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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5669-2013 (O&M)
Date of decision : 28.03.2016

M/s Krishna Rice Mill

...Appellant

Versus

Punjab State Civil Supplies Corporation Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.S. Malwai, Advocate
for the appellant.

Mr. Aman Chaudhary, 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?

AMIT RAWAL, J. (ORAL)

The appellant is aggrieved of the order dated 28.09.2013 whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') have been accepted and the Award dated 17.05.2004 has been set aside.

Mr. D.S. Malwai, learned counsel appearing on behalf of the appellant submits that the Objecting Court has dealt with the objections as if it is a Appellate Court and re-appreciated the evidence which is not within the scope of the objections, in essence, the objections were not falling within the parameters of Section 34 of the 1996 Act and thus, exceeded its jurisdiction in accepting the objections and the Award of the Arbitrator is based upon the documentary evidence, much less, contents of letter dated 29.09.1995 viz-a-viz no due certificate and no reasoning has been assigned with regard to the contents of the letter and therefore, the Objecting Court could not have accepted the objections.

Mr. Aman Chaudhary, learned counsel appearing on behalf of respondent Nos.1 and 2 submits that in view of the settled law, the benefit of driage cannot be challenged, but the fact remains that no objection certificate would not debar the PUNSUP to establish the claim with regard to the price of non-supply of the custom milled rice and accordingly, the claim-viz-a-viz, sum of ₹ 1,50,560/- was lodged and prays that the objections were falling within the realm of Section 34 of the 1996 Act.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a substance in the plea of Mr. D.S. Malwai, for the reason that the Arbitrator while dealing with the aspect of driage and as well as no objection certificate, gave the following findings which reads thus:-

> *"The undersigned was appointed as Arbitrator vide order no.LC/IV/98/36460-64 dated 6.2.98 in terms of clause 17 of the Agreement dated 25.10.94 entered between the above mentioned parties. The revised claim superceding the earlier claim was filed by the first party for a recoverable amount of ₹ 450606/- upto 31.12.2000 with further interest to be charged on the amount due till the realization of the amount as per the Statements of Accounts. As per the account statement, the balance amount recoverable on account of driage/shortage/conversion into rice has been shown to be ₹ 150560/-. PUNSUP has included this amount in pursuance*

of the letter dated 6.6.2000 from the Director Food and Supplies addressed to the MD, PUNSUP and others, containing guidelines for deciding arbitration cases relating to kharif 1994-95 marketing season. PUNSUP is taking resort to class- of the said guidelines as per which in cases where driage has caused shortage, the same should be recovered from the custodian millers at the custom milled rice rates along with interest at bank at rate. The respondents in their part have stated by way of an affidavit, which is to be read as an evidence and as per terms and conditions laid down in the letter circulated to the field officials by the HQ of Civil Supplies Corporation (Annexure L-2 clause 4 to the affidavit:-

> *"paddy will be issued on book weight allowing 2% driage to the respective buyers."*

Hence this benefit on account of driage of moisture during storage cannot be withdrawn, unilaterally at this stage. Moreover the milling of paddy had been extended and if the paddy had not been sold to the miller as per the policy of the GOI, circulated through letter dated 14.3.95 (annexure M), it would have been milled in routine. Moreover this clause C of the guidelines dated 6.6.2000 applies only in those cases where the driage has caused over and above the 2% normal shortage. Moreover, the paddy is usually lying with the millers in joint custody i.e. PUNSUP and the millers. Hence this driage allowance for which the PUNSUP has claimed an amount of ₹ 150560/- cannot be allowed. Regarding the other dues of ₹ 60000/-, the claimants have already issued the respondents a no due certificate dated 29.9.95 (annexure O) which read as under:-

> *: The respondent had cleared the entire paddy*

> *which was entrusted to them and that nothing was due towards the party on account of bardana and quality cut etc. as the same had been deposited."*

Thus, nothing is chargeable from the respondents. Their case falls in category A of the guidelines dated 6.6.2000 which reads as follows:-

> *"Cases in which the millers had sold paddy as per instructions and no rice/paddy is due from them, the arbitration proceedings may be dropped."*

Thus there is no merit in the revised claim filed by the claimant and the same is dismissed. The parties are to bear their own costs."

Whereas, the Objecting Court re-appreciated and re-examined the evidence, which is not within the scope of Section 34 of the 1996 Act. The objections, in my view, were not falling within any of the parameters, much less, against the public policy. The contents of letter viz-a-viz no objection certificate have been referred to, in essence, the respondent estopped to establish the claim in view of no objection certificate via-a-viz driage. It is a settled law that the benefit of driage cannot be withdrawn.

Keeping in view the aforementioned facts and circumstances, the order dated 28.09.2013 accepting the objections is hereby set aside and the Award of the Arbitrator is restored.

With the aforesaid observations, the appeal stands allowed.

28.03.2016 **(AMIT RAWAL)**
yogesh **JUDGE**