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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4029-2011 (O&M)
Date of decision : 02.08.2016

Punjab Agro Industries Corporation Ltd. and another
... Appellants

Versus

M/s Jagdamba Rice and General Mills, Nabha and others
... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. I.S. Sidhu, Advocate
for the appellants.

Mr. Mukant Gupta, Advocate
for the respondents.

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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?

AMIT RAWAL, J. (ORAL)

CM No.15450-CII-2011

The application is allowed as deficiency in Court fees has been made good subject to all exceptions.

CM stands allowed.

CM-15449-CII-2011

For the reasons mentioned in the application, the delay of 125 days in re-filing the appeal is condoned.

CM stands disposed of.

CM-15448-CII-2011 & CM-13995-CII-2015

Prayer in the application is for condonation of delay of 377 days in filing the appeal.

It has been contended that when the appeal was filed, there was deficiency in the Court fee and by that time, there was a delay of only 34 days. When the Courts fee was paid, the delay of 377 days has occurred which is neither wilful nor intentional. The reasons expressed in the application are justifiable and I deem it appropriate to condone the delay of 377 days in the filing the appeal.

CM stands disposed of.

FAO-4029-2011(O&M)

The Punjab Agro Industries Corporation Ltd. (hereinafter called 'the Corporation') is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 Act (herein after called 'the 1996 Act') seeking setting aside of the Award dated 25.08.2003, whereby the claim of the appellant-claimant for a sum of ₹ 86,03,170/- on the cost of the rice has been declined and the claim of ₹ 1,76,088/- regarding the cost of the gunny bags including the sale tax @ 4.4% i.e. to the tune of ₹ 1,87,770/- has been allowed. As per the statement of account (Annexure P-9/2), an amount of ₹ 1,78,998/- is payable by the claimant-appellant to the respondent as milling charges and thereafter, by adding another compensation of stitching charges, the respondent has been held entitled to recover ₹ 1,88,562/- and after adjustment of the amount claimed by the appellant from the respondent, the net amount recoverable by the respondent from the appellant-claimant comes to ₹ 792/-. Thereafter, after taking into consideration the amount of ₹ 7,146/- as per the claim of the appellant-claimant from the respondent, the Arbitrator, by adjusting the amount of ₹ 792/-, ordered for recovering of the net amount by the appellant-claimant from the respondent as on 01.09.2002, ₹ 6,354 along with interest @ 18% w.e.f. 01.09.2000.

Mr. I.S. Sidhu, learned counsel appearing on behalf of the appellant-Corporation submits that the Arbitrator, while allowing the claim to the extent of of ₹ 6,354/- with future interest has not been noticed the fact that the Miller did unauthorized milling of the paddy in contravention of the custom milling policy. As per the policy, the paddy was issued to the rice Miller in lots i.e. hundred metric tons (one stack each) through release order issued by procuring agency and resultant next lot of paddy was to be issued only after the resultant rice of previous lot had been delivered to the FCI on account of the appellant, whereas on the contrary, the respondent-miller custom milled the entire stock of paddy lying in the Mill without waiting for the release order. The entire case of Miller rested upon the fact that there was a paucity of space with the FCI on account of which the milled rice could not be shifted to the FCI, whereas the Miller failed to bring on record to the notice of the appellant-Corporation the factum of the lack of space. No letter or notice, in this regard, had been sent. Before the Arbitrator, the letters placed on record on behalf of the Miller is a communication by the Miller to the FCI not of the appellant-Corporation and should not have been taken into consideration. All these factors are to be considered by the Objecting Court as the objections were falling within the realm of Section 34 of the 1996 Act and rejection of the claim by the Arbitrator was falling against the public policy.

Mr. Mukand Gupta, learned counsel appearing on behalf of the respondents-Miller submits that the letters produced on record show that there was no space for stacking the milled rice in the godowns of the FCI. The letters of the FCI are *per se* admissible in the evidence and this fact was in the knowledge of the appellant-Corporation rather they should have made an alternative arrangement of stacking the milled rice. In this background of the matter, the Arbitrator declined to grant the relief. If the Officers of the procuring agency do not issue a release order, the paddy lying in the premises of the Miller, if unused for particular period, gets rotten, rather the milling was done in the interest of procuring agency. Normally blame is that there is an embezzlement and the Miller intentionally do not mill the rice, but it is case of the different kind where the Miller had milled the rice and yet the procuring agency had a complaint, in essence, they always have a complaint either for non-milling or milling. Such a practice on behalf of the procuring agency is liable to be deprecated.

I have heard the leaned counsel for the parties and appraised the paper book and of the view that once, the Arbitrator found that there was a shortage of space in the godowns of the FCI, the appellant-Corporation cannot be claimed the milling charges of late delivery, much less, price of the milling as the milling had been done in excess than the release order, but the fact remains that there is no case of embezzlement as no FIR has been lodged. The Officers of the Corporation are required to examine the predicament of the Miller in a pragmatic manner instead of indulging into rigmarole of unnecessary litigation as it entails into a dispute and payment of interest and cost. In case, such remedial measures are not taken by the Officers in examining each and every case in a most reasonable and feasible manner, this Court may not be constrained in imposing cost to be personally recoverd from the concerned Officer by ordering for holding of the inquiry. As while sitting on the roster, I have come across many cases where the concerned Officers of the procuring agency, have not been diligent in examining each and every case of the Miller and indulging into unnecessary dispute, resulting into appointment of the Arbitrator and consequential litigation.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been 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 31 (3) 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 judgment 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 embarked on a path by substitution in its own view. The arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

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 claim of respective claimants to the parties to the *lis*.

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.

In my view, no error of law arise from the award as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

02.08.2016
yogesh

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Whether speaking/reasoned	**Yes/**	**No**
Whether Reportable	**Yes/**	**No**