

227

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

FAO-5313-2013 (O&M)

Date of decision : 22.07.2016

M/s Dhindsa Gram Udyog Samiti and another

... Appellant(s)

Versus

Punjab State Warehousing Corporation Ltd. and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Birinder Singh, Advocate
for the appellant(s).

Mr. B.R. Bansal, Advocate
for respondent No1.

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)

The appellant(s)-Miller is aggrieved of the impugned order dated 07.05.2013, whereby the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') filed at the instance of the respondent(s)-Punjab State Warehousing Corporation Limited (hereinafter called 'Corporation') seeking setting aside the Award dated 06.10.2004 have been allowed.

Mr. Birinder Singh, learned counsel appearing on behalf of the appellant(s)-Miller submits that the Objecting Court has not dealt with the objections strictly in consonance with the parameters of Section 34 of the 1996 Act. The alleged reasoning assigned while setting aside the award has

been noticed in paragraph Nos.23 & 26 of the order under challenge which is not only fallacious, but erroneous. He submits that the Arbitrator being an Expert has examined the entire claim threadbare and rendered the award in favour of the appellant(s)-Miller. The compensation to the tune of ₹ 25,43,022/- on different heads along with simple interest @ 18% has been ordered and the claim of the Corporation was rejected. The Objecting Court has, even, gone beyond the directions given by Hon'ble Supreme Court and by this Court for calling upon the parties to lead the evidence afresh which could not be a basis for setting aside the Award. The reference was made to the judgments rendered in *“Fiza Developers & Inter-Trade (P) Ltd. Versus AMCI(I) Pvt.Ltd. & Another”, JT 2009 (12) SC 519 & “M/s Punjab State Industrial Development Corporation Ltd. V/s Sunil K. Kansal”, 2013 (7) RCR (Civil) 2606.*

Mr. B.R. Bansal, learned counsel appearing on behalf of the respondent(s)-Corporation submits that the Arbitrator was not acting as an actual Arbitrator and even the suit had been filed. Owing to the chequered litigation, the matter was allowed and ultimately, the parties submitted to his jurisdiction. The umpteen number of documentary evidence has been brought on record which has gone un-rebutted and unnoticed by the Arbitrator and rightly so, the Objecting Court has interfered with the Award. There is no illegality and perversity in the impugned order under challenge and the objections were falling within the parameters of Section 34 of the 1996 Act, thus, urges this Court for dismissal of the appeal by affirming the order under challenge.

I have heard the learned counsel for the parties and appraised

the paper book and of the view that the reasons assigned by the Objecting Court while accepting the objections are not only fallacious, but erroneous. For the sake of brevity, paragraph Nos.23 and 26 are reproduced hereinbelow:-

“23. The first contentions of the learned counsel for the petitioner that the Arbitration has acted beyond his jurisdiction and which clause is mentioned u/s. 34(2)(vi). I agree with the contentions raised by the learned counsel for the petitioner with regard to it as it is bounden duty of the arbitrator to give an award as per terms and conditions mentioned in the agreement as the arbitrator is to give cogent and convincing reasons and it is his duty to pass a speaking order as to why the arbitrator is declining the claimed by the parties, but in this award, all the claims which were set up by the claimant Corporation before the Arbitrator were totally declined, without giving any reason.

26. The Arbitrator under the head A-3 declined the claim of the petitioner. In this claim, the arbitrator mentioned that the respondent alleged that there is no time limit upto 20.09.2001. After 20.09.2001, delivery of rice was made within 10 days from the date of lifting the paddy. The respondents themselves admitted in the written statement before the arbitrator that delivery of rice was to start from 15.1.2001 and last delivery is October, 2002, then how the arbitrator came to the conclusion that the respondent is entitled to counter claim and how the

arbitrator came to the conclusion that the respondents supplied excess rice to the petitioner as there is not an iota of evidence on record, which proves the fact in favour of the respondents. So, the arbitrator has ignored the receipt dated 15.01.2001.

No reasoning has been assigned for setting aside the Award, in my view the Objecting Court has exceeding the jurisdiction in rendering the objections and none of the objections had not *prima facie* been decided by strictly complying the provisions of Section 34 of the 1996 Act. Though the expression of public policy has been expanded by the judgment of Hon'ble Supreme Court rendered in **“Associate Builders Vs. Delhi Development Authority” (2015) 3 SCC 49**, but the fact remains that the Award has to be examined in a most pragmatic and positive manner. Time and again, this Court has come across the orders, whereby the issues are framed and the parties are given the opportunity to lead the evidence in a routine manner, whereas it is inconsistent that the objections have to be decided until and unless fresh affidavit in cross-examination to that effect is filed. The Objecting Court cannot sit in arm chair of the Arbitrator and re-appreciate the evidence, even it is not the case of the re-appreciation, much less, non-appreciation.

In view of the aforementioned facts and circumstances, the matter is required to be remanded back to the Objecting Court to decide the objections afresh and accordingly, the impugned order dated 07.05.2013 is hereby set aside. The Matter is remitted back to the Objecting Court to decide the objections afresh in accordance with law as expeditiously as possible preferably within a period of six months from the date of receipt of

the certified copy of this order.

Learned counsel for the parties and as well as the parties are directed to appear before the Objecting Court on 16.08.2016.

Resultantly, the appeal is allowed in the aforementioned terms.

22.07.2016
yogesh

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No