated 23.12.2004 was not addressed to the company but was addressed to respondent No.3 in the claim petition, who had already left the place without any fresh address. There is no proof/document much less to show that the copy of the award was sent to the registered office of the company. Even postal envelope (Annexure R-1) dated 23.12.2004 has not been addressed to the registered office of the company. Though the legal notice dated 04.06.2005 has been addressed to the registered office of the company, this Court is not able to understand that what precluded Markfed to send the copy of the award at the registered office of the company, had it been done in such a manner there would not have been any occasion for the appellant to file the objections within the time. The objections in my view had been filed on the acquisition of the knowledge. Be that as it may, the District Judge in his discussion erroneously seen aforesaid aspect and rather has referred the exhibits, which are of the year 1994 i.e. of pre-reference period. Even the contents of the letter Annexure R-1 being part of the record has not been noticed and yet District Judge found that the objections were time barred.

In view what has been observed above, the appeal is allowed. The matter is remanded back to the District Judge,

Kapurthala to decide the objections being not barred by time afresh in accordance with law within a period of three months from the date of receipt of certified copy of the order.

28.08.2015
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(Amit Rawal)
Judge