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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 22nd October, 2018

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O.M.P. (COMM) 336/2016

RANJIT SINGH AND OTHERS

..... Petitioners

Through: Mr. Saurabh Jain and Mr. Siddharth Jain, Advocates. (M:9899030099)

versus

FOOD CORPORATION OF INDIA AND OTHERS Respondents

Through: Mr. Paritosh Budhiraja, Advocate for R-1. (M:9810100237)

Mr. Rajesh Chhetri, Mr. Rajeev Chhetri, Mr. Pawan Upadhyay and Ms. Meenakshi Rawat, Advocate for R-3, 4 & 5(D). (M:9891675255)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

I.A. 2288/2013 (delay)

1. Learned counsel for the Petitioners submits that there is a delay in the re-filing of section 34 petition against award dated 27th January, 2012. Objections were filed on 7th February, 2013. Learned counsel for the Petitioners submits that the knowledge of the award having been acquired only on 15th January, 2013, when the copy of the award was received by them from the ICA, there is in fact no delay. It is the submission of Ld. Counsel that the knowledge of the award was acquired by the Petitioners only when notice was received by them in the objection petition filed by FCI against the impugned Award. In fact upon the service of the notice in the said petition filed by FCI, the Petitioners wrote to the ICA and obtained

a copy of the award. Thus, limitation for filing the section 34 petition runs only from the said date.

2. For the reasons stated in the application, the delay in filing the section 34 petition is condoned. I.A. is disposed of.

O.M.P. (COMM) 336/2016

3. Present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (*'the Act'*) has been filed challenging the award dated 27th January, 2012 passed by the learned Sole Arbitrator under the aegis of the Indian Council of Arbitration.

4. Brief facts are that the partnership firm by the name Mahavir Rice & General Mills, Talwandi Bhai, Distt. Frozepur, Punjab had entered into an agreement dated 21st January, 1995 with the Food Corporation of India (*'FCI'*). The said Mahavir Rice & General Mills was an unregistered partnership firm. There were various partners in the said firm including one Mr. Mohinder Singh. Disputes had arisen between FCI and Mahavir Rice & General Mills, which were referred to the arbitration. In the said arbitration proceedings, Mr. Mohinder Singh was Respondent No.5. During the pendency of the arbitral proceedings, Mr. Mohinder Singh passed away and his legal heirs were served through publication. Paragraph 17 of the award is set out herein below:

“17. The claimant was directed to take appropriate action for substituted service by way of publication in the newspapers with regard to all the Respondents No.1. The claimant was further directed to issue notices to legal representative of Smt. Agya Wanti W/o Kundan Lal (dead) and Respondent No.5, Sh. Mohinder Singh (dead). Accordingly the claimant issued a

notice through the newspaper publication in Punjab Kesary and another newspaper Jag Bani dated 30.09.2010. It was noticed that the publications were not in accordance with rules. The claimant published fresh Notices in Tribune dated 16.12.2010 and Jag Bani dated 16.12.2010. Photocopy of the publications have been kept on record .”

After passing of the award, the award got challenged by the FCI in OMP (COMM) 335/2016 (Old No. OMP 450/2012). The FCI has filed a petition under Section 34 of the Act and notice in the said petition was issued to all the parties and the legal heirs of Mr. Mohinder Singh.

5. Present petition was, thereafter, filed by the legal heirs of Mr. Mohinder Singh taking two pleas i.e.,

(i) That knowledge of the award was acquired by them only when the summons were received in OMP (COMM) 335/2016 titled as ***Food Corporation of India v. Mahavir Rice and General Mills*** and

(ii) That Mr. Mohinder Singh had retired from the partnership firm vide retirement deed dated 28th July, 1994 i.e. prior to the execution of the agreement dated 21st January, 1995 with FCI.

6. The fact, that Mr. Mohinder Singh had exited the partnership firm vide retirement deed dated 28th July, 1994, is not seriously disputed either by FCI or anyone appearing on behalf of Mahavir Rice & General Mills. In fact, the petitions in respect of Mahavir Rice & General Mills being OMPs (COMM) 334/2016 & 335/2016 have been taken together today. None appears today for Mahavir Rice & General Mills. The copy of the retirement deed is on record. It is clear that even during the arbitration

proceedings Mr. Mohinder Singh had passed away. For both the reasons i.e. demise of Mr. Mohinder Singh as also his retirement from the partnership firm on 28th July, 1994, the award is held to be not binding on the legal heirs of Mr. Mohinder Singh. In view of the same, no execution proceedings can be filed by the FCI in respect of this award against the legal heirs of Mr. Mohinder Singh.

7. In view of the judgment in *Delhi High Court Bar Association & Ors. v. Govt. of NCT of Delhi & Ors.* 203 (2013) DLT 129 the court fee, if any paid, shall be refunded to the Petitioners.

8. OMP is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

OCTOBER 22, 2018/dk

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