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

C.R. No.5322 of 2015

M/s Guru Ram Dass Rice & Oil Mills Guruharsahai and Ors.

....Petitioners

Versus

Punjab State Civil Supplies Corporation Ltd and Anr.

....Respondents

Date of Order: 23.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Khunger, Advocate for the petitioners.
Mr. Deepak Sabharwal, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Present revision is directed against the impugned order dated 21.4.2015 (P.5) passed by learned Addl. Civil Judge (Sr. Division), Guruharsahai whereby the application submitted by the plaintiff-respondent under Section 14 of the Limitation Act, 1963 read with Section 43 of the Arbitration and Conciliation Act, 1996 (for short "the Act") seeking condonation of 12 years' delay in filing the Civil suit for recovery of Rs.46,56,898/- has been allowed.

It is stated that a dispute qua custom milling of paddy for the crop year 1997-98 between the parties had arisen wherein the respondent preferred a claim petition before the Arbitrator. Petitioner filed reply to the same by raising objections qua maintainability and jurisdiction of the Arbitrator in the following manner:

"1. That the present claim petition is without the jurisdiction of your goodself. The clauses of the alleged agreement of the alleged contract clearly states as under:

In the event of his failure to supply rice within the stipulated period he shall be liable for an interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice. The decision of the Managing Director in this behalf shall be final. Further clause 22 of the alleged contract agreement states as under:

All the disputes and differences arising out of in any manner touching or concerning this agreement whatsoever (except as to any matter the decision which is expressly provided for in the contract) shall be referred to the sole arbitration of the Managing Director by a person appointed by him in this behalf.

That as per decision of Honourable Supreme Court i.e 1989 (1) Supreme Court cases page 657, the present reference in not maintainable. The claimant has no power to refer the matter as per the alleged agreement. The honourable Apex Court of India held that "except where otherwise provided in the contract" mentioned in the agreement, the consideration to award compensation under the penal bases excluded. It means that the arbitrator cannot impose any penalty and also cannot award compensation in favour of the claimant, on the basis of penal clauses. In the case titled as Vishwa Nath Sood V/s Union of India, it was also held that if there was mentioned that the decision is with the highest authority, as in the present case the decision of Managing Director is final, no reference can be made. So the present proceedings *are null and void and without the jurisdiction."*

Despite the aforesaid objections, the respondent continued with their claim before the Arbitrator resulting into passing of the award dated 30.11.2005 vide which a sum of Rs.1,28,459/- was granted as principal amount with interest at the rate of 18% per annum w.e.f 01.9.1998 along with Rs.20,000/- as arbitration Cost. Aforesaid award was challenged by filing objections under Section 34 of the Act. The District Judge, Ferozepur vide order dated 13.8.2010 (P.8) allowed the objections holding that the Arbitrator did not have jurisdiction as the case was falling under the clause 9(i) of the agreement.

Learned counsel for the petitioner contended that the plaintiff-respondents obtained the order dated 05.3.2012 from the Managing Director wherein a decision was taken to file a civil suit and in pursuance thereof, the civil suit for recovery of Rs.46,56,898/- was filed on 17.7.2012 accompanied by an application under Section 14 of the Limitation Act for condonation of 12 years' delay i.e w.e.f 07.8.2000 till 05.3.2012. He submitted that the trial Court has erroneously allowed the application holding that the suit was presented within period of three years of judgment dated 13.8.2010 and the plaintiff has been prosecuting the matter with due diligence before the Arbitrator. In support of his contentions, learned counsel for the petitioners relies on a judgment of Hon'ble Supreme Court reported as **Ramji Pandey and Ors. Vs. Swaran Kali, 2011 AIR (SC) 489** wherein it has been held that despite the specific objection having been taken, the respondents knowing fully well that the Authority did not have jurisdiction cannot be permitted to seek condonation of delay.

Per contra, learned counsel for the respondents submitted that no doubt the agreement envisaged the interest for the delayed period at the rate of 21% i.e more than the bank interest but there were other claims also which could not have been decided by the Managing Director and therefore the matter was pursued before the Arbitrator and the proceedings culminated into passing of the award dated 30.11.2005. He submitted that money of the Government Company cannot be wasted in such a manner and for that purpose, a decision was taken to file the civil suit. The amount claimed was inclusive of interest incurred during all this period and no harm or injury could be caused to the petitioner if the suit is entertained as they shall be able to contest the case on merits, thus prayed for dismissal of the present petition.

I have heard learned counsel for the parties and perused the paper book with their able assistance.

The factum of the objections having been taken in the reply, passing of the award and that of the award having been set aside are not in dispute. The question which arise for determination by this Court is whether there was lack of diligence on the part of plaintiff-Punsup in filing the suit for more than twelver years. In other words, the question arises herein is whether the plaintiffs who obtained the decision on 05.3.2012 from the Managing Director to file the civil suit by seeking seeking condonation of 12 years' delay, had been diligent or not. Similar controversy came up before Hon'ble Supreme Court in **Ramji Pandey's case (supra)** wherein it was laid down as under:

> *" 13. The High Court considered the entire facts and circumstances of the case and then held that the aforesaid objection of the respondent is well-founded, particularly in view of the fact that at the very initial stage itself the respondent had taken a clear objection that the District Court*

did not have jurisdiction to try and decide the appeal. Not only did the appellants ignore the said objection, but the Court while allowing the application filed by the appellants, also ignored the said fact which was specifically pleaded in the objection filed by the respondent.

14.The aforesaid conclusions which have been arrived at by the High Court are relevant facts. Considering the entire records, we find that the appellants are not only negligent but have been acting and pursuing the entire matter without due diligence as would be apparent from the fact that they initially failed to pursue the suit in right earnest, having failed to appear and contest the suit, due to which an ex-parte decree had to be passed by the court. Even thereafter, they failed to file the appeal in the proper forum, which was brought to their notice right at the initial stage by the respondent's filing of an objection. Despite the said fact, they did not take any step to withdraw the same and continued with the proceedings which was void ab initio and without jurisdiction and also obtained an order in their favour. Even before the High Court, where the impugned order was passed the appellants did not appear on the date of arguments or even on the previous dates. Absence of due diligence in pursuing the matter is writ large on the face of the records. Suit of 1983 was decreed ex-parte in the year 1988 and thereafter the proceeding for setting aside the ex- parte decree is being dragged on one way or the other by filing application / appeal and is dragging the matter till date."

In the instant case also, it is evident from the objections noticed hereinabove that the jurisdiction of the Arbitrator was emphatically challenged and despite that the Punsup continued to pursue the claim before the Arbitrator. The officials of the Punsup were very well aware of the envisaged interest @ 21% which was the domain of the Managing Director. Such reckless act on behalf of the respondents-Punsup in filing civil suit by seeking condonation of 12 years' delay cannot be said to be actuation of due diligence and bonafide. All the Departments have their own independent legal branches, which are conversant with the latest laws as well as statutory provisions of the Act i.e Limitation Act etc much less terms and conditions of the agreement. Such kind of approach cannot be said to be bonafide error by taking the case within the parameters of Section 14 of the Limitation Act. All these factors, in my view, have not been taken into consideration by the court below in condoning the huge delay of 12 years, therefore, the impugned order is not only fallacious but wholly perverse.

In view of above, present revision petition is allowed and the impugned order dated 21.4.2015 (P.5) is set aside.

April 23, 2018 **`(AMIT RAWAL)**
manoj **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No