

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

FAO No.1851 of 2008 (O&M)
Date of Decision: February 6, 2019

M/s Luxmi Industries

...Appellant

Versus

The Punjab State Cooperative Supply and Marketing
Federation Ltd. and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Parvez Chugh, Advocate
for the applicant-appellant.

Ms. Deepali Puri, Advocate
for respondents No.1 and 2.

JAISHREE THAKUR, J.

CM-8475-CII-2015

1. This is an application moved by the applicant-appellant under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence in respect of Annexures A3 to A7, which are statements of the witnesses and copy of the judgment dated 01.03.2014 passed by the learned Sub Divisional Judicial Magistrate, Guruhar Sahai in case FIR No.92 dated 18.09.2001, registered under Sections 406, 420, 467, 468, 471, 477-A, 120-B of Indian Penal Code and Section 7 of Essential Commodities Act.
2. Learned counsel for the applicant-appellant submits that during the pendency of the main appeal, the partners of the appellant-firm as well

as other accused have been acquitted in the criminal case pertaining to the misappropriation of the paddy in dispute.

3. On the other hand, learned counsel for the respondent-Markfed submits that these are official and undisputed documents, being part of the judicial record and he would have no objection, if these documents are taken on record by way of additional evidence.

4. In view of the above, the application in hand stands allowed and the Annexures A-3 to A-7 are taken on record by way of additional evidence and the same are exhibited as Ex.AD-1 to Ex.AD-5.

FAO-1851-2008

1. The appellant herein seeks to challenge the order dated 14.02.2008 passed by the District Judge, Ferozepur dismissing the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award of the Arbitrator dated 30.07.2004.

2. In brief, the facts as stated are that respondent-Markfed and the appellant herein entered into an agreement dated 29.02.1996 for shelling of the paddy. In the year 1994-95, the respondent-Markfed supplied 19603 bags weighing 12741.95 quintals of IR-8 quality and 41363 bags weighing 26885.95 quintals of fine variety to the appellant-Miller for custom milling. Out of the said quantity of paddy, 3745 bags weighing 2434.25 quintals of fine variety was transferred to other millers. It is stated that as the appellant-miller could not mill the total paddy, as such, 10304 quintals of IR-8 and 423.15 quintals of fine variety was found short. The respondent-Markfed lodged claim of ₹ 95,97,796/- on account of interest, economic cost, the cost of bardana etc. The appellant-miller resisted the claim of

Markfed before the Arbitrator, but the appellant-miller was not given any opportunity to defend the case and was wrongly proceeded against ex parte. The Arbitrator passed the award for ₹ 95,22,973/- with future interest @ 21% per annum w.e.f. 01.01.1999 till the date of recovery. Aggrieved, the appellant challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 *inter alia* taking the plea that the Managing Director had no power to appoint the Arbitrator, as it was the matter within his own jurisdiction. It was claimed that only those matters are to be referred to the Arbitrator, the decision of which is not given in the agreement, apart from raising the contention that the award of the arbitrator dealt with the dispute, which is not contemplated or falling within the terms of submission of reference to the Arbitrator. The objections came to be dismissed by the District Judge, Ferozepur, which has led to the filing of the instant first appeal.

3. Mr. Parvez Chugh, learned counsel appearing on behalf of the appellant submits that both the award as well as the order of the District Judge, dismissing the objections, are liable to be set aside, as the very subject matter of the dispute could not be referred to the Arbitrator. It is contended that as per the clause 20 of the agreement, which pertains to referring disputes and differences to the Arbitrator, it has been clearly stipulated that *“All the disputes and differences arising out of or in any manner touching or concerning this agreement whatsoever (except as to any matter the decision of which is expressly provided for in the contract) shall be referred to the sole arbitration of the MD, Markfed or any person appointed by him in this behalf”*. It is further argued that in the agreement,

it has clearly been mentioned that in case of shortfall or delay, the recovery can be made at the rate of 1.5 times of the economic cost of paddy equivalent to shortage and if the failed to supply the rice within time, respondent-Markfed would be entitled to interest @ 21% per annum on the economic cost of the left over quantity of paddy rice and the decision of the Managing Director of Markfed would be final. It is submitted that the relevant portion of clause 5 and 6 of the agreement have to be read together with the arbitration clause 20. It is argued that a similar issue came up before this High Court in ***CR No.1780 of 2001*** titled as ***Shree Krishna Rice Mills vs. The Punjab State Co-op. Supply & Marketing Federation Ltd.*** ***2003(3) RCR (Civil) 254*** wherein clauses 5 and 6 of the agreement thereunder are pari materia with the clauses in the present agreement, came for judicial scrutiny and it was held as under:-

