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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6121-2015 (O&M)
Date of decision : 21.04.2016

M/s Garg Rice Mills

... Appellant

Versus

Punjab Agro Food Grain Corporation Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Lalit Rishi, Advocate
for the appellant.

Mr. Karan Singh, Advocate for
Mr. Nitin Kaushal, 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)

CM No.19394-CII-2015

The application is allowed as deficiency in Court fees has been made good subject to all exceptions.

CM stands allowed.

CM-19393-CII-2015

For the reasons mentioned in the application, the delay of 55 days in re-filing the appeal is condoned.

CM stands disposed of.

<u>FAO-6121-2015</u>

The appellant-Miller is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 Act (hereinafter called 'the 1996 Act') seeking setting aside the Award dated 17.06.2013.

Mr. Lalit Rishi, learned counsel appearing on behalf of the appellant, submits that it is a categoric case of the appellant that in pursuance to the lodging of FIR, certain amount was paid. The claim of the Punjab Agro was to the tune of ₹ 2,73,00,000/-, but the Arbitrator has not taken into consideration the payment received, much less, Punjab Agro has not informed the Arbitrator viz-a-viz the payment receipt. These facts were taken in the objections and noticed, but no reasons have been assigned by the Objecting Court while declining the objections. He further submits that that Award is not in consonance with the provisions of sub-Section 3 of Section 31 of the 1996 Act, thus, prays for setting aside the Award and as well as the order, under challenge.

Mr. Karan Singh, Advocate for Mr. Nitin Kaushal, learned counsel appearing on behalf of the Punjab Agro submits that the Miller did not place any document before the Arbitrator, who could have had an occasion to ponder upon the same, much less, did not cross-examine the witness of the agency and an application, for cross-examination, was also dismissed. The Objections were not falling within the realm of Section 34 of the 1996 Act. Moreover, Objecting Court cannot sit as a court of appeal and re-appreciate the evidence and prays for affirmation of the findings given by the Arbitrator and the

Objecting Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the Award is lacking reasons. For the sake of brevity, the operative part of the Award reads thus:-

> *"That the Respondent Rice Mill has not submitted any documents in support of the above position. The claimant was thus asked to submit the evidence by way of affidavit. That on 20.02.2013 the claimant has submitted the evidence by way of affidavit of Sh. Bhawandeep Singh Sandhu, Sr. Distt. Manager, PAFC, Mohali. A copy of the affidavit was delivered to Respondent rice mills for cross examination by the Respondent. Sh. Bhawandeep Singh Sandhu Sr. Distt. Manager in his affidavit has mentioned regarding the various annexures in support of the claim petition. Despite several dates, the Respondent has not cross-examined him. Sh. Birinder Kumar Aggarwal has stated that he is not interested in cross-examination and further submit any evidence. Thus the application submitted by the respondent was dismissed. The perusal of the above facts indicates that M/s Garg Rice Mills has failed to deliver the rice as per the agreement within stipulated period. The claim of PAFC is supported with documentary evidence. That after having made the statement in detail and submissions of documents, counsel for the claimant has closed the case and prayed for award in favour of the claimant. Thus keeping in view the record and the evidence led by the claimant I am of the considered view that PAFC/claimant has established is claim for ₹ 2,73,84,762/- inclusive interest upto 31.03.2012 plus future interest till the date of actual recovery of the amount from the respondent as per the agreement. One signed copy of the award announced today on 17.06.2013 be sent to the Respondent miller under registered post and the other signed copy be sent to the M.D., PAFC/claimant. The original award with the original file be sent to the Arbitration branch, PAFC, H.O.*

Chandigarh. As and when required the Arbitration file may be requisitioned from the Arbitration Branch of P.A.F.C. Where it is consigned."

