

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

FAO No.5393 of 2006 (O&M)

Date of decision : 01.04.2016

District Food & Supplier Controller, Ferozepur

...Appellant

Versus

M/s Laxmi Rice Mills and 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. Piyush Bansal, DAG, Punjab for the appellant.

Mr. Sameer Sachdeva, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The District Food and Supplies Controller is in appeal under Section 37 of the Arbitration and Conciliation Act, 1996 against the order dated 10.08.2006, accepting the objection under Section 34 of the Act, whereby award and supplementary award has been set aside, in essence, on the premise that Arbitrator has not followed the procedure and did not give opportunities to the parties to cross-examine any witness and thus referred to the following findings rendered by the Objecting Court seeking setting aside of the award reads thus:-

“12. I have gone through the arbitration file, In the

arbitration file, no proceedings have been recorded by the arbitrator which were taken by him. In the arbitration file, the arbitrator has not recorded the statement of either party of the effect that they did not want to lead any evidence. No opportunity of leading evidence was given to either of the parties. Without affording opportunity for evidence, the arbitrator has given its findings. The arbitrator has bases its findings only on the guidelines issued in government letter dated 6.6.2000 regarding crop year 1994-95 and the documents available on record. Otherwise also, the award has not been given on a duly stamped paper. So the award is also not legal and valid, on this ground also. Furthermore, while passing order under Section 33 of the Act, the amount of Rs.3,20,836/- has been adjusted against the original award and in doing So, only latter dated 27.5.2002 was taken into consideration. Other grounds as argued in this petition are not legal and valid.

23. In view of the above discussions, I hold that the award dated 22.3.2002 and amended/revised award dated 7.6.2002 are liable to be set aside and the same are set aside. This issue is decided in favour of the petitioner and against the respondents.”

Mr. Piyush Bansal, DAG, Haryana, submits that objections of the Miller were not falling with the parameters of 1996 Act, in essence, no objections vis-a-vis jurisdiction and the procedure followed by the Arbitrator had been taken and, therefore, waived the right as per Section 4 of the Act. Objection raised for the first time under Section 34 of the Act is not permissible. However, this fact has not been noticed by the Objecting Court which acted as Court of appeal in appreciating the evidence which is

not permissible under Section 34 of the 1996 Act.

Mr. Sameer Sachdeva, learned counsel appearing on behalf of Miller submits that claim was ex facie time barred. Arbitrator did not have jurisdiction. Though on the application filed under Section 33 of the Act, claim was reduced from Rs.881720/- to Rs.320836/- but yet aforementioned amount was not liable to be paid. The Arbitrator only relied upon the instructions dated 06.06.2000 promulgated by the State Government which is not admissible. Even the award has also been not given on any stamp paper, much less, it is an ordinary paper. Claim of the Miller was falling with the excepted clause and urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is merit in the submission of Mr. Piyush Bansal, for the reasons that Miller has waived the right in challenging the procedure adopted by the Arbitrator and the matter has been decided on the basis of the documentary evidence. As per Section 13 of the Act, procedure has been prescribed for challenging the procedure of the Arbitrator. This plea of mine is fortified by judgment of Hon'ble Supreme Court rendered in *Union of India Vs. PAM Development Private Ltd., (2014) 11 SCC 366*. The claim of the District Food and Supplies Controller was not falling within the excepted clause and rightly so, the Arbitrator had the jurisdiction to try and entertain the claim. Miller had also filed the counter claim but the same was also rejected. Once having joined issue and proceeding before the Arbitrator, Miller cannot turn around to take up all the pleas.

All these facts have not been noticed by the Objecting Court while accepting the objection. In my view objections were not falling within the parameters of Section 34 of the Act.

Keeping in view the aforementioned facts and circumstances, order of the Objecting Court is hereby set aside. The supplementary award dated 07.06.2002 is ordered to be restored.

Appeal stands allowed.

01.04.2016

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**(AMIT RAWAL)
JUDGE**