

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

FAO No. 3009 of 2013 (O&M)
Date of decision: February 6, 2019

Punjab State Warehousing Corporation

...Appellant

Versus

M/s Mahavir Rice Mills and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Harsh Aggarwal, Advocate,
for the appellant.

Mr. S.K. Singla, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. The appellant herein seeks to challenge the order dated 29.1.2013 passed by the Additional District Judge, Patiala, dismissing the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “**the Act**”), for setting aside the award of the Arbitrator dated 25.5.2009.

2. In brief, the facts are that the respondent No. 1 was allotted paddy for milling by the appellant for the crop 2003-2004. An agreement dated 1.10.2003 was entered between the parties, which was signed by one Amar Nath on behalf of respondent no1 and the Managing Director of the appellant. During the course of dealings between the parties, paddy was supplied to the respondent No. 1 but it failed to supply in terms of the

agreement and consequently a dispute arose between the parties. As per Clause 22 of the agreement dated 1.10.2003, Sh. D.K. Gupta was appointed the Sole Arbitrator by the Managing Director of the appellant by order dated 11.7.2005. The appellant herein lodged a claim for recovery of ₹25,25,909/- before the Arbitrator to which a reply was filed and a counter claim was also raised claiming a sum of ₹5,50,000/- as damages. Adequate opportunity was given by the Arbitrator to both the parties to record their evidence and on hearing the respective arguments, the Arbitrator declined the claim lodged by the appellant as well as the counter-claim filed by the respondent No. 1. Aggrieved against the said award, the appellant herein filed the objections under Section 34 of the Act pleadings that the claim of the appellant had been wrongly dismissed on the ground that the appellant had failed to prove the valid agreement between the parties, as columns of the agreement had been left blank. It was argued that the Arbitrator wrongly held that the agreement had not been signed by an authorized person and the signatures of the said person did not tally with his signatures on the receipt, which the receipt is issued as against the paddy that was supplied to the respondent no1. It is also argued that the Arbitrator wrongly observed that the claim of the appellant was barred by limitation and that the Arbitrator did not have jurisdiction to adjudicate the matter.

3. Mr. Harsh Aggarwal, learned counsel appearing on behalf of the appellant herein, submits that if one of the partners of a firm enters into a contract and other partners do not raise any objection to the same, the said contract would be valid. In this regard, reliance is placed on a judgment

rendered in **Sanganer Dal and Flour Mill Versus F.C.I. and others 1992**

AIR (SC) 481, while further relying upon a judgment rendered in **Indian Oil Corporation Ltd. Versus J.N. Marshal and Co. & Ors. 2000 (2) Arb LR 578**, which is on the similar line. In **Indian Oil Corporation Ltd.'s (Supra)**, Section 19 (2) of the Partnership Act, 1932 has been discussed, which pertains to implied authority of a partner. It is argued that Amar Nath was a partner in the firm and even though he might not have had due authorization there was an implied authority behind his act since no objection was raised by the other partner to him entering into the contract and acting on the same.

4. On the other hand, learned counsel appearing on behalf of the respondent no1 would rely on a judgment rendered in **Food Corporation of India, Barah Khamba Road, New Delhi Versus M/s Rama Mills Shahbad Markanda, Tehsil Tanesar PLR 1988 (1) 701**, to submit that according to Section 19 (2) (a) of the Indian Partnership Act, a partner has no implied authority to submit a dispute relating to the business of a firm to arbitration, which necessarily mean that there has to be an express authority in favour of the partner to enter into an arbitration agreement and in the instant case, there was no express authority in favour of the partner Amar Nath to enter into the said agreement. It is also argued that the Arbitrator did not have jurisdiction to entertain the claim. It is argued that as per Clause 20 of the Agreement, the claim of the appellant came within the ambit of excepted Clause, meaning thereby the dispute had to be settled by the Managing Director himself and the matter could not have been referred to the Arbitrator. In this regard, reliance was placed on a judgment rendered in

M/s Shree Krishna Rice Mills Vs. The Punjab State Cooperative Supply

and Marketing Federation Ltd. 2003 (2) Civil Court Cases 167, which has been affirmed upto the Supreme Court since the Special Leave Petition against that was dismissed.

