

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

C.R. No.4540 of 2017

Date of Decision.21.07.2017

M/s Shree Ram Rice Mills

.....Petitioner

Vs

Punjab State Warehousing Corporation Ltd. and othersRespondents

Present: Mr. Mukand Gupta, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The petitioner has impugned the order dated 26.05.2017 (Annexure P-9) rendered by the Objecting Court i.e. Additional District Judge, Chandigarh whereby the application dated 16.03.2017 moved by the petitioner calling upon the Objecting Court to consider the objections only viz-a-viz the remand and not to decide the objection afresh has been dismissed.

Mr. Mukand Gupta, learned counsel appearing on behalf of the petitioner submits that this Court vide order dated 21.12.2015 while rendering decision in FAO No.8586 of 2015 preferred against the award dated 7.8.2014 whereby the Objecting Court had remanded the matter to the Arbitrator by holding that the award of the Arbitrator was non-speaking and sketchy, while dealing with the issue as to whether the Additional District Judge/Objecting Court has power to remit the matter back to the Arbitrator or not, in view of the ratio decidendi culled out by Bombay High Court in Financial Service Ltd. Vs. Kritika Nagpal in Appeal No.35 of 2013

2012 held, that the Objecting Court did not have the power to remit back the matter for arbitration. The Objecting Court had either to accept it or reject. Therefore, the finding rendered in the impugned order of hearing the objection afresh is totally baseless and misplaced. It is in this aspect of the matter, the petitioner being aggrieved has approached this Court.

I have heard learned counsel for the petitioner and appraised the paper book. The finding rendered by the Objecting Court/Additional District Judge vide order dated 26.05.2017 reads thus:-

*“7. After hearing the rival contentions and perusing the file carefully, this Court is to interpret the order dated 21.12.2005 for proceeding further in the matter. Perusal of this order reveals that it has clearly observed that the objecting court shall give advance notice to the parties while deciding the **“objections afresh”** (emphasis supplied). Otherwise, it has also been observed in the concluding lines that the element of remanding the case to the arbitrator has also to be considered. That both these findings are to be read in support to each other and they are not in contra distinction to each other. Order is to be interpreted as a whole and it cannot be read in between the lines. Obviously when the matter regarding the remand is to be considered then all the objections are required to be heard afresh as ordered by the Hon'ble High Court.*

8. With these observations the applicant at hand stands disposed of. The objections shall be heard afresh while keeping in view the mind as to whether the matter could have been remanded or not. To come upon 10.07.2017 for

arguments on objections.”

The aforementioned order has been passed by interpreting the order of this Court dated 21.12.2015 passed in the aforementioned appeal i.e. FAO No.8586 of 2015, which reads thus:-

“The present appeal has arisen out of the order, whereby Objecting Court while setting aside the award dated 07.08.2014 has remanded back the matter to the Arbitrator.

Mr. Mukand Gupta, learned counsel appearing on behalf of appellant submits, that Objecting Court has, in view of judgment rendered by Bombay High Court in Appeal No.35 of 2013 in Arbitration Petition No.47 of 2009 titled as Financial Services Ltd. Vs. Kritika Nagpal, decided on 25.06.2013, no power to remand the matter to Arbitrator except in cases where Arbitrator omits to decide the certain claims. However, the present case does not fall within those exceptions and has drawn attention of this Court to order dated 02.12.2015 passed in FAO No.8032 of 2015, where this Court has set aside the order by holding that the Objecting Court did not have the power to remit back the matter for arbitration, either had to accept it or rejected it.

Keeping in view the ratio decidendi culled out by Bombay High Court as well as the order passed by this Court in LPA No.1366 of 2012, the impugned order is hereby set aside and the matter is remitted back to the Objecting Court. On receipt of the order, the objecting Court shall give advance notice to the parties while deciding the objections afresh and shall decide the objections as early as possible preferably within a period of four months from the date of receipt of certified copy of this order.

Accordingly, the appeal is allowed.

It is made clear that the impugned order is set aside to the extent of order containing the element of remanding back to the Arbitrator.”

The application calling review of the aforementioned order at the behest of the respondents i.e. Punjab State Warehousing Corporation Limited was moved in connected matters whereby similar order was also passed and that application was rejected vide order dated 27.07.2016 by passing the following order:-

“Notice of motion.

Mr. Tribhawan Singla, Advocate, who is present in court, accepts notice on behalf of the non-applicants/appellants.

Applicant-respondent No.1 seeks review of the order dated 2.12.2015 whereby this Court had allowed the appeal and remitted the matter back to the Objecting Court to decide the objections afresh as the Objecting Court did not have the power to remit the matter for arbitration.

The order dated 2.12.2015 passed by this Court shall be indicative of the fact that nothing prevented the applicant-respondent No.1 to seek appointment of the Arbitrator afresh. Instead of seeking review of the aforementioned order, the applicant can seek appointment of fresh Arbitrator if the Court thinks fit.

With the aforementioned observation, rest of the order under challenge is affirmed.

Application stands disposed of.”

Once this Court had already clarified in the subsequent order regarding hearing the objections afresh, the apprehension of the petitioner that the Objecting Court has the power only to uphold or reject the award of the Arbitrator but cannot remit the matter back is wholly misplaced. The view expressed by me was in view of the ratio decidendi culled out by Bombay High Court and as well as by this Court in the cases referred to above that the Objecting Court has no power to remand the matter unless and until the ingredients of Section 34 of the Arbitration and Conciliation Act, 1996 are not complied with. If at all the award of the Arbitrator was sketchy, the Objecting Court is fully empowered to set aside the order, if it deems appropriate.

For the reasons aforementioned, there is no illegality and perversity in the order passed by the Objecting Court and cannot be said to be erroneous. No ground for interference is made out.

The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

July 21, 2017
Pankaj*

Whether reasoned/speaking Yes/No

Whether reportable Yes/No