IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 164 of 2013(O&M)
Date of decision : February 24, 2016

Om Rice Mills and another

.... Appellants

Versus

Haryana Agro Industries Corporation Ltd.and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. N. C. Kinra, Advocate
for the appellants.

Mr. Pankaj Gupta, Advocate
for respondent Nos. 1 and 2.

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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?

<u>Amit Rawal, J (oral).</u>

The appellants-miller is aggrieved of the findings rendered by the objecting court dismissing the objections seeking setting aside of the award passed by the arbitrator.

Mr. N. C. Kinra, learned counsel appearing on behalf of the appellants submits that the following claims were laid before the arbitrator:-

S.No.	Particulars	Amount(Rs. In lacs)
1.	Cost of 301.06 MT short paddy @ 6390/-PMT.	19,23,773.00
2.	Interest on Paddy cost on Rs.19,23,773.00 upto 30.6.2002 @ 21%.	7,73,673.00
3.	Holding charges upto 5.7.2002 (3484816-597973).	28,86,843.00
4.	Interest on Holding charges	12,04,170.00

	@ 21% from 6.7.2000 to 30.6.2002.	
5.	Cost of Bardana	6,09,804.00
6.	Interest on item No. 5&6 upto 30.6.2002.	3,61,553.00
	Total	78,46,985.00

Claim Nos. 3 and 4 are with regard to the Holding charges and interest thereon, which is not permissible in view of the judgment rendered by this Court in FAO No. 3762 of 2013 decided on 8.2.2016 (M/s Grover Agro Overseas Vs. Haryana Agro Industries Corporation Ltd.and others). Viz-a-viz claim No.7 interest on item Nos. 5 and 6 was also not sustainable.

As regards claim Nos. 1 and 2, which pertains to costs of shortage of paddy, the claim was viz-a-viz sale price whereas it should had been on purchase price. A specific objection, in this regard was taken in the written statement but the arbitrator has failed to take into consideration, thus the award of the arbitrator is not sustainable and rightly so the objections were filed, which have erroneously been dismissed by the objecting court.

Mr. Pankaj Gupta, learned counsel appearing on behalf of respondent Nos. 1 and 2 submits that the award was perfectly justified and the objections were not falling within the realm of Section 34 of the Arbitration and Conciliation Act, 1996. No objection had been taken before the arbitrator viz-a-viz its jurisdiction and rightly so the arbitrator had pronounced the award.

I have heard learned counsel for the parties and appraised the paper book and of the view that viz-a-viz claim Nos. 3 and 4, which pertain to Holding charges, Haryana Agro Industries

Corporation Ltd. is not entitled to in view of the ratio decidendi culled out by this Court in FAO No. 3762 of 2013 wherein it has been held that Haryana Agro Industries Corporation Ltd. has not claimed Holding charges and has waived off the same, therefore, Haryana Agro Industries Corporation Ltd. was not entitled to claim, accordingly the award viz-a-viz Holding charges and interest thereon is set aside.

As regards claim Nos. 1 and 2, pertain to charging of price of the shortage of paddy at “sale price” and not against the “purchase price”. Since the miller had to pay, it was liable to pay only on purchase price, therefore, Haryana Agro Industries Corporation Ltd. cannot sustain its claim on profit basis.

Accordingly, the award of the arbitrator is hereby modified. It shall be construed to be viz-a-viz purchase of shortage of 301.06 MT paddy at the “purchase price” instead of “sale price”. In essence, Haryana Agro Industries Corporation Ltd. is entitled to recover shortage of the aforementioned paddy at the “purchase price”. The details of which shall be given in the execution application, in case, the miller fails to make the payment within time.

The appeal is partly allowed. The award of the arbitrator is modified to the aforementioned extent only.

(AMIT RAWAL)
JUDGE

February 24 , 2016
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