

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

Date of Decision: April 05, 2016

1. FAO No.3352 of 2008 (O&M)

Punjab State Co-operative Supplies and Marketing Federation Limited,
Chandigarh

...Appellant

Versus

M/s Mangla Solvex Pvt.Ltd., Dhuri, District Sangrur & another

...Respondents

2. FAO No.8887 of 2014 (O&M)

M/s Mangla Solvex Pvt.Ltd., Dhuri, District Sangrur

...Appellant

Versus

M/s Punjab State Cooperative Supply and Marketing Federation Ltd.,
Chandigarh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Ms.Deepali Puri, Advocate
for the appellant in FAO No.3352 of 2008 &
for respondent Nos.1 & 2 in FAO No.8887 of 2014.

Mr.Mukand Gupta, Advocate,
for the appellant in FAO No.8887 of 2014 &
for respondent No.1 in FAO No.3352 of 2008.

AMIT RAWAL, J. (Oral)

CM No.24189-CII of 2014 in FAO No.8887 of 2014

For the reasons mentioned in the application, which is

supported by an affidavit, delay of 64 days in re-filing the present appeal.

CM stands disposed of.

By this order, I intend to dispose of two F.A.O. Nos.3352 of 2008 and 8887 of 2014 as the common questions of law and facts involved in both the appeals are the same. FAO No.3352 of 2008 is at the instance of the Markfed, whereas FAO No.8887 of 2014 has been filed by the miller.

It would be apt to give brief facts of the case.

An agreement dated 28.9.1994 was entered into between the Markfed and the miller for milling of the paddy for the year 1994-95. It is a matter of record that there was a acute shortage of space in the godowns of the Markfed and, therefore, the majority of the paddy remained un-milled. The Government of India came out with a decision to sell the balance paddy stock by making open tender and in that tender, there was an arbitration clause that in case of dispute, the matter can be sorted out by referring the matter to the Indian Council of Arbitration.

Ms.Deepali Puri, learned counsel appearing on behalf of the appellant in FAO No.3352 of 2008 submits that the claim before the Arbitrator was filed in pursuance to the terms and conditions of the agreement dated 28.9.1994 and not with regard to the tender containing terms and conditions, therefore, the matter could not be referred to the Indian Council of Arbitration. The Arbitrator, though accepted the claim and awarded an amount of ₹5,33,496/-, but observed that the claimants shall be entitled to recover the amount only after adjudication of the claim of the miller, stated to be pending at that time before the Indian Council of Arbitration. She further submits that though the said order is not

sustainable, but at the best, the interest of the Markfed should have been kept by incorporating the element of interest. The objections in this regard have also been dismissed and, therefore, the present appeal.

Mr.Mukand Gupta, learned counsel appearing on behalf of the appellant in FAO No.8887 of 2014 submits that vis-a-vis his claim qua payment of ₹2.00 crores towards the costs of the paddy, which was because of the non-issuance of the release order, an application for production of the documents also containing the release orders was moved before the Arbitrator, but the same was not adjudicated and the arbitral award came to be passed, whereby the claim was rejected. An application under Section 34 along with an application under sub-section (4) of Section 34 of 1996 Act was moved to seek report from the Tribunal and that application remained undecided and, thus, there is apparent error on record, much less illegality.

I have heard the learned counsel for the parties and appraised the paper book.

This Court, vide order dated 24.7.2015, had requisitioned the records of the Courts below. I have gone through the records and the zimni orders and of the view that the aforementioned application remained undecided. The zimni orders starting from 17.2.2012 to 31.8.2012 reveal the filing of the application and reply and thereafter the matter was adjourned for arguments, much less the application, aforementioned, remained undecided. Thus, a valuable right has accrued to the appellant vis-a-vis non-decision/disposal of the application, aforementioned.

Once an application under sub-section (4) of Section 34 of 1996 Act was filed, the Objecting Court is obliged to ponder upon the contents of the same by giving its decision or otherwise. Having failed to do

so, the appellant has been prevented from vindicating grievance as the objections were falling with the realm of Section 34(1) of 1996 Act as the appellant has been prevented from production of the records vis-a-vis his claim. Accordingly, I deem it appropriate to remit the matter back to the Objecting Court to pass an order on the application which has remained undecided.

In view of the aforementioned facts, the impugned order is set-aside and the matter is remitted back to the Objecting Court to decide the objections and the application as expeditiously as possible within a period of six months.

Since as per the award, payment of dues of the Markfed has been kept in abeyance subject to the adjudication of the claim of the miller, I deem it appropriate that the award of the Arbitrator is required to be modified to the extent of element of interest and accordingly I award interest @ 9% per annum, commencing from the date of the claim till adjustment of the same in case the miller succeeds in getting the award in his favour.

FAO No.3352 of 2008 stands partly allowed, whereas FAO No.8887 of 2014 is disposed of in the aforementioned terms.

The parties, through their counsel, are directed to appear before the Objecting Court on 9/5/16 for adjudication of the objections and the application.

Records of the Objecting Court and as well as the arbitrator be sent back.

April 05, 2016
ramesh

(AMIT RAWAL)
JUDGE