

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

FAO No.4363 of 2016 (O&M)

Date of Decision.02.08.2016

District Manager, Haryana State Federation of Consumers, Cooperative
Wholesale Stores Limited (Confed)

.....Appellant

Vs.

Shiv Shakti Food Product and another

.....Respondents

2. FAO No.4367 of 2016 (O&M)

District Manager, Haryana State Federation of Consumers, Cooperative
Wholesale Stores Limited (Confed)

.....Appellant

Vs.

Shiv Dass Rice Mills Private Ltd. and another

.....Respondents

Present: Mr. Padamkant Dwivedi, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

Mr. Dwivedi, learned counsel for the appellant submits that owing to the resolution of dispute through arbitration, the Arbitrator was appointed vide order dated 26.05.2011 and vide letter dated 29.03.2012, another Arbitrator was appointed but the previous Arbitrator continued with the proceedings and passed the impugned Award dated 26.08.2013. Objections were filed under Section 34 of the Arbitration and Conciliation Act, 1996 on 30.05.2015 taking the date of knowledge of the Award from the receipt of summons of the execution petition. The Objecting Court had dismissed the objections on merits and as well as on limitation.

He submits that once the Arbitrator has been changed, the previous Arbitrator ought not to have continued instead of adhered to the exhorting provisions of Section 15 of the Arbitration and Conciliation Act, 1996. The objections were not beyond the period of limitation as the knowledge has been acquired only on receipt of notice of the execution in the month of May, 2005 and in the same very month, the objections were filed, thus, urges this Court for setting aside the impugned order by remanding the matter to the Objecting Court to hear the objections on merits, as having been dismissed on account of delay only.

I have heard learned counsel for the appellant and appraised the paper book. A plain and simple language of Section 15 reads that no matter of doubt where an Arbitrator had been replaced but the parties continued to participate in the proceedings and the Arbitrator decides the matter in their presence, there could be no grievance for replacement. Even otherwise no reasons assigned for replacing the Arbitrator, much less, consent of the respondents ever taken. Thus instrumentality of the State, which participated in the arbitration proceedings, cannot be permitted to raise a plea of ignorance of the outcome of the arbitration award, as being the contested one. The officers of the Confed were required to ascertain the outcome of the Award. They cannot remain silent and would wake up when notice of execution petition was received. The Award was published on 26.08.2013 whereas the objections were filed in the month of May, 2015. No copy of the acknowledgment has been shown to make out a case that the objections were filed within the period of limitation. In my view, the explanation given is wholly misplaced and not warranted with any foundation to bring the objections within the period of limitation.

It is now a settled law that in what circumstances, the award has to be interfered with. The question, which is now raised in the aforementioned appeal, has already been answered by the Hon'ble Supreme Court in catena of judgments, wherein it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 34 of the Act, the same cannot be interfered with. In this context, I intend to refer the judgments of Hon'ble Supreme Court in *Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698*. In the aforementioned judgments, the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances, it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embark on a path by substituting its own view in support of the Arbitrator's view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute, which was contemplated and was within its scope. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but vis-a-vis proceedings. In my view, the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator, who is expert, has dealt with the matter and decided the claims of respective parties to the *lis*.

In my view, the award read as a whole is just, fair and

reasonable. It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arises from the award. The same is perfect and justified.

There is no merit in the appeals. The same are accordingly dismissed.

(AMIT RAWAL)
JUDGE

August 02, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No