

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

F.A.O.No.1290 of 2012 (O&M)

Date of Decision: February 11, 2016

M/s Jain Rice Mills, Ahmedgarh, District Sangrur

...Appellant

Versus

Punjab State Civil Supplies Corporation Limited, Chandigarh & others

...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.Mukand Gupta, Advocate,
for the appellant.**

**Mr.Deepak Sabharwal, Advocate,
for the respondents.**

AMIT RAWAL, J. (Oral)

The appellant-miller is aggrieved of the order dated 30.11.2011 passed by the Objecting Court, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") seeking setting-aside of the ex-parte award dated 16.12.1997, have been dismissed being barred by law of limitation.

Mr.Mukand Gupta, learned counsel appearing on behalf of the appellant-miller submits that no doubt the miller appeared before the Arbitrator through a counsel, but thereafter the counsel absented. The ex-parte award, aforementioned, came to be passed on 16.12.1997. On perusal

of the award, there is no compliance of provisions of sub-section (5) of Section 31 of 1996 Act. The miller acquired the knowledge of the award only on receipt of the summons in the execution proceedings and accordingly filed the objections in the Court at Sangrur, but the Court did not have the jurisdiction and the same were returned back and ultimately filed the objections on 30.11.2009 before the District Judge and also moved an application under Section 14 of the Limitation Act. The Objecting Court dismissed the objections on the ground of limitation without there being any whisper on merits of the case.

Mr. Deepak Sabharwal, learned counsel appearing on behalf of the PUNSUP submits that the miller had the knowledge of the arbitration proceedings. They should have been vigilant for ascertaining the status of the arbitration proceedings. It is the miller, who absented and therefore, the objections have rightly been dismissed on the ground of limitation. He further submits that there was concealment as Vijay Kumar, partner of the appellant, had moved an application under Section 33 of the Act by annexing copy of the ex-parte award, therefore, they had the knowledge. Even the revision petition was filed, which was also dismissed on the ground of concealment and, thus, prays for dismissal of the appeal.

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

The operative part of the award reads thus:-

“The facts of the claim petition have been proved by the two witnesses examined by the Claimant Corporation. In fact, the various items of claim mentioned in the claim petition have been admitted by the Respondents in their reply also. The Respondents have not led any evidence in support of their counter claim as given in their reply. I, therefore, accept the

claim of the Claimant Corporation in its entirety except that a credit of ₹17,951/- deposited by the Respondent party on 7.2.1996 and 26.6.1996 be allowed to them. After deducting this amount of ₹17,951/-, I allow the claim of ₹2,49,565/-. The Claimant Corporation will also be entitled to recover interest at the rate of 12% per annum on this amount till the date of actual recovery from the Respondents. Besides, the Corporation will also be allowed to recover from the Respondent mill a sum of ₹2750/- which is the Respondent's share of arbitration fee.”

On perusal of the operative part of the award, it reveals that there is no compliance of sub-section (5) of Section 31 of 1996 Act. The award ought to have been set-aside on this ground. Be that as it may, the appellant-miller acquired the knowledge of the award in the execution proceedings and filed the objections in 2009. It is settled law that the objections, on having acquired the knowledge, can be filed within 90+30=120 days as per sub-section (3) of Section 34 of 1996 Act.

Even otherwise, the application under Section 33 is dated 13.12.2004 after acquisition of the knowledge on 26.7.2002. These aspects have not been noticed by the Objecting Court, in essence, the objections cannot be said to be beyond the period of limitation. The Objecting Court ought to have noticed from the award that there is non-compliance of sub-section (3) of Section 31 of 1996 Act and accordingly the delay in filing the objections is condoned.

The matter is remitted back to the Objecting Court to decide the objections on merits, preferably within a period of four months from the date of receipt of certified copy of the order.

The parties, through their counsel, are directed to appear before

the Objecting Court on 1.3.2016.

The record of the Objecting Court be sent back.

The appeal is accordingly disposed of.

February 11, 2016
ramesh

(AMIT RAWAL)
JUDGE