5. I have heard the counsel for the parties and with their able assistance have gone through the pleading as well the case law cited.

6. An argument has been raised that Sh. Amar Nath being a partner had the implied authority to enter into the agreement with the appellant and the Arbitrator erred in relying on a judgment rendered in **Food Corporation of India, Barah Khamba Road, New Delhi** (supra), which was not applicable to the facts of the instant case. In order to appreciate this argument Sections 18,19 and 22 of the Act have to be gone into. Section 18 of the Indian Partnership Act postulates that a partner of a firm is also an agent of the firm. Furthermore, Section 22 specifies that in order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm-name, or in any other manner expressing or implying an intention to bind the firm. However, the authority is tempered with a restriction as specified in section 19 (2) of the Act.

7. Section 19 (2) of the Indian Partnership Act reads as:-

“19. Implied authority of partner as agent of the firm.—

(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his “implied authority”.

- (2) *In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—*
- (a) *submit a dispute relating to the business of the firm to arbitration,*
 - (b) *open a banking account on behalf of the firm in his own name,*
 - (c) *compromise or relinquish any claim or portion of a claim by the firm,*
 - (d) *withdraw a suit or proceeding filed on behalf of the firm,*
 - (e) *admit any liability in a suit or proceeding against the firm,*
 - (f) *acquire immovable property on behalf of the firm,*
 - (g) *transfer immovable property belonging to the firm, or*
 - (h) *enter into partnership on behalf of the firm.”*

8. In order for the court to appreciate whether there was implied authority to act on behalf of the other partners, it is noted that none of the partners have stepped into the witness box to submit that the agreement has not been entered into by a duly authorized person. No objection was taken by the other partners that the agreement had not been entered into at the time of delivery of the paddy. This conduct would leave a person with the impression that the agreement had been signed with the concurrence of all, binding both the partners and the firm. Since there is an arbitration clause in the said contract, it would then bind the other partners as well. This view is fortified since the firm also raised a counter claim before the Arbitrator which came to be dismissed. Having acted upon the said agreement dated 1.10.2003 for custom milling of rice and failing to deliver as per schedule and specification, the respondents cannot be permitted to take up the plea

that their partner was not authorized to enter into the agreement. In a similar circumstances, the Supreme Court in **Sanganer Dal and Flour Mill (supra)** held that contract would be valid and binding upon all partners, in a given situation when other partners do not raise an objection thereto. The judgment relied upon in **M/s Rama Mills Shahbad Markanda (supra)** is distinguishable and not applicable to the facts of the instant case where the partners did not object to the contract and even filed a counter claim before the Arbitrator. Therefore, in view of the discussion above, the finding of the Arbitrator and the District Judge is set aside. It is held that the agreement entered into is binding on the firm and the partners.

9. An argument has also been raised that the District judge has erred in dismissing the claim raised on the respondents as there was a shortage of rice as supplied to FCI, as well as the fact that it was not supplied within time and there were certain deviations in the specifications. However, as far as this argument is concerned, the court finds no merit in the same. The matters as referred to the Arbitrator fell within the excepted matters which could not have been referred to the Arbitrator and were within the jurisdiction of the Managing Director himself. Major claim of the appellant is related to economic cost of non supply of paddy and interest thereon, which decision was within the purview of the Managing Director himself. In view of the settled proposition in **Shree Krishna Rice Mills vs. The Punjab State Co-op. Supply & Marketing Federation Ltd. 2003(3) RCR (Civil) 254**, 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. Therefore, there is no infirmity in the

finding of the District Judge.

10. In view of the above, the appeal stands partly allowed. However, while dismissing the appeal as far as regards the jurisdiction of the Arbitrator is concerned, it would not be a bar on the appellant to claim compensation and interest, if due above, by filing the claim before the competent authority in accordance with law and the findings recorded herein would not come in the way of adjudication of the same.

11. The appeal stands partly allowed.

February 6, 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No