

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

FAO No.3857 of 2009 (O&M)

Date of decision : 31.05.2016

M/s Shiva Rice Mills

...Appellant

Versus

The Managing Director, PSWC 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. S.K. Singla, Advocate for the appellant.

Mr. Lekh Raj Sharma, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant-Miller is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act seeking setting aside of the award dated 03.03.2003 in respect of claim lodged by the Punjab State Warehousing Corporation.

Mr. S.K. Singla, learned counsel appearing on behalf of appellant submits that in pursuance to the arbitration clause, in view of contract entered into, matter was referred to the Arbitrator and the Miller appeared and filed written statement. Date fixed before the Arbitrator was 07.02.2003. However, the Arbitrator took up the matter on 30.01.2003 and adjourned the matter to 10.02.2003. No doubt on 07.02.2003, one of the partner had appeared and

noted the proceedings and the case was adjourned to 10.02.2003. On 10.02.2003, no one appeared on behalf of the appellant and Arbitrator should not have proceeded ex parte. On such date, the claimant also filed evidence which resulted in the ex parte award. This aspect has not been noticed by the Objecting Court, thus, evidence has been sufficiently led and the objections were falling within the parameters of Section 34(2)(i) of the Act and thus urges this Court for setting aside of the impugned order.

Mr. Lekh Raj Sharma, learned counsel appearing on behalf of respondent No.1 submits that once partner had an intimation/knowledge of an adjournment of the arbitration proceedings, no explanation has come forth for not appearing on the adjourned date i.e. on 10.02.2003 and thus urges this Court for affirming of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that Arbitrator ought not to have proceeded ex parte on 10.02.2003. Notice should have been sent in case the Miller had not appeared on the next date and after receiving the intimation should have continued with the proceedings, thus, in my view objections were falling within the provision aforementioned. This fact has not been noticed by the Objecting Court. Any party shall be heard particularly when they contested the matter and filed written statement etc.

In view of the foregoing reasons, award and impugned order are set aside.

At this stage, learned counsel for the parties submit that instead of availing remedy, by invoking the provision of Section 11(6) of 1996 Act and as well as to defray the cost of litigation and save time, requests this Court to appoint the Arbitrator.

On the consent made by the learned counsel for the parties, I hereby appoint Mr. Jagmohan Chaudhary, Senior Advocate as Arbitrator subject to the condition that he accords his consent.

Registry is directed to sent him letter in this regard seeking his consent. On receipt of consent, he shall enter into the reference by calling the parties to file their respective claims.

It is expected that the Arbitrator shall decide the arbitration proceedings within in a period of six months from the date of entering into the reference. Records be also sent to Arbitrator.

With the aforementioned observations, the appeal stands disposed of.

31.05.2016

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**(AMIT RAWAL)
JUDGE**