

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

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**CM-5390-CII-2018 in/and
FAO No.3740 of 2017 (O&M)
Date of Decision : 19.03.2018**

M/s Sohal Rice Mills, Village Jhabbal, Teh. And
Distt. Tarn Taran through its partner
Sh.Gurcharan Singh

..... Appellant

Versus

Punjab Agro Food Grain Corporation Ltd. & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Arun Abrol, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

CM-5390-CII-2018

For the reasons recorded, the application is allowed.

Documents are taken on record.

FAO No.3740 of 2017

Notice of motion.

Mr. Sunish Bindlish, Advocate has entered appearance on
behalf of respondents No.1 and 2 and accepts notice.

This appeal has been filed against the judgment dated
25.01.2017 passed by the Additional District Judge, Tarn Taran whereby the
application under Section 34(3) of the Arbitration and Conciliation Act,
1996 (for short the 'Act') filed by the appellant has been dismissed.

The brief facts are that the appellant was a miller for the respondents No.1 and 2. As per the respondents No.1 and 2, it had allotted 23677-93 quintals to the appellant for the crop year 2010-2011 but the appellant had failed to deliver 19907-92 quintals and consequently the respondents No.1 and 2 were entitled to recover a sum of Rs.4.00 crores odd under different heads. The respondents No.1 and 2 appointed the arbitrator as per the agreement. The attempts to serve the appellant were unsuccessful as both the special messenger and the registered post recorded that he was away to Delhi and thereafter, publication was made on 07.08.2013. The appellant not having appeared, an ex-parte award dated 30.10.2013 was passed against it. The objections having been dismissed the appellant is before this Court.

The sole contention raised by the appellant is that the Court did not appreciate the provisions of Section 34 (2) (a) (iii) of the Act which is to the following effect :-

“34 (2) (a) (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or.”

As per the counsel for the appellant, the daughter of the partner Gurcharan Singh was detected with Cancer on 07.09.2012 and she had to be admitted to hospital in Delhi where she unfortunately died on 03.07.2013. As per learned counsel the partner of the appellant-company was busy at all his time to attend to his daughter in Delhi and this was a fit case where it had to be held that he was 'otherwise unable to present his case'.

Learned counsel for the appellant has argued that in the first place the last document placed by the appellant on the record itself shows that his daughter was discharged from hospital in March, 2013 but in any case once as per him also she had passed away on 03.07.2013, the publication had appeared more than one month thereafter on 07.08.2013 and in these circumstances, it would not lie in the mouth of the appellant to assert that he did not know about the proceedings.

In my opinion there is something to be said on both sides. However, I can not also be unmindful of the fact that this dispute relates back to the year probably 2010-2011 and the award was passed almost 5 years ago. In the circumstances, I put it to the learned counsel for the appellant whether his client would be open to making a deposit/bank guarantee if not of the entire amount upto date atleast of the principal amount so that in the event that the award was maintained the respondents No.1 and 2 would not be unable to recover monies due to them.

Counsel for the appellant states that it would not be possible for the appellant to either make a deposit or furnish a bank guarantee. As per him the entire property of the appellant has already been sold by a bank to which also he owed money.

In the circumstances, I am constrained to dismiss the appeal.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

19.03.2018

Pooja sharma-I

(AJAY TEWARI)
JUDGE