

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

FAO No.4422 of 2013

Date of Decision.16.11.2016

M/s Gopi Rice Mills and another

.....Appellants

Vs

Punjab State Civil Supplies Corporation Ltd. and othersRespondents

Present: Mr. P.S. Rana, Advocate
for the appellant.

Mr. Deepak Sabharwal, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The counsel for the appellant is aggrieved of the impugned order whereby the objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award, has been dismissed.

Mr. Rana, learned counsel appearing for the appellant submits that in pursuance of the agreement having entered into between the respondent-PUNSUP, procuring agency and appellant-rice miller, paddy had been supplied for milling. Certain disputes arose and the matter was referred to the Arbitrator, Mr. M.S. Gulati. However, by the time when the pleadings, much less, the evidence was completed and the matter reached at the stage of arguments, PUNSUP withdrew the Arbitrator and a new Arbitrator namely Mr. J.R. Singla was appointed who passed an ex parte award. In pursuance of the remand order, Mr. G.S. Bhatia was appointed as new Arbitrator and both the parties before Mr. Bhatia suffered a statement

namely Mr. Gulati, be read as part and parcel of the present proceedings vide Annexure A-3, resulting into passing of the impugned award. The aforementioned award was assailed and during the pendency of the same, an application for summoning the record of the Arbitrator was moved but the same was rejected vide order dated 15.04.2013 and that fact was also noticed in the impugned order.

He further submits that the finding of the Objecting Court that once the award of the Arbitrator had already been set aside and the matter was remanded back, there was no need for summoning the record is against the statement suffered by both the parties. Even otherwise, there was no ground mentioned to be falling within the realm of Section 34 of the 1996 Act, in essence, it is lacking reasons, thus, the order under challenge is liable to be dismissed.

Mr. Deepak Sabharwal, learned counsel appearing for the respondents submits that assurance/undertaking had been given to the miller to make balance payment. There was no challenge to the agreement or its terms and therefore, nothing survives in the objection petition itself. It is a delaying tactic. The miller is not realizing that the interest is recurring day by day. During the arguments, he disputed the factum of the application and its dismissal.

He further submits that there is very limited scope of interference in the objection, as on cursory glance of the objection, none of the grounds falls within the realm of Section 34 of the 1996 Act, thus, urges this Court for confirming the order under challenge.

I have heard learned counsel for the parties and appraised the paper book. The reasoning assigned by the Objecting Court reads as under:-

“8. After hearing the respective contentions of both the sides and having gone through the record carefully, it is found that the instant objection petition filed by the applicant merits dismissal. From the perusal of the objections raised by the applicant in the petition, it is found that the same are misconceived. The legal position, as settled by the Hon'ble Supreme Court and various High Courts is that the Arbitral Tribunal is the final judge of all questions, both of law and of fact; the Arbitral Tribunal is the sole judge of the quality as well as sufficiency of evidence and it is not open to the Court to re-examine and re-appreciate the evidence considered by the Arbitral Tribunal to hold that the conclusion reached by the Arbitral Tribunal is wrong. The arbitration court cannot interfere with the award on the ground that the award is erroneous if the award is otherwise proper. It is not open to the arbitration court to re-appreciate reasonableness of reasons in the arbitral award as held in **Union of India Vs. Pam Developments P. Ltd. AIR 2004 NOC 353 (Cal.)**. Moreso, In **Narayan Prashad Lohia Vs. Nikunj Kumar Lohia and others 2002(3) page 572**, it has been held that one of the objects of the said Act is not minimize the role of Courts in the arbitration process. Judicial authorities should not interfere except where so provided in the Act. It is the intention of legislative that there should be a minimum interference with the award. The award can be challenged only under the provisions of Section 34 of the Act. Furthermore, the applicant has not been able to make out any case within the scope and ambit of Section 34 of the 1996 Act, so as to enable this Court to interfere in the impugned Award. Moreover, the applicant-miller was requested several times to pay the cost of balance rice but it has failed despite assurance/undertaking. Even otherwise, the receipt of paddy supplied, execution of agreement and affidavit have not been challenged by the counsel for the applicant Miller before the Arbitrator. So far as the non production of original file of Sh. M.L. Gulati,

Arbitrator is concerned, it is suffice to say that vide order dated 7.11.2007, the court of learned Additional District Judge, Chandigarh set aside the award and remanded the case to the Arbitrator for deciding afresh on merits after giving opportunity to both the parties, therefore, there was no need to consider the material and evidence put up or adduced before the earlier Arbitrator who had given the impugned award which was set aside by the then learned Additional Judge, Chandigarh vide above said order dated 7.11.2007. Furthermore, the award is reasonable, speaking and also based on sufficient material and as such, there is no infirmity in the award. Moreso, it is the settled law that the court cannot as an appellate court over and above the award passed by the Arbitrator, Consequently, it is held that no grounds are made out to set aside the Award dated 08.01.2009. Hence, this issue is decided against the applicant and in favour of the respondents.”

The pith and substance of the order is the reproduction of the judgment, much less, the passing of the previous order declining the application for summoning the record and as well as setting aside of the ex parte award but in my view, no reasons have been assigned as to how and why the objections are not falling within the realm of Section 34 of the 1996 Act. The person of the rank of District Judge should be very circumspect in deciding the objections but not in the manner and mode as indicated above.

I am of the view that the matter requires to be reconsidered by the Objecting Court. Accordingly, the order under challenge is hereby set aside and the matter is remitted back to the Objecting Court to decide the objections as expeditiously as possible and preferably within a period of four months after summoning the record in view of the fact that both the

parties were ad idem for taking into consideration the pleading in evidence recorded by the previous Arbitrator Mr. M.S. Gulati.

The appeal stands disposed of. The parties are directed to appear before the Objecting Court on 08.12.2016.

(AMIT RAWAL)
JUDGE

November 16, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No