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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6504-2015 (O&M)
Date of decision : 07.04.2016

M/s Ashoka Rice Mills and another

... Appellants

Versus

Punjab Agro Food Grain Corporation Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellants.

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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 appellants-Miller is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') seeking setting aside of the Award dated 22.01.2013.

Mr. Amit Jain-I, learned counsel for the appellants submits that though the appellant did not contest the matter before the Arbitrator, owing to the registration of the FIR and had a threat of arrest, but the fact remains that the claimants had to stand on their own legs in support of the claim. The paddy was lying under joint custody at Miller which was sealed by the Punjab Agro

Food Grain Corporation Ltd., and thereafter unmilled paddy was sold in auction and realization of the amount has not been accounted for, as the claim was for cost of balance rice/paddy. Even there was a dispute with regard to the supply of certain gunny bags and this fact surfaced, during the cross-examination of the witness, RW-1, who admitted that receipt dated 13.11.2009 did not bear the signatures of the miller and but has not been noticed by the Arbitrator and therefore, the appellants are not liable to pay the amount as awarded by the Arbitrator. The genuinity of the agreement to sell was also challenged as the last page of the agreement to sell was tampered. This fact has also escaped to the notice of the Arbitrator, much less, Objecting Court, thus, the objections were falling within the realm of Section 34 of the 1996 Act. He further submits that the claim was falling within excepted clause and therefore, the Arbitrator did not have jurisdiction.

I have heard the learned counsel for the appellants and appraised the paper book. Nothing prevented to the appellants to place on record certain documents, in support of the objections and sought the indulgence of the Objecting Court as per the provisions of Section 34 (4) of the 1996 Act. The evidence brought on record before the Arbitrator has gone un-impeached. Had the appellants-Miller placed on record the receipts of the payment, much less, sought information in support of their submissions, the Objecting Court would have had an occasion to ponder upon the dispute in ascertaining whether the award is against the public policy or not. In my view, all objections as sought to be raised before the Objecting Court and as well as in this Court, were/are not falling within the realm of Section 34 of the 1996 Act. Since, the appellants did not contest the jurisdiction of the Arbitrator by filing any reply, thus, the objection qua excepted clause is deemed to have been waived as per Section 4 of the 1996 Act.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been 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 31 (3) 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 judgment 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 embarked on a path by substitution in its own view. The arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

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 claim of respective claimants to the parties to the *lis*.

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 arise from the award as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

07.04.2016 **(AMIT RAWAL)**
yogesh **JUDGE**