

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 7781 of 2013(O&M)
Date of decision : April 5th, 2016

Food Corporation of India

..... Petitioner

Versus

M/s Durga Rice and General Mills and others

..... Respondent

CR No. 1160 of 2015(O&M)

Food Corporation of India

..... Petitioner

Versus

M/s Brar Rice Mills and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:-

Mr. Vikas Chatrath, Advocate and
Mr. Neera Thakur, Advocate
for the petitioner in CR No. 7781 of 2013

Mr. K. K. Gupta, Advocate
for the petitioner in CR No. 1160 of 2015.

Mr. Sumeet Mahajan, Senior Advocate with
Ms. Ramneeq Kaur, Advocate
for respondent Nos. 1 to 4 in CR No. 7781 of 2013.

Mr. R. K. Girdhar, Advocate
for the respondents in CR No. 1160 of 2015.

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.

This order of mine shall dispose of two revision petitions at the instance of the Food Corporation of India being aggrieved against the impugned order passed in a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996.

In CR No. 7781 of 2013 the application for interrogatories for examination of respondent submitted on behalf of the miller has been allowed. In other Civil Revision bearing CR No. 1160 of 2015 taking the affidavit and documents of the objector off the file and for fixing the case for arguments, has been declined.

Mr. Vikas Chatrath, learned counsel appearing on behalf of the petitioner in CR No. 7781 of 2013 submits that in view of the law laid down by the Division Bench of this Court in **M/s Punjab State Industrial Dev. Corporation Ltd. Vs. Sunil K. Kansal, 2012 (4) PLR 805** relying upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Fiza Developers & Inter Trade P. Ltd. Vs. AMCI (I) Pvt. Ltd. And another (2009)17 SCC 796** it has been held that the issues as required under Order 14 Rule 1 of the Code of Civil Procedure, 1908 in a suit are not required to be mandatorily framed by the objecting court. However, the objecting court can frame the questions which may arise for adjudication. In essence, the Court while dealing with the objections under Section 34 of the 1996 Act is not bound to grant opportunities to the parties to lead evidence as in the regular civil suit. The jurisdiction of the Court

is akin to the appellate jurisdiction.

He further submits that proceedings before the Court under Section 34 of the Act are summary in nature and in case some questions of fact or mixed questions of fact and law and/ or facts are to be decided, the objecting court while permitting the parties to furnish affidavits in evidence can summon the witness for cross-examination, if desired by the other party keeping in view the principles of natural justice, fair play and equity whereas on going through the impugned order numerous interrogatories have been raised on behalf of the objectors-respondents seeking setting aside of the award, which is not permissible in law.

Mr. K. K. Gupta, learned counsel appearing on behalf of the petitioner in CR No. 1160 of 2015 submits that in pursuance to the objections, the objector had filed an affidavit in the shape of examination-in-chief along with certain documents and when on acquiring the knowledge of the same, an application was moved for taking the affidavit and documents off from the file of the Court, but same had been declined and adopt the submissions made by Mr. Vikas Chatrath in CR No. 7781 of 2013 that the proceedings before the Court under Section 34 of the Act are summary in nature.

Mr. Sumeet Mahajan, learned Senior Advocate assisted by Ms. Ramneeq Kaur, Advocate appearing on behalf of the respondents in CR No. 7781 of 2013 submits that a party cannot be prevented to place on record certain subsequent events which have been carried out after passing of the award. The award of the arbitrator is dated 23.5.2011 whereas as per letter dated 14.1.2013

written by Food Corporation of India, District Office, Bathinda to the Registrar Indian Council of Arbitration, New Delhi it transpired that certain cases have been withdrawn owing to the fact that the matter viz-a-viz the dispute in question has already been set right/raised.

In view of the judgment rendered by Hon'ble Supreme Court and this Court, it has become essential and necessary to raise interrogatories viz-a-viz aforementioned affidavit, rather the answer to the interrogatories would help the objecting court in deciding the controversy between the parties to the *lis*. The Food Corporation of India cannot be permitted to adopt pick and choose policy. In case, the order is allowed to be sustained the petitioner would be afraid of surfacing of the truth, it is in these circumstances, the revision petitions have been filed.

Mr. R. K. Girdhar, learned counsel appearing on behalf of the respondents in CR No. 1160 of 2015 submits that vide interim order dated 27.8.2014, the objecting court allowed the application of the objector to lead evidence in support of the objections and adjourned the matter for filing of the affidavit on 2.9.2014 i.e. on the adjourned date an affidavit of OW-1 Babu Singh was filed. The statement was recorded and the matter was posted for 9.9.2014 and on 4.9.2014, an application on behalf of the Food Corporation of India-petitioner was filed for taking the affidavit and documents of the objector off the file.

I have heard learned counsel for the parties, appraised the paper book and of the view that the principle No.3 culled out in **Punjab State Industrial Dev. Corporation Ltd.'s case**

(supra) would be applicable to the facts and circumstances of the present sake. For the sake of brevity para 30 of the judgment reads thus:-

“30. In view of the above, we answer the question of law framed as follows:-

(i) The issues, as required under Order XIV Rule 1 of the Code as in the regular suit, are not required to be mandatorily framed by the Court. However, it is open to the Court to frame questions which may arise for adjudication.

(ii) The Court while dealing with the objections under Section 34 of the Act is not bound to grant opportunities to the parties to lead evidence as in the regular civil suit. The jurisdiction of the Court being more akin to the appellate jurisdiction;

(iii) The proceedings before the Court under Section 34 of the Act are summary in nature. Even if some questions of fact or mixed questions of law and/or facts are to be decided, the court while permitting the parties to furnish affidavits in evidence, can summon the witness for cross-examination, if desired by the other party. Such procedure is keeping in view the principles of natural justice, fair play and equity.”

Since subsequent development has occurred, the objector cannot be prevented to bring on record the material in order to bring the matter in parity and alleged discrimination but the manner and mode adopted by filing fresh interrogatories is not in consonance with the ratio decidendi culled out in **Punjab State Industrial Dev. Corporation Ltd.'s case (supra)**. Accordingly, the

impugned order in both the revision petitions are set aside. The matter is remitted back to the trial court. Liberty is granted to the parties to file affidavit in support of their cases and in case the other party so desire, can seek cross-examination of the opposite party in view of the principle of natural justice, fair play and equity.

The parties through their counsel are directed to appear before the trial court. Liberty is granted to the respondents to file an appropriate affidavit containing documents sought to be placed on record. The petitioners are given liberty to rebut the same, in case the respondents so desire, that there is necessity to cross-examine the witnesses of the plaintiff on certain specific point, the objecting court shall give them liberty. However, the entire exercise should be done as early as possible. The objecting court should be wary that none of the parties adopt any dilatory tactics.

The civil revisions stand disposed of.

(AMIT RAWAL)
JUDGE

April 5th, 2016
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