

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 6659 of 2015(O&M)
Date of decision : September 29, 2015

M/s Prem Singh & Co. through its partners

..... Appellants

Versus

The Managing Director and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S. K. Singla, Advocate
for the appellants.

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?

Amit Rawal, J (oral).
CM No. 20695-CII of 2015

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 135 days in refiling the appeal is condoned.

The application stands disposed of.

FAO No. 6659 of 2015(O&M)

For the reasons stated in the application, which is duly supported by an affidavit, delay in filing the appeal is condoned.

The application stands disposed of.

The challenge in the present appeal is to the order dated 20.11.2014 whereby, the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act') against the award dated 23.5.2013 has been dismissed.

Learned counsel appearing on behalf of the appellant submits that earlier the arbitrator had passed an award against the miller. Since the PUNSUP challenged the same by filing the objections. The objections were dismissed and it was held that the dispute between the parties was within the parameters of excepted clause. The aforementioned order was challenged by the PUNSUP vide FAO No. 1035 of 2010 and this Court vide order dated 15.10.2012 set aside the order passed under Section 34 of the Act and as well as the award and remitted the matter, back to the arbitrator to decide the matter afresh in accordance with law.

He further submits that without there being an application at the behest of the PUNSUP, the arbitrator invited fresh claim from the PUNSUP, which has seriously pre judiced the miller, yet the said act on the part of the PUNSUP was objected to when the arbitrator did not assign any reason and even in the objections. The court below has committed illegality and perversity in not noticing the aforementioned fact.

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

The operative part of the order dated 15.10.2012 passed by this court reads thus:-

“There is considerable force in the aforesaid

contention. The instant case is covered by the judgment in M/s Adarsh Rice Mills (supra). Accordingly, the instant appeal is allowed. Impugned judgment dated 4.6.2009 passed by the trial court is set aside. Application under section 34 of the Act moved by the appellants is allowed. Award dated 17.1.2005 passed by respondent no. 7 is set aside and the matter is remitted to the Arbitrator for fresh decision in accordance with law. Parties are directed to appear before the Arbitrator on 16.11.2012.

Records of the trial court and the Arbitrator be sent back immediately to the respective quarters.”

In view of the aforementioned, it is evident that the arbitrator was directed to decide the matter afresh, in accordance with law. No doubt that the arbitrator has invited a fresh claim but the fresh claim is in tandem with the previous one and there is no change in the amount. The arbitrator has interpreted the direction of this Court to decide the matter afresh and not on the basis of the evidence already lead by the parties and on the aforementioned direction, called upon the parties to file afresh claim.

In view of what has been observed above, once the claim filed in the previously instituted arbitration proceedings and after the remand, is the same, no pre judice can be said to have been caused to the parties to the *lis*, much less appellant-miller.

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 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. 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.

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*.

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.

In my view, no error of law arise from the award.
The award is perfect and justified

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

September 29 , 2015
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