

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

FAO No. 1816 of 2005 (O&M)
Date of decision: 15.7.2019

M/s Jhalli Rice Mills and others

...Appellants

Versus

Punjab State Cooperative Supply & Marketing Federation Limited and
another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. H.S. Saggu, Advocate,
for the appellants.

Mr. A.P.S. Mann, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. This appeal has been filed seeking to challenge the impugned judgment dated 8.12.2004 passed by the District Judge, Sangrur, whereby the objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short '**the Act**') against the award of the Arbitrator dated 21.3.2001 has been dismissed.

2. In brief, a few facts need to be noted for proper appreciation of the case. The appellants and the respondents had entered into an agreement dated 10.10.1998 for shelling of paddy for the crop year 1998-1999 to be supplied by the respondents under the terms and conditions agreed between them. As per the agreement, the respondents supplied 70565 bags of fine paddy weighing 45867.25 quintals of rice by 31st December, 1999.

However, the appellants failed to adhere to the delivery of rice in terms of the agreement, thereby committed breach of trust and thus became liable to pay the cost of 7523.88 quintals of rice at the rate of ₹873.73, total amounting to ₹65,73,840/- recoverable for balance paddy i.e. 11458.85 quintals, in terms of the agreement. Since a dispute arose between the parties, a notice dated 30.5.2000 was served upon the appellants, claiming therein an amount of ₹74,21,621/-, but neither any reply was given nor any amount was deposited by them. Thereafter a notice dated 2.11.2000 was sent by the Arbitrator to the appellants to file reply to the aforesaid arbitration on 6.12.2000 at 11 a.m. but the registered notice was received back undelivered on 7.11.2000 with the remarks 'refused'. The Arbitrator in the interest of justice gave another opportunity to the appellants and sent another notice dated 6.12.2000 to them, which was also received undelivered on 21.12.2000 with the remarks 'refused'. In view of the refusal to accept notice, the appellants were deemed to have been served and ex-parte proceedings were initiated against them. The Arbitrator, after appreciating the evidence brought on record, came to the conclusion that a sum of ₹74,21,621/- is recoverable from the appellants. Aggrieved against the award, the appellants filed objections under Section 34 of the Act, primarily on the ground that they never received a copy of the award from the Arbitrator and rather they came to know of the ex-parte award only when the execution proceedings were initiated before the Civil Judge (Senior Division), Barnala. It was also alleged that the Arbitrator was bound to send notice to all the partners of the appellant—firm, but he did not send any copy to any of the partners of the firm and thus the award was vitiated.

The District Judge, while deciding the application under Section 34 of the Act held that the objections filed by the appellants are barred by time and dismissed the same. Aggrieved against the judgment, the instant appeal has been filed.

3. Learned counsel for the appellants argues that the District Judge has wrongly held that the objection petition was barred by time. It is submitted that the appellants came to know of the exparte arbitral award only when the execution proceedings were initiated by the respondents in the Civil Court. The execution petition was filed on 9.10.2001, in which notices were issued to the appellants for appearance on 8.12.2001. The appellants received the notices on 9.11.2001 thus got the knowledge of the ex-exparte award only on 9.11.2001. Immediately thereafter on 28.1.2002 they filed the objection petition, which was well within time of three months prescribed under Section 34 (3) of the Act. However, the District Judge ignored this fact, while passing the impugned judgment.

4. Per contra, learned counsel appearing on behalf of the respondents, while supporting the impugned judgment, submits that the District Judge has rightly held that the appellants have not mentioned on which date they had put in appearance before the Additional Civil Judge (Senior Division), Barnala and therefore, it would be presumed that the appearance was put in promptly that showed that the appellants were aware of the award in the year 2001 and therefore, the objection petition was barred by time.

5. I have heard learned counsel for the parties and have gone through the impugned judgments as well as the award.

6. As per Section 34 of the Act, an award of an Arbitrator can be challenged within a period of three months as specified under Section 34 (3) of the Act with a further extension of 30 days. Section 31 (5) of the Act mandates that a copy of the award has to be delivered to each party to the arbitration. The delivery of arbitral award under sub section 5 of Section 31 of the Act is to be complied with, as is evident from sub section 5 itself, which reads “*after the arbitral award is made, a signed copy shall be delivered to each party.*” On receipt of the said award, the period of limitation would commence for setting aside the award.

7. In the instant case, the appellants did not put in appearance before the Arbitrator despite notices having been sent to them, which resulted in ex-parte award being passed against them. It is argued by the appellants that there was non-compliance of Section 31 (5) of Act, as copy of the award was not supplied to them and they came to know about the passing of the award only when execution application was filed before the Civil Judge (Senior Division), Barnala. A request was made for the copy of the award, but as it was not supplied to them and thereafter a certified copy was obtained and objections filed. The District Judge, on a perusal of the record, took note of the fact that a copy of the award had been sent to M/s Jhalli Rice Mills, Rajgarh Road, Dhanaula, District Sangrur, through registered post, vide letter dated 21.3.2001 and the same was received back with an endorsement that it was refused to be accepted. A refusal of a letter would raise the presumption that the appellants were aware of the contents of the registered letter sent by the Arbitrator and, therefore, had refused to accept the same. The copy of the award was sent on the same address as

available with the Arbitrator on the record and there is nothing to show that the Arbitrator or the respondents herein had been intimated about the change of address. A party who is avoiding receipt of the award, cannot be permitted to hold the award in abeyance. Section 3 of the Act pertains to receipt of written communication and it is specified that any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address; and a written communication is deemed to have been received, if it is habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it. Both the Bombay High Court and the Delhi High Court dealt with a similar situation and interpreted Clause 31 (5) and Section 3 of the Act and it was held that once an envelope has been sent to a correct address and party refused to accept the same, it would amount to good service. Reference in this regard is made to the judgments rendered by the Bombay High Court in **Jenjon Retail and Services Pvt. Ltd. V. Lavasa Corporation Ltd. 2016 SCC Online Bom 5321** and the Delhi High Court in **Tata Capital Financial Services Ltd. Versus A.G. Aerovision Electronics Pvt. Ltd. and others 2018 (4) AD (Delhi) 73.**

8. In the instant case, the Arbitrator had sent a copy of the award by registered post on 21.3.2001 to the appellants' known place of business as mentioned in the agreement but they 'refused' to accept the same on 26.3.2001. A refusal would be deemed that copy the award has been served upon the addressee. Admittedly, objections were filed and, therefore, taking the date 26.3.2001 as service of the award, the period of three months would

come to end on 25.6.2001, whereas the objections were filed on 28.1.2002, which was apparently barred by time. It is settled law that period of limitation cannot be condoned.

9 In view of the above, there is no infirmity or illegality in the impugned order passed by the District Judge. Consequently, the appeal is dismissed.

15.7.2019	(JAISHREE THAKUR)
prem	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No