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

**FAO-5562-2006 (O&M)
Date of decision : 29.03.2016**

M/s Parkash Agro Rice Mills and another

...Appellants

Versus

The Managing Director, Punjab State Civil Supplies Corporation Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vivek K. Thakur, Advocate
for the appellants.

Ms. Deepali Puri, Advocateg
for respondent Nos.1 and 2.

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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. (ORAL)

The appellants are aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') for setting aside of the Award dated 14.01.2004.

Mr. Vivek K. Thakur, learned counsel appearing on behalf of the appellants submits that the claim of the PUNSUP was falling within excepted clause and therefore, the matter is covered by the law laid down by this Court in ***'M/s Sukhbir Singh and Company V/s The Punjab State Cooperative Supply and Marketing Federation Limited through its District Manager, Ferozepur (Markfed) and another" 2010 (1) RCR (Civil) 760***. He further submits that as per the Award, the shortfall of the rice falls within excepted clause and the claim of interest @ 21% is phenomenal. Before the Objecting Court, umpteen number of documents have been placed on record to show that the PUNSUP had compromised the matter with M/s Jain Agro, but taking the principal amount same kind of treatment should be met with the appellants. There was a shortage of space at the FCI godowns and on these facts, rice could not be delivered. This fact has been brought on record before the Arbitrator and the Objecting Court, but they failed to notice of the same and thus, the Miller cannot be burdened with the liability to pay the interest on the shortfall.

Ms. Deepali Puri, learned counsel appearing on behalf of the respondent submits that the Arbitrator has rendered the findings of fact on the basis of the documentary evidence brought on record, the claim was not falling within the excepted matter as it was on account of shortfall. None of the claims was falling within excepted clause of the agreement, and therefore, jurisdiction of the Arbitrator cannot be ousted. The evidence led on record by the Miller before the Objecting Court is totally different from the evidence brought on record before the Arbitrator and the same has also been disbelieved as per the findings rendered in paragraph 14 of the judgment rendered by the Addl. District and Sessions Judge and prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal as the appellants have not been able to prove case of alleged jurisdiction of the Arbitrator. Even otherwise, the case of the appellants is not similar to the case of M/s Jain Agro. The statement of Rattan Lal Jain RW-5 would be read as per the terms of the contract entered into between the Agency and the Miller. Each and every contract has to be read independently. The shortfall of price and interest is as per the terms and conditions of the agreement, in my view, the Arbitrator has passed the Award in terms of sub-Section 3 of Section 28 of the 1996 Act. The claim was not falling within the excepted clause and therefore, the ratio decidendi culled out by this Court in ***"M/s Sukhbir Singh and Company's case*** (supra), would not be applicable to the present case.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme Court in catena of judgments wherein it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in ***"Associate Builders Vs. Delhi Development Authority" (2015) 3 SCC 49*** and ***"Navodaya Mass Entertainment Ltd. Vs. J. M. Combines" (2015) 5 SCC 698***. In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. The arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

In my view the award of the Arbitrator does not suffer from any illegality, in as much as, the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants to the parties to the *lis*.

It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise from the award as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

29.03.2016 **(AMIT RAWAL)**
yogesh **JUDGE**