

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

F.A.O.No.2488 of 2011 (O&M)

Date of Decision: January 19th, 2016

Inder Mohan

...Appellant

Versus

Hafed, through District Manager, Karnal & 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.J.K.Goel, Advocate,
for the appellant.**

**Mr.R.S.Kundu, Advocate,
for respondent No.1.**

AMIT RAWAL, J. (Oral)

The appellant-Miller is aggrieved of the order dated 15.11.2010, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") seeking setting-aside of the award dated 11.8.2008, have been dismissed.

Mr.J.K.Goel, learned counsel appearing on behalf of the appellant, in support of his grounds of appeal, submits that the agreement alleged to have been entered into on 17.10.2001, actually was not entered between the parties and even the proceedings of the arbitration were not communicated to the appellant, resulting into passing of the *ex-parte* award, in essence, the appellant has been deprived of his right to contest the claim.

He further submits that a civil suit against the HAFED has been filed, seeking declaration that no agreement has been entered into between the

parties. The said suit has been dismissed and, thus, prays for setting-aside of the impugned order and as well as the award.

Mr.R.S.Kundu, learned counsel appearing on behalf of the Hafed submits that the Arbitrator had, time and again, sent copy of the proceedings to the Miller, which was responded by saying that there was no agreement and requested the Arbitrator not to send any further communication. He further submits that the civil suit, referred to above, has been dismissed and the appeal filed against the same has also been dismissed and it has been held that the agreement has been entered into. He further submits that the objections were also time barred as the Arbitrator had communicated the award vide communication dated 28.4.2005 through registered post, whereas the objections have been filed on 3.10.2008 beyond the time prescribed under sub-section (3) of Section 34 of 1996 Act.

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

It would be apt to reproduce the relevant portion of the award, whereby the Arbitrator had communicated to the appellant the claim of the respondent:-

“On 10-12-2003, the respondent did not appear. However they sent a letter dated 25-11-2003. In this letter, they informed that there was no agreement containing the arbitration clause or otherwise between the parties and the matter is sub-judice in the Civil Court at Karnal, that no claim if any, filed by Hafed has been supplied to them. Therefore, the respondent-mill was sent a copy of agreement dated 17-10-2001 entered into between the parties and also a copy of claim to the respondent. He was directed to produce the copy of order, if any, regarding stay of arbitration proceedings by the Civil Court, Karnal. Thereafter, the arbitration proceedings took

place on several dates but the respondent never appeared before the Arbitrator and they continued writing letters for staying the arbitration proceedings through they did not file/send any order of the Hon'ble Court for staying the proceedings. In their last letter dated 04-04-2005, the respondent stated that unnecessary notice to them be stopped and only decision be communicated to them. Therefore, when the respondent failed to appear and plead their case, the ex-parte proceedings were ordered to be initiated and the case was fixed for ex-parte evidence of the claimant for 25-05-2005. However, the ex-parte order was conveyed to the respondent-mill and it was ordered that the respondent may still attend the arbitration proceedings, if desired to do so. A copy of the said order bearing No.Hafed/Secy/Arb./161 dated 28-04-2005 was sent to the respondent through registered post.”

The aforementioned findings of the Arbitrator would reveal that copy of the arbitration proceedings was sent. Even copy of the award had been sent through registered post vide letter dated 28.4.2005. No explanation has come forth for not filing the objections within the period as prescribed under sub-section (3) of Section 34 of 1996 Act. Even the suit seeking declaration of having not entered into any agreement has also been dismissed vide judgment and decree dated 27.4.2006 and the appeal filed against the same has also been dismissed on 30.3.2007.

It is now a settled law that in what circumstances, the award has to be interfered with. The question, which is now raised in the aforementioned appeal, has already been answered by the Hon'ble Supreme Court in catena of judgments, wherein it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 34 of the Act, the same cannot be interfered with. In this context, I intend to refer the judgments of Hon'ble Supreme Court in **Associate**

Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and

Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC

698. In the aforementioned judgments, the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances, it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embark on a path by substituting its own view in support of the Arbitrator's view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute, which was contemplated and was within its scope. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but vis-a-vis proceedings. In my view, the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator, who is expert, has dealt with the matter and decided the claims of respective parties to the *lis*.

In my view, the award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

The appeal is accordingly dismissed.

January 19th, 2016
ramesh

(AMIT RAWAL)
JUDGE