IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1777 of 2010 (O&M)
Date of decision : 11.04.2016

M/s Mahadev Rice Mills

...Appellant

Versus

Punjab State Warehousing Corporation 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. Mukand Gupta, Advocate for the appellant.

Mr. Nitin Thatai, Advocate for respondent No.1.

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AMIT RAWAL, J. (Oral)

The appellant-Miller is aggrieved of the impugned order dated 09.01.2010, whereby objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as the Act) seeking setting aside of the arbitration award dated 09.02.2005, has been dismissed.

Mr. Mukand Gupta, learned counsel appearing on behalf of appellant-Miller submits that claim of the respondent was composite one which included the element of interest at the rate of 21% and 30% which was falling within the excepted clause. There was no bifurcation or segregation of the claim for the alleged shortage of the custom milled rice and objection with regard to jurisdiction of the arbitrator was taken. However, Arbitrator vide order dated 27.03.2013 did not decide the application. However in the final award, it was observed that he has already dismissed the application qua jurisdiction vide order dated 27.03.2013. However, this aspect has not been noticed by the Additional District Judge/Objecting Court while dismissing the objections.

Mr. Thatai, learned counsel appearing on behalf of respondent No.1 submits that composite claim can be claimed as Miller has not supplied custom milled rice on account of issuance of the paddy and rightly so, amount was claimed including the element of interest 21% and 30% and again interest of 20% has been ordered by the Arbitrator. The objections were not falling within the parameters of Section 34 and rightly so, has been dismissed and urges this Court for affirmation of the award.

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

It would be apt to reproduce the operative part of the order of arbitration proceedings dated 27.03.2013, which reads thus:-

> *"Although in the agreement there exists clause 22 in which it is clearly written that excepted matters cannot be referred to the Arbitrator but as there are other claims also in the claim petition filed by the claimant before the Tribunal apart from the interest on late delivery. So these matters cannot be disposed off without receiving any reply and other evidence of both the parties, only on the basis of this objection the decision on excepted matters shall be taken alongwith the rest of the matter in controversy at the*

time of final arbitration award. Hence the present arbitration proceedings cannot be terminated at this stage."

However, on perusal of the award, Arbitrator in para No.5 held that he has also rejected the said objections, which reads thus:-

"5. The respondent on notice appeared through its counsel Mr. Mukand Gupta, Advocate and filed objection under Section 16 read with Section 7, 8(2), 23 and 25 of the Arbitration Act for terminating the arbitration proceedings on 15.1.2003. The claimants filed their reply to the objection petition on 19.2.2003 and these objections were rejected by the undersigned vide separate order dated 27.3.2003."

The observations are contradictory to each other. Even otherwise, the claim could not decipher as to the shortage and interest factor once the agency submitted the composite claim vis-a-vis the alleged shortage including the element of the interest at the rate of 21% and 30% which as per the provision of Clause 9(iii) of the Act is Excepted Matter as it is prerogative of the agency to decide the same. However, for the sake of brevity, same is reproduced hereinbelow:-

"9(iii) The miller shall complete delivery of rice within 10 (ten) days of the issuance of paddy to him and rice due the State Government on the total quantity of paddy issued to him or in joint custody released at regular intervals shall be delivered not later than 28th February, 1999 or upto the period extended by Government of India from time to time. In the event of his failure to supply rice within the stipulated period he shall be liable for an interest @ 21% for the first year of default and @ 30% for

the subsequent period on the custom milled price fixed by Govt. of India from the date it become payable till the date of actual realisation towards the left over quantity/stocks of paddy. The decision of the director in this behalf shall be final."

In my view, Arbitrator did not have jurisdiction to try and entertain the claim of the Warehousing Corporation as it is deemed to be of excepted matter and failed to address issue. Accordingly, award is not sustainable in the eyes of law and is hereby set aside. Consequently, the order declining the objection is also set aside.

Appeal is allowed.

Parties shall be at liberty to seek vindication of the grievance in accordance with law.

11.04.2016 **(AMIT RAWAL)**
pawan **JUDGE**