

326.

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

Civil Revision No.4223 of 1998 (O&M)

Date of decision:22.01.2016

M/s Markfed Vanaspati & Allied Industries, Khanna.

... Petitioner

versus

M/s Northern Gases, Ludhiana

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Anuj Garg, Advocate,
for Mr. Amar Vivek, Advocate,
for the petitioner.

None for the respondent.

K.Kannan, J. (Oral)

1. In a case before the Arbitrator for claims made by respective parties for the value of goods supplied claim by Markfed and a counter claim made by the buyer that there had been some defects which were required to be compensated, the Arbitrator read a clause of agreement between parties that provide circumstances for impossibility of performance as protecting only the vendor Markfed and did not protect the vendee M/s Northern Gases. The clause that was invoked to defeat the counter claim was the following:-

“Notwithstanding anything herein contained the seller shall not be responsible for any breach, non performance

or delay in performance of the terms and conditions of this agreement, as a result of strike, lock, supply or short supply of electricity, disturbance, fire, riot war insurrection restraints imposed by Govt. Act of Legislature or for any other causes which are not within the control and non-preventable by reasonable diligence on the part of the buyer or the seller.”

This reasoning was disapproved by the court before which the respondent had applied for setting aside the award to make room for allowing for the counter claim. The decision of the first court was confirmed by the lower appellate court. The challenge is made to the concurrent decisions of the civil courts that had modified the award of the Arbitrator.

2. The reference to the seller's right as not to be made liable for non-performance or delay in performance under the conditions mentioned above are truly examples of conditions which the Contract Act itself contemplates by reference to Section 56 that details that an agreement to do an impossible act will be treated as void. Doctrine of frustration is a known concept both in common law and in statutory provision that any event that frustrates the performance which was not itself under the control of parties would relieve the parties of their obligation to perform. The enumerated causes, namely, non-performance or delay resulting from strike,

short supply of electricity, fire, riot or insurrection are all typical examples of when a contract would be frustrated. It will be wrong to invoke this clause as applying only to one party and will not apply to another. In any event in this case the defect in supply was not attributed to any of these circumstances which could have been used against the buyer for challenging the counter claim made. The decision of the Arbitrator was not merely a defect in reasoning but a gross misconduct in applying the principle which was completely wrong. The two courts below have correctly dealt with the issue and provided for upholding the counter claim made by the respondent. There is no error for interference. The revision petition is dismissed.

(K.KANNAN)
JUDGE

22.01.2016
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