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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) 289/2015**

FOOD CORPORATION OF INDIA Appellant

Represented by: Mr.Rajeev Sharma, Advocate

versus

M/S RAJKUMAR ASHOK KUMAR & ORS Respondents

Represented by: Mr.Rajesh Chhetri,
Ms.Meenakshi Rawat, Mr.Pawan
Upadhayay, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **21.03.2016**

CM No.8698/2016

1. Issue notice.
2. Learned counsel as above accepts notice for all respondents including proposed legal heirs of deceased respondent No.3
3. The application is not opposed and is therefore allowed.
4. Amended memo of parties is taken on record.

FAO(OS) 289/2015

1. Though not for the reason recorded by the learned Single Judge, we dismiss the appeal for the reason notwithstanding disputes as per clause 21 of the agreement between the parties being required to be referred to arbitration by the designated authority from out of a panel of arbitrators maintained by ICA, the fact of the matter would remain, as recorded in the

award dated October 03, 2012, that the alleged notices dated 20/22.07, 1995 and 30.11.1997/06.12.1997 purportedly sent by the appellant to the respondent were not even proved. That apart, the statement of claim filed by the appellant is full of blank spaces. The learned Arbitrator has correctly opined that since the Supreme Court had on March 17, 1993 directed ICA to forthwith nominate an Arbitrator, appellant took no steps to ensure compliance thereof and Arbitrator was appointed only on August 15, 2003. So callous is the approach of the appellant that one full missing page in the statement of claim was not made good in spite of being told by the learned Arbitrator.

2. That apart, a finding of fact has been returned by the learned Arbitrator that there was no shortage of paddy and rice and the entire quantity stored with the respondent was duly accounted for. This is a finding of fact and while challenging the award arguments are being raised requiring re-appreciation of the evidence.

3. The appeal is dismissed in limine.

4. No costs.

CM No.9926/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

MARCH 21, 2016

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