IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.1950 of 2009 (O&M)
Date of Decision: January 22nd, 2016

Punjab State Civil Supplies Corporation Ltd., Chandigarh & another

...Appellants

Versus

M/s Toor Rice Mills, Bhawanigarh, District Sangrur and another

...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: Mr.Rakesh Gupta, Advocate, for the appellants.

Mr.S.S.Salar, Advocate, for the respondents.

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AMIT RAWAL, J. (Oral)

The appellant-PUNSUP is aggrieved of the order dated 14.5.2008, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") for setting-aside the award dated 23.1.2004, have been accepted.

Mr.Rakesh Gupta, learned counsel appearing on behalf of the appellant-PUNSUP has raised the following submissions:-

a) The award aforementioned was *ex-parte.* The Miller having been sent notice by registered post through the District Manager and as well as having been served through publication did not intentionally appear, therefore, they could not raise this grievance by bringing their objections within the parameters of

Section 34 of 1996 Act;

b) The claim was not falling within the `excepted clause' even if the award given by the Arbitrator containing the element of interest which is falling within the excepted clause, would not oust its jurisdiction. In support of his contention, he has relied upon the unreported order of the Hon'ble Supreme Court dated 7.9.2015 rendered in Civil Appeal No.6887 of 2015, titled as M/s Kisan Rice Trading Company Versus Punjab State Civil Supplies Corporation Ltd. and another;

c) Since the Miller has absented, therefore, impliedly the objections vis-a-vis the excepted clause are deemed to have waived in view of the provisions of Section 4 of 1996 Act.

Mr.S.S.Salar, learned counsel appearing on behalf of the Miller submits that the District Judge had specifically noticed in his order that the publication was ordered to be effected in the Newspapers "English Tribune" and "Ajit Punjabi", whereas the notice was got published in "Indian Express" and "Punjabi Tribune". The particulars given in the claim petition reads thus:-

> "M/s Toor Rice Mills, Bhawanigarh, District Sangrur, through its proprietor/partners."

There is no mention of the name of the partner nor his personal address. Even otherwise, in case the award was to be executed, in the absence of such address, the same could not be executed. The Objecting Court also found that the claim of the PUNSUP was falling with the excepted clause and, therefore, accepted the objections. In the end, the learned counsel prays for dismissal of the appeal.

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

The order of the Hon'ble Supreme Court came to be passed in an appeal filed by the Rice Miller against the PUNSUP, where also the controversy on behalf of the PUNSUP vis-a-vis the claim under the excepted clause was raised, but the same was negated. The relevant portion of the order of the Hon'ble Supreme Court reads thus:-

> "*Insofar as the claim No.1 of the respondent is concerned, it pertains to 1½ times cost of balance rice at FCI rate as on 30.6.1995. It is clear therefrom that the respondent wanted the cost of balance rice at higher rates. In order to show that it is the Managing Director who had to decide this claim, reference is made to clause 6(i) which is reproduced as above. On reading of the said clause, we do not find that the contention of the respondent is correct. This clause pertains to the quality of stocks which were to be supplied and in that respect the decision of the Managing Director was final. On the other hand, the claim of the respondent is directly covered by Clause 13(ii).*"

The Arbitrator, while awarding the compensation, has taken into consideration the element of 21% and 30% interest, which as per Clause 9(iii), was falling within the excepted clause. For the sake of brevity, relevant portion of the award reads thus:-

> "*The net amount recoverable from the respondents comes to Rs.1435495/-. The respondents are also liable to pay interest from 1.9.2000 to 31.8.2001 @ 21% p.a.amounting to Rs.301454 and from 1.9.2001 to 31.7.2002 @ 30% p.a. amounting to Rs.394761/- (as per C-6). The total amount recoverable from the respondents, for which the claimants are entitled, comes to Rs.2131710/- upto 31.7.2002.*
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> *In view of the foregoing reasons, I award an amount of*

Rs.2131710/- in favour of the claimants and against the respondents and respondents firm (responsible for conduct of business) jointly and severally along with interest @ 30% per annum from 1.8.2002 till the date of payment. Both the parties to bear their own costs."

The findings rendered by the Objecting Courts on this point read thus:-

"*32. I have considered the submissions made by the learned counsel for the parties and it appears that the Corporation has itself invoked the provisions under Clause 9(iii) of the agreement having claimed the interest at the rate of 21% for the first year of default i.e. For the period 1.9.2000 to 31.8.2001 and at the rate of 30% per annum for the subsequent period i.e. from 1.9.2001 to 31.7.2002 as detailed in Annexure C-6 contained in the arbitration file. Clause 8(iii) does not contain any provision for recovering in terms @ 30% for the default for the 2nd year and thereafter. Therefore, the decision on the matter regarding the short delivery of the rice qua the interest to be charged thereon fell within the domain of the Managing Director of the Corporation and the decision of him shall be final and for that reason, the matter is covered by the `excepted clause" and could not be referred to the Arbitrator as held in the case of citations Vishwanath Sood v/s Union of India and another (1989) 1 Supreme Court Cases 657, Food Corporation of India v/s Surendra, Devendra & Mahendra Transport Co. 2003(1) SCALE 684 and M/s Shree Krishana Rice Mills v/s The Punjab State Co-operative Supply and Marketing Federation Ltd. 2003(2) Civil Court Cases 167 (P&H)."*

I am in agreement with the findings rendered by the Objecting Court holding that the Arbitrator did not have jurisdiction as the claim was falling within the excepted clause. Remedy, if any, was of the Managing Director.

In view of what has been noted above, no ground is made out to interfere in the impugned order.

The appeal is accordingly dismissed.

However, the appellant-PUNSUP shall be at liberty to seek vindication of their grievance, if any, in competent forum.

January 22nd , 2016 **(AMIT RAWAL)**
ramesh **JUDGE**