IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1413 of 2011 (O&M)
Date of decision : 14.03.2016

M.D. PUNSUP and another

...Appellant

Versus

M/s Ishar Rice and General Mills 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. Karan Gupta, Advocate for the appellant.

Mr. Atul Goyal, Advocate for respondent Nos.1 and 2.

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AMIT RAWAL, J. (Oral)

CM No.4086-CII of 2011

For the reasons stated in the application, which is duly supported by an affidavit, delay of 25 days in filing the present appeal is condoned.

Application is allowed.

Main Case

The appellant-PUNSUP is aggrieved of the impugned order, whereby petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 on behalf of Miller has been allowed by holding that revised claim was falling within the excepted clause and thus, the remedy if any for the PUNSUP was to seek vindication of the grievance through the intervention of the Managing Director and not through Arbitrator.

Mr. Karan Gupta, learned counsel appearing on behalf of appellant submits that as per the terms and conditions of the agreement in case of any dispute resolution was required to be decided through Arbitration. The matter was referred to the Arbitrator and Arbitrator vide his award dated 30.09.1999, allowed the claim. The objections at the instance of the Miller have erroneously been accepted by giving liberty to PUNSUP to file revised claim. The Managing Director of the PUNSUP appointed another Arbitrator who entered into reference in May, 2006 and as per the revised claim, the claim was within the Clause 5(iii) of the agreement and not under Clause 6(i) as erroneously been held and found by the Objecting Court. This aspect though was also noticed by the Arbitrator but the same was negated. In this regard, he has drawn the attention of this Court to the relevant clauses, which reads thus:-

> *"5(iii) In case there is a shortfall in the recovery of rice provided in sub-clause (i) above, them miller shall pay to the PUNSUP the cost of paddy equivalent to the shortfall at the rate of 1-1/2 times the economic cost of paddy.*
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> *6(i) The entire quantity of rice of all various delivered by the miller to the Punsup shall conform to the specifications laid down in the Punjab Rice Procurement (Levy) Order 1983 as amended from the time to time and in any other or Notifications issued by the State Government from time to time. The stocks of rice not confirming to the specifications so laid down, shall be liable to be rejected in*

respect of such quantity or rice which is not found to be within the specifications and miller shall be liable to offer fresh stocks of rice conforming to the specifications to the Punsup in the event of his failure to supply rice within the prescribed specifications, shall be liable to pay to the Punsup for the quantity of rice short supplied at the penal rate of one and half times the economic cost of the converted variety of paddy equivalent to the shortages. The decision of the Managing Director in this behalf shall be final.

6(iii) The Miller shall complete delivery of rice within (10) days of issuance of paddy to him and rice due to the Punsup on the total quantity of paddy issued to him or in the joint custody released at regular interval shall be delivered not later than the 28th February, 1995 or upto the period extended by Govt. of India from time to time. In the event of his failure to supply rice within the stipulated period, he shall be liable to for an interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice. The decision of the Managing Director, Punsup in this behalf shall be final."

and thus prays that impugned order be set aside and award be restored.

Mr. Atul Goyal, learned counsel appearing on behalf of respondents submits that revised claim is totally silent as to whether same was falling within the Clause 6(iii) or under Excepted Clause or under 5(iii) and rightly so, objecting court accepted the objection. Revised claim was filed beyond the time period given in the previous order and therefore barred by law of limitation and prays for dismissal of the appeal. Even the award of the arbitrator is not commensurating to the revised claim and thus

Miller is left in oblivion as to whether revised claim was within the excepted clause or not.

I have heard learned counsel for the parties and appraised the paper book and gone through the revised claim, copy of which has been handed over during the course of hearing and of the view that the award of the arbitrator commensurate with the claim as the details of paddy of variety IR-8 column wise has been mentioned. No doubt in case PUNSUP had claimed 1 ½ economic time in view of the rice having not been supplied upto the specification, the matter squarely fell within the excepted clause i.e. as per Clause 6(i) but revised claim do not say so but is on account of the non-supply of balance paddy. Thus, objecting Court in my view mis-construed the revised claim and as well as terms and conditions of the agreement holding it to be falling within clause 6(i). As regards the plea of limitation, I am of the view that Arbitrator entered into reference whereas revised claim has been filed in 2001, therefore, claim cannot be said to be without jurisdiction/or barred by law.

Keeping in view the aforementioned facts and circumstances, order under challenge is not sustainable and is hereby set aside. Objection in my view did not fall within the parameters of Section 34 of the Act, much less, order is based upon the mis-interpretation of the terms and conditions of the Contract and award of the Arbitration is hereby restored.

Appeal stands allowed.

14.03.2016 **(AMIT RAWAL)**
pawan **JUDGE**