

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

**FAO No.8032 of 2015 (O&M)
Date of decision: 02.12.2015**

M/s Mahadev Rice & General Mills & another ... Appellants

Vs.

Punjab State Warehousing Corporation & another ... 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. Tribhawan Singla, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

Learned counsel appearing on behalf of the appellants submits that the Arbitrator pronounced the Award on 27.03.2014/19.06.2014 against the Miller and the same was assailed by filing objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short '1996 Act'). The objecting Court accepted the plea that award was lacking reasons by setting aside the award and remitted the matter back to the Arbitrator. He further submits that part of impugned order remitting the matter back to the Arbitrator is not sustainable, in view of the ratio decidendi culled out by the Bombay High Court in Appeal No.35 of 2013 in Arbitration Petition No.47 of 2009 titled as **Financial Services Limited vs.**

Kritika Nagpal decided on 25.06.2013. He further submits that the provisions of Section 34(4) of 1996 Act does not envisage the power of remitting matter back to the Arbitrator, in the cases where the objecting Court found that Award is not sustainable and the same deserves to be set aside.

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

The objecting Court found that award was lacking reasons as Arbitrator misconducted himself in holding the proceedings, much less, did not take into consideration the orders passed by this Court in LPA No.1366 of 2012 and keeping in view the aforementioned circumstances, remanded the matter back to the Arbitrator. In essence, the directions contained in the aforementioned LPA passed by this Court from time to time have not been complied with, much less, other documents including pleadings. The ratio decidendi culled out by the Bombay High Court in **Financial Services Limited's case (supra)** in paragraphs 14 to 16 read thus:-

“14. Under sub-section 4 of Section 34, the Court is vested with the discretion, where it is appropriate and where the court is requested by a party, to adjourn the proceedings for a period of time. An adjournment is granted in order to furnish the arbitral tribunal with an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the Tribunal will

eliminate the grounds for setting aside the award. Sub-section 4 of Section 34, therefore, does not contemplate a situation where the proceedings are remanded back to the arbitrator after setting aside the arbitral award. Once an arbitral award is set aside under [Section 34](#), that brings to a conclusion a proceeding before the Court. What sub-section 4 of Section 34 envisages is an opportunity to the arbitral tribunal to resume the arbitration proceedings or to take such other action as would eliminate the grounds for setting aside the award. Without meaning to be exhaustive, we can conceive of a situation where the arbitral tribunal has overlooked a particular item of claim on which parties have led evidence and have addressed arguments. A challenge to the arbitral award in such a case would be on the ground that the arbitral tribunal has failed to decide a claim which was raised, controverted and submitted upon. The provisions of [Section 34](#) enable the Court to adjourn the petition under [Section 34](#) so that instead of setting aside the award, the arbitral tribunal can resume the proceedings and take necessary steps to eliminate a ground of challenge. [Section 34\(4\)](#), however, does not contemplate or vest a power in the Court to remand proceedings back to the arbitral tribunal once the Court

has set aside the award. Once an award has been set aside, recourse cannot be taken to [Section 34\(4\)](#) since it is evident that the power can be exercised by the Court while adjourning a petition under [Section 34](#).

*15. The jurisdiction under [Section 34\(4\)](#) can be exercised in a manner which is strictly consistent with that provision. The equitable jurisdiction which the Court exercises under [Article 226](#) of the Constitution is clearly inapposite when dealing with a petition under [Section 34](#). The learned Single Judge has relied upon his earlier decision in *Angel Capital and Debt Market Limited Vs. Sharad Munot*¹, which seems to suggest that the Court has while setting aside an award a general power to remand the proceedings for reconsideration. We clarify that this would not reflect the correct position in law.*

16. Before concluding our discussion of this aspect, we may note that [Section 16](#) of the Arbitration Act, 1940 specifically conferred upon the Court a power to remit an award subject to stated conditions. A provision analogous to [Section 16](#) has advisedly not been incorporated in the Act of 1996 and a circumscribed power has been vested in the Court by the provisions of [Section 34\(4\)](#).”

From the perusal of the aforementioned findings rendered by Bombay High Court, reveal that erstwhile/repealed act envisages

for remand but 1996 Act does not contemplate or vest a power in the Court to remand proceedings back to the arbitral tribunal once the Court has set aside the award.

I am in agreement with the submission made by Mr. Tribhawan Singla that Objecting Court did not have power to remit the matter for arbitration, either had to accept it or rejected it.

Keeping in view the ratio decidendi culled out by Bombay High Court, as well as, orders passed by this Court in LPA No.1366 of 2012, the impugned order is hereby set aside and the matter is remitted back to the objecting Court. On receipt of the order, the objecting Court shall give advance notice to the parties while deciding the objections afresh and shall decide the objections as early as possible preferably within a period of four months from the date of receipt of certified copy of this order.

Accordingly, the appeal is allowed.

It is made clear that the impugned order is set aside to the extent of order containing the element of remanding back to the Arbitrator.

(AMIT RAWAL)
JUDGE

December 02, 2015
savita