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

**FAO-3762-2013 (O&M)
Date of decision : 08.02.2016**

M/s Grover Agro Overseas

...Appellant

Versus

Haryana Agro Industries Corporation Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Sethi, Advocate
for the appellant.

Mr. Pankaj Gupta, Advocate
for respondent Nos.1 to 3.

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?

AMIT RAWAL, J. (ORAL)

CM-15283-CII-2013

For the reasons stated in the application which is supported by an affidavit, the delay of 04 days in re-filing the appeal is condoned.

CM stands disposed of.

FAO-3762-2013

The appellant is aggrieved of the order dated 03.12.2012, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') seeking setting aside of the Award dated 16.04.2009, have been dismissed.

Mr. Rajesh Sethi, learned counsel appearing on behalf of the appellant-Miller submits that the matter in dispute pertains to 1997-98 and onwards. The prime grievance of the appellant-Miller is that the Arbitrator without noticing the documentary, much less, oral evidence, has held that the appellant-Miller is entitled to pay the holding charges, whereas the holding charges in respect of the Miller who had supplied the rice upto 31.12.1998 being extended date were waived off. The plea of the Haryana Agro Industries Corporation Ltd., viz-a-viz the non-accepting of One Time Settlement (OTS) Scheme, would not come in the way of the appellant-Miller as no such notice of the aforesaid scheme had ever been received, much less, OTS Scheme pertained to the Millers of Ambala. In this regard, he has drawn the attention of this Court to the cross-examination (particularly of RW-1 Pritam Singh, District Manager, Haryana Agro Industries Corporation Ltd.,) who in cross-examination, admitted that during the year 1997-98, there was no record of charging the "Holding Charges" of any of the Millers throughout Haryana, and thus, the Award was against the public policy, much less, against the record and, therefore, the objections

were falling within the realm of Section 34 of the 1996 Act.

Mr. Pankaj Gupta, learned counsel appearing on behalf of the respondents Nos.1 to 3, submits that the Miller was required to opt the OTS Scheme, having failed to do so, Holding Charges have rightly been awarded in his favour and could not be waived off and a separate notice was also sent, but the Miller did not opt, thus, the objections were not falling within the parameters of Section 34 of the 1996 Act and prays for dismissal of the appeal.

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

I am of the view that the appeal deserves to be dismissed on the following reasons:-

It would be apt to reproduce the cross-examination of the RW-1 Pritam Singh, District Manager, Haryana Agro Industries Corporation Ltd., recorded before the Objecting Court which reads thus:-

"Self stated the holding charges were charged in Ambala District. Today I have not brought any record in this regard. The witness has thoroughly inspected the record received from the Arbitrator wherein there is no record regarding holding charges of any of the millers throughout Haryana during 1997-98. Copy of the document Ex.R3 was not sent to the petitioner".

Even the other witness, namely, P.C. Goyal, Store Keeper, Haryana Agro Industries Corporation Ltd., admitted that the Haryana Agro Industries Corporation Ltd., had not claimed any Holding Charges from any Miller who supplied the rice prior to

31.12.1998 and the Miller delivered the rice prior to the aforementioned date. The relevant part of his cross-examination reads thus:-

"This date was extended to 30.06.1998 and then to 31.12.1998 as per instructions of Government of India. As per instructions of Government of India, the last date of supply of rice was 31.12.1998 and no holding charges were chargeable if the Miller delivered the rice prior to 31.12.1998. I have checked the record and as per my record, Haryana Agro has not claimed holding charges from any Miller who had delivered the rice prior to 31.12.1998 in Haryana. The petitioner had also made the delivery of rice prior to 31.12.1998 with regard to entire paddy which was given to him for custom milling. As per my record the said rice was supplied in 5717 gunny bags by the petitioner, out of which, 1500 fresh bags were given to the petitioner by the respondent on 11.10.1998 and 1500 bags were given to him on 16.11.1998 and total 3000 gunny bags were given by the respondent."

The Objecting Court ought to have noticed the aforementioned facts, but having failed to do so, thus, the Award of the Arbitrator entitling the Haryana Agro Industries Corporation Ltd., to claim the Holding Charges is not sustainable. There is no force in the contention of Mr. Pankaj Gupta, Advocate that a separate notice was sent to the Miller to claim the OTS Scheme as no such evidence has been brought on record, thus, in the absence of the same, Miller is not liable to pay Holding Charges.

Keeping in view the admission of the witnesses of

Haryana Agro Industries Corporation Ltd., I am of the view that the Miller is not entitled to pay Holding Charges. Accordingly, the Award of the Arbitrator, viz-a-viz the holding charges, is hereby set aside and rest of the findings are affirmed.

With the aforesaid observations, the appeal stands partly allowed.

08.02.2016
yogesh

(AMIT RAWAL)
JUDGE