

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

FAO No.4376 of 2010 (O&M)

Date of decision : 09.08.2016

PUNSUP

...Appellant

Versus

M/s Sullar Rice and General Mills Pvt. Ltd. and others

...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: Ms. Deepali Puri, Advocate for the appellant.

Mr. M.S. Khaira, Sr. Advocate with
Mr. R.S. Khaira, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The PUNSUP is aggrieved of the dismissal of the objection filed under Section 34 of the Arbitration and Conciliation Act, seeking setting aside of the award dated 07.05.2004.

Ms. Deepali Puri, learned counsel appearing on behalf of appellant-PUNSUP submits that the appeal was filed after two years of the decision by the Objecting Court. She submits that Arbitrator could not have pondered upon the genuinity of the agreement alleged to have been entered into between the PUNSUP and Miller by giving the findings that PUNSUP

shall be free to lift the paddy or rice lying in the premises of the Miller as on daily basis and thereafter while conducting the physical verification finds some loss and can initiate the recovery proceedings, though, the aforementioned award was not complied with, as the same was challenged as the Arbitrator exceeded its jurisdiction and, therefore, the objections ought not to have been dismissed as it was falling within the realm of Section 34 of 1996 Act.

Mr. M.S. Khaira, learned Senior Counsel assisted by Mr. R.S. Khaira, learned counsel for the respondents-Miller submits that after the dismissal of the objection, PUNSUP submitted a complaint to the police. Police, on inquiry filed cancellation report and protest petition is stated to be pending and it is thereafter only the wisdom dawned upon the appellant to challenge the order of the Objecting Court. Nothing prevented the PUNSUP to comply with the direction contained in the award as it would be farcical exercise in allowing and wasting the time of the Court and cost of litigation.

He further submits that there was no space for delivery of rice at FSD Sunam, and, therefore, the Miller could not have delivered the milled rice. There was unilateral interpretation of agreement by changing the word not accepted. This fact has been noticed by the Arbitrator yet gave the liberty to lift the unmilled paddy and rice.

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

The Arbitrator disposed of the arbitration proceedings in following manner:-

“18. In the circumstances mentioned above I hold that the claimants have failed to prove their claim and as such are not entitled to get the amount claimed in their claim petition. At the same time, counter claim filed by the respondents is also dismissed being devoid of merit. However, since it is admitted by the respondents that they received the paddy belonging to the claimants and they were also bound to supply the rice after custom milling of the paddy the respondents have no right over the balance paddy and rice lying with them. It has been also conceded by the respondent that they are still ready to supply balance paddy and rice in what ever condition they are lying today. In these circumstances the claimants are free to take back the balance paddy and rice lying in the premises of the respondents in the condition as they are. However, it is made clear that if any paddy of rice is found short. After taking into consideration the time factor and natural calamities, the respondents will be liable to compensate the claimants for that quantity at the rate claimed by the claimants. Keeping in view the peculiar circumstances of the case the parties are left to bear their own costs. Chandigarh”

In my view, the award is most innocuous and nothing prevented the Officer of the PUNSUP in complying with the order and immediately seek vindication of the grievance in accordance with law instead for assailing the aforementioned findings by filing the objections and the objection petition was dismissed wayback in the year 2009 and the appeal has been filed with delay of 338 days, though, same has been condoned. Be that as it may, in my view no explanation has come forth in the grounds of appeal of objection petition in not complying with the direction of the

Arbitrator.

I am in agreement with the submission of Mr. Khaira, that once the Arbitrator had an occasion to examine the agreement particularly the interpolation, yet had been benevolent in granting liberty to the PUNSUP to recover/lift unmilled paddy and milled rice and thereafter seek vindication of the grievance, yet the PUNSUP was audacious enough to challenge the same by filing the objections.

No ground for interference is made out.

Accordingly, appeal is dismissed.

However, direction of the Arbitrator shall remain intact. There is no force in the submission of Ms. Deepali Puri, that once the Arbitrator had arrived at a conclusion that the agreement was not valid to decide the reference, in view of the aforesaid reasoning.

09.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

Yes/No