

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

**CR No.1876 of 2015
Decided on.31.08.2016.**

M/s Rising State Rice Mills Sunam

.....Petitioner

Versus

Punjab State Grain Procurement Corporation Ltd.

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Pardeep Goyal, Advocate
 for the petitioner.

 Mr. Charanjit Singh Bakhshi, Advocate
 for the respondent.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 09.12.2014, vide which the defence of the petitioner was struck off and the order dated 24.02.2015, vide which the application moved by the petitioner for recalling the order dated 09.12.2014 and allowing the petitioner to file the written statement, has been dismissed.

2. Learned counsel for the petitioner contended that the respondent has initiated the arbitration proceedings. The petitioner has appeared in the arbitration proceedings. Petitioner could not file the written statement in the arbitration proceedings as he was diagnosed for liver cancer and could not contact his counsel. So, his defence was struck off vide order dated 09.12.2014. He moved an application for recalling the said order and to allow the petitioner to file the written statement. The said application was also dismissed vide impugned order dated 24.02.2015. He

contended that in the interest of justice, one opportunity may be granted to the petitioner to file the written statement in the interest of justice.

3. On the other hand, learned counsel for the respondent contended that number of opportunities were granted to the petitioner to file the written statement. The case was even listed for evidence with the consent of learned counsel for the petitioner and the case remained posted for evidence for number of dates. Thereafter, the Arbitrator has granted opportunity to the petitioner to file the reply. But, even after that he did not file the written statement despite availing four opportunities. Even the costs were imposed. Thus, he contended that the petitioner is not entitled to file the written statement and his defence has been rightly struck off.

4. I have duly considered the aforesaid contentions.

5. It is settled principle of law that the claim of the parties should be adjudicated upon on merits rather than on technicalities. No party should be deprived of the effective opportunity to contest the *lis*. In the instant case, the copy of the interim orders brought on record shows that the learned Arbitrator has fixed the case on 22.07.2014 for evidence of the claimant even without obtaining the rely of the petitioner. After that the case was adjourned for 05.08.2014, 26.08.2014, 09.09.2014 and 23.09.2014. It was only on that date when the Arbitrator became aware of the fact that the petitioner is yet to file the written statement and the case has been wrongly fixed for evidence. Thereafter, he afforded opportunity to the petitioner to file the written statement. However, the written statement was not filed by the petitioner and ultimately the defence was struck off vide impugned order dated 09.12.2014. Petitioner moved an application for recalling the said order. The same was also dismissed by the Arbitrator vide impugned order dated 24.02.2015.

6. In the revision petition, it has been categorically mentioned that the petitioner fell ill and he was diagnosed for liver cancer and could not contact his counsel for filing the written statement. Thus, the explanation given by the petitioner with respect to his failure to file the written statement seems to be justified and the interest of justice requires that the petitioner should be given an opportunity to file the written statement in order to enable him to effectively contest the Arbitration Proceedings. But, at the same time the inconvenience has been caused to the opposite party as well as to the Arbitrators and for that the petitioner is certainly bound to pay costs.

7. Thus, keeping in view of my aforesaid discussion, the present revision petition is hereby allowed. The impugned orders dated 09.12.2014 and 24.02.2015 are hereby set aside. The petitioner is afforded one opportunity to file the written statement subject to Rs. 20,000/- as costs. The petitioner will submit the written statement before the Arbitrator within 15 days from the date of this order.

31.08.2016
S.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No