

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

FAO No.686 of 2012 (O&M)
Date of decision : 22.01.2016

M/s Moga Roller Flour Mills Pvt. Ltd.

...Appellant

Versus

Punjab State Civil Supplies Corporation Ltd. 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. S.K. Singla, Advocate for appellants.

Mr. Aman Chaudhary, Advocate for respondents No.1 and 2.

AMIT RAWAL, J. (Oral)

The Miller has knocked the door of this Court by filing the appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as the Act) vis-a-vis finding rendered by the Objecting Court relegating the parties to the Managing Director.

Mr. Singla, learned counsel appearing on behalf of Miller submits that Objecting Court does not have any power to refer the matter to the Managing Director as he could only set aside the award. Instead of pondering upon merits and demerits of the matter, the matter has been relegated to the Managing Director. In support of his contention, he has

relied upon para No.14 of the Division Bench judgment of Bombay High in case titled as Geojit Financial Services Ltd. Vs. Kritika Nagpal decided on 25.06.2013.

Mr. Aman Chaudhary, learned counsel appearing on behalf of respondents No.1 and 2 submits that Objecting Court under the provision of sub-Section 4 of Section 34 of the Act has jurisdiction to refer the matter and being an exceptional matter, the jurisdiction has been exercised, therefore, no fault can be found with such directions.

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

It would be apt to refer para 14 of the judgment cited supra, which reads thus:-

“14. Under sub-section 4 of Section 34, the Court is vested with the discretion, where it is appropriate and where the court is requested by a party, to adjourn the proceedings for a period of time. An adjournment is granted in order to furnish the arbitral tribunal with an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the Tribunal will eliminate the grounds for setting aside the award. Sub-section 4 of Section 34, therefore, does not contemplate a situation where the proceedings are remanded back to the arbitrator after setting aside the arbitral award. Once an arbitral award is set aside under Section 34, that brings to a conclusion a proceeding before the Court. What sub-Section 4 of Section 34 envisages is an opportunity to the arbitral tribunal to resume the arbitration proceedings or to take such other action as would eliminate the grounds for setting aside the award. Without meaning to be

exhaustive, we can conceive of a situation where the arbitral tribunal has overlooked a particular item of claim on which parties have led evidence and have addressed arguments. A challenge to the arbitral award in such a case would be on the ground that the arbitral tribunal has failed to decide a claim which was raised, controverted and submitted upon. The provisions of Section 34 enable the Court to adjourn the petition under Section 34 so that instead of setting aside the award, the arbitral tribunal can resume the proceedings and take necessary steps to eliminate a ground of challenge. Section 34(4), however, does not contemplate or vest a power in the Court to remand proceedings back to the arbitral tribunal once the Court has set aside the award. Once an award has been set aside, recourse cannot be taken to Section 34(4) since it is evident that the power can be exercised by the Court while adjourning a petition under Section 34.”

The Objecting Court while deciding the objections ought not to have relegated the parties to appear before the Managing Director on the premise that claim was falling within the Excepted Clause. The relevant portion of the finding rendered by the Objecting Court reads thus:-

“In this case, the dispute between the parties is with regard to the short supply of milled rice, therefore, the decision of which falls within the jurisdiction of the Managing Director only. Hence, in the given circumstances, the case be sent to the Managing Director of PUNSUP for its decision in accordance with law. Learned counsel for petitioner is directed to appear before the Managing Director, Punjab State Civil Supplies Corporation Limited on 03.10.2011 at 10.00 am. The arbitration record be sent to the quarter concerned and file

of this Court be consigned to the record room.”

I am of the view that aforementioned order is not sustainable in view of ratio decidendi culled by the judgment in Geojit Financial Services Ltd. (Supra) & is hereby set aside.

Parties shall be at liberty to seek vindication of their grievances in accordance with law.

Appeal stands allowed.

22.01.2016

pawan

**(AMIT RAWAL)
JUDGE**