

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

FAO No.5060 of 2015 (O&M)
Date of Decision.12.12.2016

2. FAO No.5061 of 2015 (O&M)

The Punjab State Civil Supplies Corporation Limited (PUNSUP) and another
.....Appellants

Vs

M/s Hitesh Rice Mills and another
.....Respondents

Present: Mr. Nitin Kaushal, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two appeals bearings FAO Nos.5060 and 5061 of 2015 filed at the instance of the PUNSUP against the order of the Objecting Court setting aside the Award of the Arbitrator holding it to be falling with the exempted/excepted clause. The appeals are also accompanied by applications seeking condonation of delay of 755 days on the ground that the opinion sought had reached late and therefore, there was a delay.

On merits, learned counsel appearing for the appellant submits that the Objecting Court has mis-interrupted and misread the terms and conditions of the clause. It was not a case of shortage but of a short supply. In fact, the case was falling squarely within the provisions of clause 5 of the agreement and not under clause 7 and therefore, there is misinterpretation of the terms and conditions of the agreement and the shortage was not on account of imposition of the quality cut but on account of short supply. In this regard, statement of account had been placed on record. The factum of charges to be recovered from the miller as per the terms and conditions of the contract were

is not maintainable, thus, liable to be set aside.

I have heard learned counsel for the appellants, appraised the paper book and of the view that the finding given by the Objecting Court that the Award is falling within the excepted clause as per clause 7 of the agreement is not correct. On going through the claim petition, it is revealed that it was a case of short supply, in essence, not shortage of goods after supply of entire quantity. Be that as it may be. The fact remains that except the self-serving statement i.e. the statement of account, the appellant-PUNSUP has not been able to establish the same by placing on record the physical verification report duly signed by the miller or their representatives as the custody of paddy was always joint.

Regarding the alleged short supply, had it been so the argument of the PUNSUP for sustaining the Award, the recovery would have been something else. It would be farcical exercise in setting aside the order and remanding back the matter to the Objecting Court, as the inherent compliance of the statutory provisions i.e. absence of the foundation, in my view, not pressed, thus, not sustainable to re-decide the issue. Even the explanation given in the application for condonation of delay is wholly lacking reasons, much less, cogent reasons. The officers who are at the helm of the affairs should be circumspect in availing the remedy in law and should not indulge into blame game resulting into a delay which is of more than two years.

Both the appeals are dismissed on account of delay and as well as on merits.

(AMIT RAWAL)
JUDGE

December 12, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No