

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

FAO No.1148 of 2013 (O&M)

Date of decision : 30.05.2016

Daljit Singh

...Appellant

Versus

Punjab State Warehousing Corporation 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. Deepak Sabherwal, Advocate for the appellant.

Mr. A.D.S. Sukhija, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant-Miller is aggrieved of the dismissal of the objection filed under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside of the award dated 18.05.2006.

Mr. Deepak Sabherwal, learned counsel appearing on behalf of appellant-Miller submits that vide lease agreement dated 15.10.1999, premises of the rice miller was leased out to M/s K.R. Rice Mills, Bhuchio Mandi as lessee for selling the rice milled paddy and deliver the same on account of the beneficiary. Agreement for custom milling rice is between M/s K.R. Rice Mills and Punjab State Warehousing Corporation. He submits that for the institution of the recovery proceedings, matter was referred to the Arbitrator. In the

meantime, proprietor of M/s K.R. Rice Mills i.e. husband and wife committed suicide. Even a complaint under Section 138 of Negotiable Instruments Act was filed. The Punjab State Warehousing Corporation had erroneously impleaded the appellants as respondent in the claim petition de hors of the fact that the guarantee deed of even date i.e. 15.10.1999 (Annexure A-2) was denied, though the validity of the same was only for one year yet fastened the liability of entire claim. All these aspects have not been noticed by Objecting Court, therefore neither the award nor the order of the Objecting Court is sustainable.

Mr. A.D.S. Sukhija, learned counsel appearing on behalf of Punjab State Warehousing Corporation submits that no doubt the FIR lodged against the appellant has been quashed but that cannot be the ground for allowing the appeal filed under Section 37 of the Act as the objections were not falling within the parameters of Section 34 of the Act. All these aspects have been noticed by the Arbitrator. Appellant had given unconditional warranty in case of non-payment of bills by M/s K.R. Rice Mills and proprietors of the Mill, therefore, cannot avoid the liability and thus urges this Court for affirming of the findings under challenge.

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

It is conceded position on record that FIR lodged at the instance of the respondent, herein, against the appellant has been vide order dated 09.10.2012 quashed by this Court as noticed in the order dated 01.04.2013 in the present case. Be that as it may, Clause 2 of the bank guarantee, which reads thus:-

“2. That the guarantee herein agreed shall be continuing

one and irrevocable for a period of one year from the date here of and for due performance of the agreement and shall be enforceable by the beneficiary in the event of breach of terms and conditions of the agreement herein before mentioned.”

The appellant leased out the premises to M/s K.R. Rice Mills for the purpose of Milling paddy and in lieu lease amount of ₹90,000/- in cash. The Punjab State Warehousing Corporation cannot have any claim against the lessor, much less, in the absence of any privity of contract with the appellant. It is also matter of record that claim has been lodged after expiry of one year.

In view of such fact, I am of the view that claim was not maintainable, much less, Arbitrator lacked the jurisdiction vis-a-vis the appellant-lessor. All these facts has not been noticed by the Objecting Court.

In my view, the objections squarely falls within the provision of Section 34 of the Act as the award is against the public policy. Scope of the public policy has already been enlarged by Hon'ble Supreme court in view of the judgment of *M/s Anand Brothers P. Ltd. Vs. UOI and others, 2015 AIR SC 125*.

In view of the aforementioned, award of the Arbitrator and order under challenge is set aside.

Resultantly, present appeal stands allowed.

30.05.2016

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**(AMIT RAWAL)
JUDGE**