

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

FAO No. 4361 of 2004 (O&M)
Date of decision: August 1, 2019

M/s Brij Rice Mills and another

...Appellants

Versus

Punjab State Civil Supplies Corporation Limited and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Pardeep Goyal, Advocate,
for the appellants.

Mr. R.S. Dadwal, Advocate and
Mr. Aman Chaudhary, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. The appellants seek to challenge the order of the District Judge, Sangrur, dated 6.11.2003, whereby the award of the Arbitrator has been set aside on the ground that the arbitration proceedings would be governed by the provisions of the Arbitration Act 1940 (hereinafter referred to as '**the Act of 1940**') and not under the Arbitration and Conciliation Act 1996 (hereinafter referred to as '**the Act of 1996**').

2. In brief, a few facts that need to be noticed for adjudication of the controversy is, that an agreement dated 2.12.1993 was entered into for custom milled rice between the appellants and the respondent (PUNSUP). A dispute arose between the parties, namely the appellants and the respondent

—PUNSUP, on account of several issues arising namely, out of a claim

toward interest on delayed payments , incidental charges etc. A legal notice dated 25.01.1995 was sent by the appellants to the Managing Director PUNSUP for its claim and when the amount was not settled a request was sent on 10.2.1995 for appointment of an Arbitrator. As there was no response, the appellants thereafter filed an application for appointment of an Arbitrator before the Civil Judge, Sunam and vide order dated 24.12 1997 the Civil Judge, Sunam, directed the PUNSUP to appoint an Arbitrator. Sh S.N. Aggarwal was appointed as an Arbitrator by order dated 27.2.1998 but before he could have given an award he died. Consequently, Sh S.C. Goyal was appointed, who passed his award dated 14.1.2001 in favour of the appellants. This award was challenged by the PUNSUP before the Civil Judge, Sangrur, on the ground that the award was not within four months, as envisaged under Section 28 of the Act of 1940. This application was contested by the appellants before the Civil Judge (Senior Division), Sangrur, who vide order dated 9.2.2002 returned the application to file the same before the District Judge, Sangrur, on the ground that he had no jurisdiction to entertain the application. The District Judge, Sangrur, on an application filed under section 34 of the Act of 1996 held that the award is non est as the same was beyond a period of limitation as the proceedings would be under the Act of 1940. The District Judge, Sangrur, held that the dispute would be governed by provision of the Act of 1940 and not the Act of 1996. Aggrieved, this appeal has been filed by the miller seeking the award to be upheld.

3. The only question that needs adjudication in the instant appeal is, whether the order of the District Judge is liable to be upheld wherein he

has held that the Arbitrator so appointed had to pass an award under the provisions of the Act of 1940 and not under the Act of 1996.

4. The Ordinance which was promulgated by the President of India on the 16th January, 1996 was brought into force with effect from the 25th January, 1996. The Arbitration and Conciliation Bill, 1996, was passed by both Houses of Parliament and received the President's assent on 16th August, 1996 and came on the Statute Book as The Arbitration And Conciliation Act, 1996 (26 of 1996). The appellant had sent his first notice raising a claim dated 25.01.1995 to the Managing Director, PUNSUP and when the amount was not settled a request was sent on 10.2.1995 for appointment of an Arbitrator. As per Section 21 of the Act of 1996, arbitral proceedings in a dispute would commence on the day when a request that the dispute be referred to the arbitration is received by the respondent. Section 85 of the Act of 1996 pertains to the repeal and saving clause of the Act of 1940. Section 85 (2) of the Act of 1996 reads that the provisions of the Arbitration Act, 1940 would apply in relation to the arbitral proceedings which commenced before the Act of 1996 came into force, unless otherwise aggrieved by the parties. In a judgment rendered by the Supreme Court in **Shetty's Constructions Co. Pvt. Ltd. V. Konkan Railway Construction 1999 (4) RCR (Civil) 447**, it has been held that arbitral proceedings would be deemed to have commenced on a date when a request for the dispute to be referred to arbitration is received by the respondent. In the instant case, the appellants had sent a request for arbitration on 10.2.1995 for appointment of an Arbitrator which was prior in time to Act of 1996 coming into effect. Therefore, in the instant case, the arbitration proceedings would

be governed by the Act of 1940. Reliance in this regard can be placed upon the judgment rendered in **Shetty's Constructions Co. Pvt. Ltd. (supra)** and **Mir Singh and others Versus M/s Puri Constructions (P) Ltd. 2004 (4) R.C.R.(Civil) 267.**

5. The judgments as relied upon by the learned counsel for the appellants are distinguishable. In **Mahanagar Telephone Nigam Limited Versus Unibros & Ors. 2003 (105) DLT 837**, a dispute arose as to whether the award ought to have been passed under the Act of 1940 or the Act of 1996. The first Arbitrator was appointed under the 1940 Act, who gave an interim award, which was subsequently challenged. The award of the Arbitrator was set aside and there was a fresh appointment of an Arbitrator. The fresh adjudication specifically ordered by the Court was to be held under the Act of 1996, though the proceedings had culminated in the impugned award under the Act of 1940. The facts would not be applicable in the instant case since there was no specific order by the Court that proceedings by the fresh Arbitrator would be under the Act of 1996. In **M.M.T.C. Versus Sterlite Industries (India) Ltd. 1997 (1) R.C.R. (Civil) 686**, the question before the Hon'ble Supreme Court was regarding the appointment of an Arbitrator and did not pertain to the issue whether the Act of 1940 would be applicable. The Hon'ble Supreme Court, while deciding the question regarding appointment of an Arbitrator clearly held that since the arbitral proceedings in the present case commenced after the Act of 1996 had come into being, the provisions of the new Act would apply. Even in the judgment rendered in **Punjab State Co-operative Supply and Marketing Federation Ltd. Versus M/s Shiv Rice and General Mills**

2000 (4) R.C.R. (Civil) 270, this Court held that in the failure of any material on the record to show that a request had been made for appointment of an Arbitrator before 25.1.1996, the Act of 1996 would be applicable. The case law as cited does not advance the contention of the appellants.

6. Though the District Judge rightly came to the conclusion that the Act of 1940 would be applicable he erred in setting aside the award passed under Section 34 of the Act of 1996. At best, he should have remitted the matter back to the Principal Civil Court having the jurisdiction to entertain the objection under the Act of 1940. The Principal Civil Court is defined under Section 2 (c), which would mean a civil court having jurisdiction to decide the question forming subject matter of reference if the same had been subject matter of the suit, whereas the definition of a 'Court' under the new Act of 1996, means a Principal Civil Court of original jurisdiction in a District. The District Judge could not be deemed to be a 'Court' under the provision of Act of 1940 and, therefore, this Court has no hesitation in holding that District Judge usurped the said jurisdiction.

7. For the reasons afore-stated, the appeal is allowed, the impugned order of the District Judge is set aside, leaving the parties to avail their remedies in accordance with law.

August 1, 2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No