IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 7886 of 2015(O&M)
Date of decision : November 27, 2015

M/s Mahabir Rice and General Mills

.... Appellant

Versus

The Punjab State Warehousing Corporation Ltd.and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:-

Mr. Karan Gupta, Advocate for
Mr. Rajiv Mittal, Advocate
for the appellant.

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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).

The challenge in the present appeal is to the impugned order dated 2.9.2015 whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for setting aside of the award dated 20.9.2013 has been dismissed.

Learned counsel appearing on behalf of the appellant has raised the following arguments:

i) Prior to the appointment of the arbitrator, no notice under Section 21 of the Act was served. In support of his contentions he has relied upon the judgments in **Mulchand B. Jain VS. Indus Ind**

Bank Ltd. 2010 (4) LW231 and M/s Indus Ind Bank Ltd. Vs. Mulchand B. Jain 2013 (2) LW67 to contend that the impugned award in view of the specific provisions under Section 34 of the Act is liable to be set aside.

ii) The claim of the respondents-claimants was falling within the excepted clause and thus, objection was specifically taken in the written statement which has been erroneously rejected by the arbitrator.

iii) The award was reserved on 25.5.2005 whereas copy of the award/pronouncement was made on 20.9.2013 and therefore, the miller cannot be burdened with interest which has been assessed by the arbitrator @ of 15%.

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

During the course of arguments, learned counsel for the appellant brought to the notice of the Court the calculation sheet to contend that claim of the respondent-Corporation was falling in an excepted clause as it claimed interest @ of 21% and 30% thus, in view of clause 8 of the agreement, granting of the interest was within the realm of Director, Food and Supplies.

I have gone through the calculations as well as agreement and is of the view that the claim of interest @ of 21% is as per clause 7 and not 8, thus, the first contention is rejected. Viz-a-viz the non-serving of notice under Section 21 of the Act, the ratio decidendi culled out in the judgments **Mulchand B. Jain and Indus Ind Bank Ltd** (supra) in the both the cases the award was ex-parte, here in this case, miller contested the award, lead the evidence, therefore, service of notice under section 21 would be immaterial.

As regards the third contentions, burdening the miller with regard to the interest @ 15%, I have gone through the award, though, the award does not clearly specify that the corporation shall be entitled to claim the interest till realization, I am of the view that since the pronouncement of the award was reserved in the month of May, 2005 but actually pronounced in September, 2013 the corporation shall not be entitled to interest for the aforementioned period.

With the aforementioned observations, I do not intend to differ with the finding rendered by the Objecting Court dismissing the objections.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 27 , 2015
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