

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

F.A.O.No.605 of 2016 (O&M)

Date of Decision: January 29th, 2016

**M/s D.K.Rice Mills, Raikot Road V.Fauzewal, Sandhour (Malerkotla) and
another**

...Appellants

Versus

Punjab State Warehousing Corporation, Sangrur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

**Present: Mr.Pardeep Goyal, Advocate,
for the appellants.**

AMIT RAWAL, J. (Oral)

Appellant-Miller is aggrieved of the order dated 9.9.2015, whereby the objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") seeking setting-aside of the award dated 22.5.2014, has been dismissed.

Mr.Pardeep Goyal, learned counsel appearing on behalf of the appellants submits that the Punjab State Warehousing Corporation has violated Clause 11 of the agreement, much less, their own documents, while the Arbitration has announced the award to the tune of ₹3,97,872/- with interest @ 12% w.e.f. 1.4.2008 till actual realisation. He further submits that letter, Ex.C-9, clearly proves that the Miller was to lift the paddy on the basis of agreement, therefore, there could not be case of shortage. The

Objecting Court has not appreciated the aforementioned submissions and,

therefore, the order under challenge is liable to be set-aside.

I have heard the learned counsel for the appellants and appraised the paper book and am of the view that there is no substance in the aforementioned submissions as the Arbitrator has given the detailed reasons in allowing the claim and in case there was any violation, nothing prevented the Miller to file the counter-claim. In the absence of the same, the aforementioned arguments cannot be raised. For the sake of brevity, the relevant portion of the award reads thus:-

“The perusal of the letter dated 29.5.2007 (Ex.C14) addressed to the District Manager, Sangrur would go to show that the miller was directed by the State Warehouse Manager to mill 432.250 Mts paddy lying stored at SW, Sandhaur within a period of 12 days as per order dated 9.5.2007 but the miller not only failed to lift the paddy but on the contrary it transpired that the miller had got disconnected the electric connection thereby making the milling impossible. Subsequently, the respondent miller was issued letter dated 6.11.2007 (Ex.C-9) & 27.11.2007 to lift the paddy before the expiry of the milling period till 30.11.2007 with a further direction that in case the respondent miller failed to lift the paddy, the respondent shall have no claim on the paddy left unmilled and the same shall be got milled from any other mill at his risk and cost. In these premises, it stands proved that the respondent miller failed to lift the paddy as per order of the Hon'ble Court and even subsequently filed an application for withdrawal of the contempt petition fixed on 18.2.2008 as per Ex.C-10 wherein the respondent miller has submitted that he has no objection if the paddy reserved by PSWC be given to any other eligible rice miller and forego his claim to claim paddy and that the department is at liberty to get the paddy milled from any other miller by delivering the paddy and so he has no more dispute with the department. It further stands

proved that after the withdrawal of the petition, the Managing Director of the claimant corporation had issued order dated 1.4.2008 for disposal of the paddy stocks, which was reserved as per Court order and subsequently the same was disposed of at lesser price as against the CMR rates crop year 2006-07 (copy Ex.C-11). It has come in the evidence of the claimant that had the 'due rice' against the balance paddy of 3516-53 quintals which comes to 2356-08 quintals been delivered by the respondent miller to the FCI in the claimant's account, the PSWC would have received Rs.28,78,558/- from FCI whereas after the auction of the said stock, the claimant had received only Rs.26,05,460/- and as such the claimant had evidently suffered a loss of Rs.2,46,731/- as per statement Ex.C-13 proved on the record. Indubitably, since the paddy was reserved by the PSWC on the direction of the Hon'ble Court at the instance of the respondent miller, the claimant cannot be made to suffer for the eventual financial loss due to the sale/disposal of the said stock at a lesser rate during auction as well as for the loss of interest on the delayed disposal. Naturally if the stocks had been lifted by the respondent miller at the earliest and the rice delivered to the FCI within the stipulated period, the corporation would have received the amount from the FCI at an early date and also would not have to undergo the process of auction for the disposal of the said stocks and as such the respondent miller cannot escape from his responsibility to indemnify the claimant for the financial losses due to his overt or covert acts. However, in so far as, the liability of the respondents No.3 to 5, who are the guarantors, is concerned, the same cannot be adjudicated upon since the respondents No.3 to 5 were not privy to the milling agreement having arbitration clause.

Resultantly, an award is passed in favour of the claimant corporation and against the respondents No.1 & 2 to the effect that the claimant is entitled to recover a sum of Rs.3,97,872/- with interest @ 12% P.A. w.e.f. 1.4.2008 till the date of actual

realization by way of execution in the competent court of jurisdiction in accordance with law.”

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.

I am in agreement with the findings given by the Arbitrator. In my view, the aforementioned objections were not falling within the parameters of Section 34 of 1996 Act.

Accordingly, there is no merit in the appeal. The same is dismissed.

January 29th, 2016
ramesh

(AMIT RAWAL)
JUDGE