

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

FAO No.588 of 2011 (O&M)

Date of decision : 22.01.2016

Punjab State Civil Supplies Corporation Ltd. (PUNSUP) and another

...Appellants

Versus

Shri Raja Ram and ors.

...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 appellants.

Mr. S.K. Singla, Advocate for respondent Nos.1, 2, 4, 6 and 9.

AMIT RAWAL, J. (Oral)

The appellant-PUNSUP is aggrieved of the order dated 09.03.2010, whereby objection filed under Section 34 of the 1996 Act, has been allowed and the award of the Arbitrator dated 10.07.2000, has been set aside.

Mr. Karan Gupta, learned counsel appearing on behalf of appellant submits, that Rice Miller did not take any objection vis-a-vis jurisdiction of the Arbitrator as the claim containing the certain relief, which according to them, was falling within the Excepted Clause, thus deemed to have waived the right in view of the provision of Section 4 of the Act. In support of his contention, he has relied upon judgment rendered by this Court

in *M/s Gupta Rice Mill (P) Ltd. Vs. The Punjab State Co-operative Supply and Marketing Federation Ltd. and another*, 2013(3) RCR (Civil) 371.

He further submits that in objection, the Objecting Court called upon the parties to lead evidence afresh, in essence, supplemented the evidence already led before the Arbitrator. This procedure is unknown to the cannons of Arbitration and Conciliation Act, 1996. The Objecting Court does not have any jurisdiction to sit in appeal while dealing with the objection, yet by giving certain observation has examined as if it was the Court of appeal, thus, the findings rendered by the Objecting Court are not sustainable in the eyes of law and thus prays for setting aside of the order under challenge.

Mr. S.K. Singla, learned counsel appearing on behalf of the Miller submits, that Arbitrator did not have any jurisdiction to entertain and try the dispute as the claim of the appellant was falling within the Excepted matter. The Objecting Court re-examined the evidence and found that the claim of the PUNSUP was not sustainable and there cannot be any fault in findings rendered by Objecting Court and thus prays for dismissal of the appeal.

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

The law with regard to the waiving of the right is no longer res integra. Section 4 of 1996 Act provides that in case party does not take objection vis-a-vis the jurisdiction of the Arbitrator, its right is deemed to have been waived. I draw support from the ratio decidendi culled out in the judgment rendered by this Court in *M/s Gupta Rice Mill (P) Ltd. case (Supra)*. As regards the findings examining the matter afresh by taking the evidence while dealing with the objection, I am of the view that there is no provision provided under the 1996 Act empowering the Objecting Court to take evidence

against & in support of the objection, in essence, while dealing with the objections, parties are not required to lead evidence. Objections have to be decided summarily.

I have come across so many various orders passed by the Objecting Court, whereby considerable time has been spent in recording the evidence on behalf of Objector and the adverse party. The provision of Section 34 do not provide recording of any evidence. Even otherwise, now it is settled law that objections have to be decided on the basis of affidavits.

Accordingly, I hereby issue direction to all the Objecting Court in the States of Punjab and Haryana & U.T. Chandigarh to decide the objections if any filed under Section 34 of the 1996 Act on the basis of facts & affidavits and not by recording of evidence by framing issues and taking the evidence. The direction of mine may be sent to concerned District Judges of all the Districts of States of Punjab and Haryana & UT, Chandigarh for compliance.

Keeping in view the aforementioned facts, once the Miller has failed to take the objections vis-a-vis jurisdiction, I am of the view that objection is not maintainable, much less, not falling within the parameters of Section 34 of 1996 Act.

Accordingly, order of the Objecting Court accepting the objections is not sustainable and is hereby set aside.

Resultantly, appeal is allowed.

22.01.2016

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**(AMIT RAWAL)
JUDGE**