

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

FAO-10049-2014 (O&M)

Date of Decision: October 18, 2019

M/s Shankar Rice Mills

..... Appellant

VERSUS

Punjab State Co-operative Supply & Marketing Fed. Ltd. and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Mukand Gupta, Advocate
for the appellant.
None for respondents No. 1 and 2.

JAISHREE THAKUR, J.(Oral)

The instant appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 seeking to challenge the order of the Additional District Judge, Sangrur dated 02.09.2014 by which the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 against the award of the Arbitration were dismissed.

In brief, the facts are that a milling agreement was entered into between the respondents No. 1 and 2 and the appellant-M/s Shankar Rice Mills through its partner- Sh. Gauri Shankar. On account of a dispute that arose between the parties the respondent-Corporation filed a claim petition on 19th June 1997 seeking an amount of ₹23 lacs on account of short supply of rice towards the paddy that was given for milling. The Arbitrator commenced proceedings but was unable to secure the presence of the appellant herein and ultimately directed that a public notice be issued.

However, the District Manager, Markfed, Sangrur by a letter dated 14.01.2003 furnished the correct address of Sh. Gauri Shankar to the Arbitrator. As per the letter, it was clearly stated that Sh. Gauri Shankar s/o Mangat Rai has changed his address and his latest address is #Gauri Shankar Mittal, Backside Malwa Gas Agency, Malerkotla, District Sangrur. Consequent to the fresh address having been supplied, the Arbitrator by his order dated 14th June 2003 directed that Sh. Gauri Shankar be served at his new postal address. Thereafter, on service, the appellant herein put in appearance and participated in the arbitration proceedings, which led to passing of an award dated 31.10.2003. Copy of the said award was sent by registered post to Sh. Gauri Shankar at his previous address and since it was not served it was returned back undelivered. Execution proceedings were initiated against the appellant herein and it is thereafter that he became aware of the award having been passed.

Aggrieved against the said award, objections were filed on 24.04.2009 taking the plea that he had never received a copy of the award as mandated under Section 31(5) of the Arbitration and Conciliation Act, 1996. However, the objections were dismissed by the Additional District Judge as being time barred.

Aggrieved against the order, the instant appeal has been filed.

Mr. Mukand Gupta, learned counsel for the appellant raises a contention that the record would reveal that the copy of the award which was to be furnished upon the appellant was sent at the old address, despite the fact that the Arbitrator had been made aware of the change of the address of the appellant. He relies upon the proceedings of the Arbitrator

dated 14.01.2003, wherein the Arbitrator had issued fresh notice upon the appellant at the fresh address. He submits that while passing the award the old address of the appellant has been taken into account and consequently the registered envelop was sent there, which was returned undelivered and consequently the award had not been delivered. It is only on coming to know of the proceedings initiated by the Executing Court on 22.04.2009 about the award and consequently, within a period of 2 days the objections were filed.

None appeared on behalf of the respondents No.1 and 2 today.

I have heard the learned counsel for the appellant and with his assistance have also gone through the record. The only question that is to be determined by the Court is whether the objections could have been decided purely on the sole ground that the same were time barred. A reading of Section 31(5) of the Arbitration and Conciliation Act, 1996 clearly states that after the arbitral award is made “a signed copy shall be delivered to each party”. The record itself would reflect that there was a change of address and the Arbitrator was aware of the said change, however he did not reflect the same in the award that was passed. With the result a copy of the award was sent at the old address which was returned undelivered. The Supreme Court in several judgments has held that a copy of the signed award is to be delivered to the parties in consonance with Section 31(5) of the Arbitration and Conciliation Act, 1996. In this regard, reference may be made to judgment passed by the Hon'ble Supreme Courts titled as ***Benarsi Krishna Committee vs. Karmyogi Shelters Pvt. Ltd., 2012 (4) RCR (Civil) 584***, while further holding that in case a copy of the signed

award has not been delivered to the party itself, there would be non-compliance of Section 31(5) of the Arbitration and Conciliation Act, 1996. The said judgment has subsequently been followed in **Harchand Singh vs. M/s Reliable Agro Engineering Services Pvt. Ltd., 2010(4) ArbiLR132** and **Bharat Sanchar Nigam Ltd. vs. Haryana Telecom Ltd., 2010(3) ArbiLR 460 ”**

The question of limitation has also been decided by the Supreme Court in judgment rendered in **Union of India vs. Tecco Trichy Engineers & Contractors, 2005(2) RCR (Civil) 420**, wherein it has been held that the date for computing the period of limitation would be when a copy of the award has been delivered upon the party and therefore, this Court finds that the District Judge has erred in dismissing the objections on the ground of limitation without taking into account the fact that there was non-delivery of the award by the Arbitrator since the same was delivered at the old address. The order of the Addl. District Judge dated 02.09.2014 is hereby set aside. The case is remanded back to the District Court to decide the objections afresh on merits.

Parties are directed to appear before the Addl. District Judge, Sangrur on 18th of December, 2019.

The record of the lower Court as well as of the Arbitration be also sent back.

October 18, 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes