

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : January 22, 2020

1. FAO No. 2244 of 2006 (O&M)

Chairman Punjab State Agricultural Marketing Board, Chandigarh
and another

....Appellants

versus

M/s Shanti Sarup Singla and another

....Respondents

2. Civil Revision No. 3625 of 2012 (O&M)

Punjab State Agricultural Marketing Board

....Petitioner

versus

M/s Shanti Sarup Singla

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. S.P.Garg, Advocate for the appellants/petitioner

Mr. Ankur Gupta, Advocate, for the respondent

Fateh Deep Singh, J. (Oral)

The undisputed facts of this revision petition are that the revisionist Punjab State Agricultural Marketing Board (in short, the

Mandi Board) and respondent-firm M/s Shanti Sarup Singla (in short, the Contractor) entered into an agreement dated 12.4.1985 on the basis of tenders having been invited by the revisionist for the construction of 12000 M.T. capacity Godown at Dhuri which was allocated to the Contractor and written agreement had come about between the two. Subsequently a dispute has arisen between the Mandi Board and the Contractor and as per the stipulation contained in their agreement, the matter was referred to the Sole Arbitrator i.e. the Chief Engineer of the revisionist. The Arbitrator gave his award dated 20.1.2005. It is worth while to refer here that an application under Section 14 of the Arbitration Act, 1940 (in short, the Old Act) was moved by the Contractor against award dated 20.1.2005 and the court of learned Civil Judge (Senior Division), Sangrur through orders dated 5.2.2011 Annexure P/3 had adjudicated upon the objections of the Mandi Board and dismissed the same and made award dated 20.1.2005 as rule of the Court. It is during the course of events after hectic legal acts of one upmanship an application under Section 34 of the Arbitration & Conciliation Act, 1996 (in short, the New Act) was moved by the Mandi Board. The court of learned District Judge, Sangrur vide judgment dated 29.3.2006 Annexure P/2 dismissed the application with costs. The Contractor in the

meanwhile filed an execution application under Order 21 Rule 10 CPC for execution of the award and the court of learned Civil Judge (Senior Division) through orders dated 5.5.2012 dismissed the objections of the JD Mandi Board and issued warrants of attachment of the property of the JD.

In this background these two matters FAO No. 2244 of 2006 and CR No. 3625 of 2012 have been filed by the JD Mandi Board and being between the same parties over the same contract pertaining to same very award and in view of factual and legal inextricably intertwining facts and law are being disposed of together.

Heard learned counsel for the parties and perused the records.

The first and foremost arguments that have come about by counsel for the Mandi Board appellant/revisionist/JD rallies around the fact that the courts below have wrongly interpreted that the Old Act did not apply to this litigation and the New Act ought to have been applied and further that the process adopted by the courts below in making the award rule of court being patently illegal, inoperative needs to be set aside so consequently the orders of attachment of the properties of the JD.

The submissions have been controverted tooth and nail on behalf of the respondent who has sought to assail that the invocation of referring the matter to the Sole Arbitrator had commenced during the operation of the Old Act and therefore, the New Act could not take over the reigns over the dispute. It is submitted that since the JD has failed to fulfill its obligations arising out of the award the orders of the attachment of the properties of the JD are legally enforceable and legitimate one.

Perused the records of the two cases and appreciation of the arguments, the Hon'ble Apex Court in **Milkfood Ltd. vs GMC Ice Cream (P) Ltd., (2004) 7 Supreme Court Cases 288** has remarked as below:-

“72. Keeping in view the fact that in all the decisions, referred to hereinbefore, this Court has applied the meaning given to the expression “commencement of the arbitral proceeding” as contained in Section 21 of the 1996 Act for the purpose of applicability of the 1940 Act having regard to Section 85(2)(a) thereof, we have no hesitation in holding that in this case also, service of a notice for appointment of an arbitrator would be the relevant date for the purpose of commencement of the arbitration proceeding.”

Reverting back to the present case the New Act came

into force with effect from 16.8.1996. It is fairly conceded that as per the impugned findings on the application under Section 4 of the New Act, Annexure P/2, the learned District Judge has relied upon the fact that though the request made by the Contractor is not on the arbitration file but one fact is clear that he submitted his statement of claim in January, 1989 and therefore, by all means is shown to have invoked the clause of arbitral agreement and initiated the dispute and it has been rightly held that the same commenced by virtue of Section 85 of the New Act from that day. Moreover the repealing clause in the New Act emphatically makes it clear that the provisions of the Old Act would apply to the proceedings which have commenced before 21.1.1996 in the light of the saving clause 85(2) of the New Act. Counsel for the appellant could not convince this Court how there has been wrong interpretation of the provisions rendering the impugned order dated 29.3.2006 to be illegal. The impugned order of the learned District Judge has been rightly passed and needs to be upheld. As is there the award under dispute has been made rule of court on 20.1.2005 and thus confers upon the Contractor-respondent the right to get the award executed through legal and legitimate means. The court of learned Civil Judge (Senior Division) in the execution application under Order 21

Rule 10 CPC considering these circumstances has held that there is nothing on the records to hold that the execution application by the decree holder was not maintainable and has correctly and legally issued warrants of attachment of the properties of the JD but have failed to comply with the award.

In the light of what has come about in the foregoing paragraphs, neither there is any merit in the appeal nor in civil revision and as such both are hereby dismissed.

January 22, 2020
'tiwana'

(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No