The Objecting Court noticed the pleadings while starting with the judgment, but failed to assign the reasons while declining the objections. For the sake of brevity, the relevant portion of the judgment reads thus:-

"M/s. Garg Rice Mills through its proprietor Sh. Barinder Kumar, has filed the application under Section 34 of the Arbitration and Conciliation Act 1996 alleging that the objector had entered into an agreement with respondent No. 2 for custom milling of paddy for the kharif milling season 2009-10. In consonance with the same, the objector and respondent No. 2 entered into an agreement dated October 09, 2009. Respondent No. 2 had taken signatures from the objector on blank documents in 2010 by giving a false assurance/impression to the objector that they would be using the said blank signed documents for the purpose of granting him an extension in regarding to providing the rice to the Food Corporation of India. However, the request of objector with regard to copy of said agreement was declined by respondent No. 2 out rightly. The objector was not required to hand over any rice to respondent No. 2 and further the Food Corporation of India has not been made a party, moreso, is not the aggrieved party in the claim petition, therefore, there is no cause of action accrued to respondent No. 2 for recovery. It is further averred that a dispute/difference arising out of or in any manner touching or concerning this agreement entered into between the respondent and the objector could have only resulted in an initiation of the arbitration proceedings. There being no dispute or even an iota of intention of the Food Corporation of India of a dispute/difference; there is no probability/authorisation upon the respondent to initiate the arbitration proceedings for and on behalf of the Food Corporation of India. The alleged agreement between the objector

and the respondent agrees to a period of one year for initiation of arbitration proceedings between the parties by the Miller. Accordingly, the last date for cause of action to have accrued upon the respondent could have been 31.03.2010 wherein it was required to provide the last consignment of rice to the FCI. However, the claim petition preferred by respondent No. 2 was filed on 10.10.2012 and is barred by the terms and conditions agreed between the parties. The paddy prvided to the objector for custom milling for the Kharif milling season 2009-2010 was in joint custody and accordingly it was the duty and responsibility of both the respondent and the objector to look after/manage the paddy. It is further averred that the objector had deposited Rs.1,50,000/- with the respondent at the time of signing of the agreement and had further deposited Rs.11,00,000/- for obtaining an additional grant of paddy for milling. The objector had also provided a security through a demand draft of Rs.5,00,000/- to the respondent with regard to that procurement of paddy. In consonance with the total amount of alleged paddy milled and handed over to the respondent, there is an outstanding amount of Rs.7,20,000/- towards the respondent for milling the paddy into rice. Therefore, a total of Rs.24,70,000/- is due and payable by the respondent to the objector with regard to the amount already paid as security by the objector and further the price for milling paddy into rice. The objector further made a payment of Rs.10,00,000/-, Rs.30,00,000/- and Rs.10,00,000/- to the respondent under the orders of Hon'ble High Court while availing the relief of anticipatory bail. The stock of paddy lying with the objector was also sold by the respondent under the orders of Hon'ble High Court for an amount of Rs.1,00,00,000/- approximately. The Arbitrator failed to take these amounts into consideration while passing the impugned award dated 17.06.2013 and passed the impugned award arbitrarily for the whole claim, which is liable to be set aside".

It is matter of record that the Punjab Agro had registered an FIR against the Miller in order to deposit the specific amount. All these factors would be necessary and to be considered for the purpose of adjudication of the claim, the Arbitrator has treated the claim of the Punjab Agro as sermon without referring to any documents, much less, even did not call upon them to furnish the statement of account by accepting the claim in toto.

Since, the Award is not sustainable, the parties would have resort to the provisions of Section 11(6) of the 1996 Act seeking the appointment of the Arbitrator, which shall entail into wastage of time and incurring of extra cost. In order to prevent the parties of such hardship, much less, to defray cost, with the consent of the parties, I deem it appropriate to appoint Sh. Satish Kumar Mittal, retired Hon'ble Chief Justice of Hon'ble High Court of Rajasthan as an Arbitrator who shall conduct arbitration proceedings at place of his choice. The Registry is directed to intimate Sh. Satish Kumar Mittal, regarding his appointment and seek consent. On receiving consent, he shall enter into the reference by calling the parties to file their respective claims.

It is expected that the Hon'ble Arbitrator shall decide the arbitration proceedings within in a period of six months from the date of entering into the reference.

With the aforementioned observations, the appeal stands disposed of.

21.04.2016 **(AMIT RAWAL)**
yogesh **JUDGE**