

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

**FAO No.2771 of 2017(O&M)**  
**Decided on: 21.03.2018**

M/s Gaurav Rice & General Mills, Dharamkot, District Moga  
th. Its Prop.Amit Kumar

....Appellant

Versus

Punjab State Co-operative Supply & Marketing Federation Ltd. & another

...Respondents

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA**

Present: Mr.P.K.Kataria, Advocate, for the appellant.

Mr.N.G.Sharma, Advocate, for respondent No.1.

Service of respondent No.2-Arbitrator,  
dispensed with vide order dated 01.05.2017.

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**G.S. SANDHAWALIA, J. (Oral)**

The present appeal is directed against the decision of the Addl.District Judge, Moga, whereby the petition, filed under Section 34 of the Arbitration & Conciliation Act, 1996, filed by the appellant, was allowed on 14.02.2017 and the award passed by the respondent No.2 was set aside. However, the respondent was given the liberty to make a fresh reference to the Arbitrator for adjudication of the dispute in accordance with law. Relevant portion of the order reads as under:

“14. In fact the major portion of the award relates to the said claim. The remaining portion is only with regard to the price of Bardana. In these circumstances, it would be proper to set aside the award with liberty to the Managing Director of respondent No.1 to make a fresh reference to the arbitrator for adjudication of the dispute between the parties in proper manner. Accordingly, the instant application is allowed and the impugned award is set aside. However, the respondent No.1 shall be at liberty to make a fresh reference to the arbitrator for adjudication of the dispute in accordance with law. The record pertaining to arbitration proceedings record be returned and instant file be consigned to record room.”

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Counsel for the appellant has vehemently submitted that under Section 34, the matter could not be sent for fresh reference to the Arbitrator. He has placed reliance upon the judgment in FAO-686-2012 titled *M/s Moga Roller Flour Mills Pvt. Ltd. Vs. Public State Civil Supplies Corporation Ltd. & others*, decided on 22.01.2016 and FAO-520-2012 titled *M/s Pathela Rice Mills & others Vs. Public State Civil Supplies Corporation Ltd. & others*, decided on 11.04.2016.

On close perusal of the said judgments would show that the said judgments do not support the proposition, as such, which has been advocated by counsel for the appellant. In those cases, excepted matters had been adjudicated by the Arbitrator and resultantly, the said decision had been set aside by this Court, being outside the purview of the arbitration clause without giving fresh liberty. In the present case, the award has been set aside, solely on the ground that the dispute is qua the custom rice milled, which was sought to be recovered. There was no document on record to show as to on what rate the award could have been allowed for the claim of rice and it was held that there was no evidence at all. The Arbitrator did not discuss the issue of the rate of the rice, though the same had been specifically raised by the applicant-miller in the written reply and the written arguments, filed before the Arbitrator. It was, in such circumstances, the award was set aside, with the liberty given, as such.

In such circumstances, no error, as such, could be pointed out in the order impugned. Accordingly, finding no merit in the present appeal, the same is, hereby, dismissed.

21.03.2018  
*Sailesh/Naveen*

**(G.S. SANDHAWALIA)**  
**JUDGE**

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