“12. Therefore, the combined reading of Clauses 18, 5 & 6 of the aforesaid agreement, clearly show that all disputes between the Markfed and the miller were liable to be referred to the arbitration concerning the agreement except disputes regarding the matters, the decision of which is expressly provided for in the contract. Under Clauses 5 & 6 of the aforesaid agreement, the decision with regard to 1.5 times economic costs and interest @ 21% is clearly provided in the agreement itself and as such, the aforesaid matters were not liable to be referred to the Arbitrator and reference in this regard was beyond the scope of arbitration clauses and the proceedings before the Arbitrator were clearly liable to be terminated on the short ground alone. In such circumstances, neither the Managing Director had any authority to refer

aforesaid dispute to the Arbitrator, nor the Arbitrator had any jurisdiction to continue with the proceedings under any circumstances. The observation of the learned Additional District Judge at page 13 of the Judgment that the claim with regard to the economic cost and interest was liable to be decided by the Arbitrator and the dispute is not frivolous, is not based on the appreciation of Clause 18 read with Clauses 5 and 6 of the agreement but he has misinterpreted these clauses and had failed to appreciate the same properly and as such, has misdirected himself. Consequently, the findings of the Additional District Judge on this score cannot be sustained.”

4. Per contra, learned counsel for the respondent-Markfed argues that the award of the Arbitrator is in consonance with the agreement entered into between the parties and the objections of the appellant have been rightly dismissed by the District Judge, Ferozepur, while praying that the instant appeal too liable to be dismissed.

5. I have heard learned counsel for the parties, apart from perusing the record.

6. For ready reference, relevant portion of clauses 5 and 6 of the agreement entered into in the instant case are reproduced as under:

“Clause 5

(i & ii) xxx xxx xxx

iii) In case there is shortfall in the recovery of rice provided in sub-clause (i) above the Miller shall pay to the Markfed the cost of paddy equivalent to the shortfall at the rate of 1 ½ times of the economic cost of paddy.

Clause 6

iii) xxx xxx xxx In the event of his failure to supply rice

within the stipulated period, he shall be liable for an interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice. The decision of Markfed, Managing Director in this behalf shall be final.

7. Clauses 5 & 6 of the agreement entered into in ***Shree Krishna Rice Mills vs. The Punjab State Co-op. Supply & Marketing Federation Ltd. (supra)*** are reproduced as under:-

“Clause 5:

I & II xxx xxx xxx III) In case there is a shortfall in the recovery of rice provided in Sub-clause (1) above the miller shall pay to the Markfed the cost of paddy equivalent to the shortfall at the rate of 1.5 times the economic cost of paddy.

Clause 6:

I, II & III. xxx xxx xxx In the event of his failure to supply within the stipulated period, he shall be liable for an interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice. The decision of the Markfed Managing Director in this behalf shall be final.”

8. It would also be worthwhile to mention that Special Leave to Appeal (Civil) No.3826 of 2006 filed in the aforesaid judgment in ***Shree Krishna Rice Mills vs. The Punjab State Co-op. Supply & Marketing Federation Ltd. (supra)*** was dismissed.

9. Thus, a reading of the aforesaid clauses clearly reflects that dispute/claim of shortage of rice or delayed supply of rice, are matters which fall in the excepted category, are to be taken up by the Managing Director of the Markfed, whose decision would be final.

10. In view of the above, this court is of the opinion that since the

disputes were liable to be adjudicated by the Managing Director itself, the reference to the arbitrator could not have been made and the arbitrator clearly had no jurisdiction to pass the award. It is held that economic cost, award of interest etc. is covered by Clauses 5(iii) and 6(iii) of the agreement and as such, the award of the arbitrator is without jurisdiction. Resultantly, the impugned order passed by the District Judge, Ferozepur as well as the award of the arbitrator are hereby set aside.

11. The appeal stands allowed accordingly. However, the Managing Director is at liberty to decide the dispute afresh in accordance with law, after summoning the record from the District Judge as well as the Arbitrator.

February 6, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No