IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2833 of 2012 (O&M)
Date of decision : 24.05.2016

Punjab State Warehousing Corporation

...Appellant

Versus

M/s Jiwan Rice Mills 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: Mr. A.D.S. Sukhija, Advocate for the appellant.

Mr. Satinder Pal Singh, Advocate for
Mr. Lakhwinder S. Sidhu, Advocate for respondent Nos.1 and 2.

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AMIT RAWAL, J. (Oral)

The appellant-Punjab State Warehousing Corporation is aggrieved of the impugned order dated 28.10.2011, whereby objection filed under Section 34 of 1996 Act at the instance of the Miller seeking setting aside of the award dated 04.12.2006, has been allowed.

Mr. A.D.S. Sukhija, learned counsel appearing on behalf of appellant submits that claim before the Arbitrator was on account of shortage of paddy and as per terms and conditions of the Clause i.e. 9 and 12, which also envisages granting of interest at the rate of 21% and 30%. The aforementioned claim qua interest have been declined by the Arbitrator but on the basis of the evidence i.e. admission of the one of the partners of the Miller awarded compensation at the rate of ₹12,88,257/- along with interest at the rate of 21% per annum from 01.09.2002 till the date of payment of the decretal amount after allowing the counter claim of the Miller of ₹17,69,475/-, in essence, out of the assessed amount of compensation of ₹30,57,732/-, the appellant has been held entitled to ₹12,88,257/-. However, the Objecting Court without adverting to the award and by referring to the Clause 9 and 21 of the agreement found that claim was falling within the excepted clause. He submits that objections were not falling within the parameters of Section 34 of 1996 Act.

Mr. Satinder Pal Singh, learned counsel appearing on behalf of Mr. Lakhwinder S. Sidhu, learned counsel appearing on behalf of respondent Nos.1 and 2 submits that there is no illegality and perversity in the order under challenge. The Objecting Court has examined the matter and found that the objections were falling within the parameters as the award was against the public policy. Agency cannot claimed the interest at the rate of 21% and 30% as decision of such amount is under the domain of the Managing Director. Even awarding of the interest at the rate of 21%, is not phenomenal and thus urges this Court for affirming of the findings rendered by the Objecting Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that the findings rendered by the Objecting Court was not sustainable in the eyes of law, for, it has abdicated in not referring to the award whereas claimed amount falling within the excepted clause had been rejected by the Arbitrator.

For the sake of brevity, relevant portion of the award declining the relief, read thus:-

"As far as interest on late milling interest on late milling claimed by the claimant to the tune of Rs.21,17,806/- is concerned, the relevant clause at page No.5 of the agreement is to the effect that, in that event of his failure to supply rice within the stipulated period he shall be liable for an interest @ 21$ for the first year of default and @ 30% for the subsequent period of the custom milled price fixed by Government of India from the date it becomes payable till the date of actual realisation towards the left over quantity/stocks of paddy. The decision of the Director in this behalf shall be final.

In view of the authority of the Apex Court in case FCI Versus Surendra Devendra and Mahendra Transport Co. reported (2003) 4 Supreme Court Cases 80, Rajasthan State Mines and Minerals Ltd. Case (1999) 9 SCC cases 283 and authority of Single Bench of Punjab and Haryana High Court in Shree Krishna Rice Mills Vs. The Punjab State Coop Supplies and Marketing Federation Ltd. The said matter has been left to the final decision of the Director Food and Supplies, Punjab. As such the Arbitrator has no power to decide the dispute raised by the claimant in this regard. The reference for arbitration on this aspect is not permissible under the law. As such in my opinion the claimant Corporation cannot legally claim interest for late milling in the arbitration proceedings.

As far as the claim of Rs.10,37,702, as interest on un-milled paddy raised by the claimant corporation from the respondent-millers is concerned, reference may be made to page No.5 of the agreement wherein it is specifically mentioned that 21% interest from the date it becomes payable till the date of actual realisation of the converted variety of rice. The decision of the Director Food and Supplied, Punjab in this behalf shall be final." In view of the aforesaid authorities of the Apex Court and that of the Punjab and

Haryana High Court, the reference in this regard for arbitration is not permissible under law. As such in the arbitration proceedings the claimant is not legally entitled to claim interest on un milled paddy to the tune of Rs.10,37,702/-."

This aspect has totally been ignored by the Objecting Court. It is a matter of record that against the claim filed under the excepted clause, suit was also filed which was ultimately dismissed. Be that as it may, but the fact remains that Arbitrator has awarded the amount of compensation after examining the evidence threadbare, much less, noticing the statement of partner of the Miller, who unequivocally admitted his signature. The entire record of shortage has been proved on record. However, the awarding of the interest at the rate of 21% is on phenomenal side.

Accordingly, impugned order is set aside. Award of the arbitrator is also modified. There shall be no change in the awarding amount of ₹12,88,257/- however interest awarded at the rate of 21% is reduced to 9%.

Appeal stands allowed, with the aforementioned modification.

24.05.2016 **(AMIT RAWAL)**
pawan **JUDGE**