

FAO No.4795 of 2015 (O&M)

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

FAO No.4795 of 2015 (O&M)

Date of decision:02.06.2016

M/s Sandeep Rice and General Mills

... Appellant

Vs.

Punjab State Warehousing Corporation Chandigarh
and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. K.B. Raheja, Advocate, for
Mr. Nitin Narula, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.14850-CII of 2015

For the reasons stated in the application, duly supported by an affidavit, delay of 100 days in re-filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.14851-CII of 2015

For the reasons stated in the application, duly supported by an affidavit, delay of 1294 days in filing the appeal is condoned.

C.M. stands disposed of.

FAO No.4795 of 2015 (O&M)

Appellant-Miller is aggrieved of the dismissal of the objections

filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “1996 Act”) for setting aside of the award dated 20.04.2006, modified on 02.08.2006.

Mr. K. B. Raheja, learned counsel appearing on behalf of the appellant has raised the following submissions in support of the grounds of appeal:-

- i) The claim before the Arbitrator was barred by law of limitation as the agreement envisages that claim has to be filed within a period of one year, whereas, the claim has been filed on 13.11.2001 and period of supply envisages that contract had expired on 14.09.1999.
- ii) Original agreement dated 02.11.1998 has not seen the light of the day and only photocopy has been tendered.
- iii) The agreement has been signed only by D.M. on behalf of the company, who, was not a competent authority.
- iv) Yashpal/a partner of the firm was not made a party.
- v) Arbitrator did not have the jurisdiction.

I have heard learned counsel for the appellant-Miller and appraised the paper book and of the view that Arbitrator has rightly declined the claim alleged to be falling under the excepted clause as no objection had been taken, thus, deemed to have waived right, therefore, there is no force in the aforementioned submission. As regards, the original agreement, having not seen the light of the day as only photocopy was tendered. Record reveals no objection, in this regard, has been raised. As per the provisions of Order

29 Rules 1 and 2 of the Code of Civil Procedure, the officers were duly authorized to act and perform duties on behalf of the company and are competent. Reference is invited to the judgment rendered by the Hon'ble Supreme Court in **United Bank of India vs. Naresh Kumar and others 1997 AIR SC 3**. Once the company/firm is impleaded, the factum of non impleadment of Yashpal would not be fatal. As far as, limitation is concerned, I am of the view that until and unless, the agreement excludes the applicability of the Limitation Act, the parties cannot arrest the period of limitation than what has been prescribed in the Limitation Act. Once the period of contract expired in the year 1999, and claim has been filed in 2001, which is within a period of three years.

In view of the aforementioned observations, there is no merit in the submissions of Mr. Raheja. Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

June 02, 2016
savita