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

CWP No. 9527 of 2015
Reserved on:19.09.2022
Pronounced on:29.09.2022

M/s K.K. Rice General Mills …Petitioner

Versus

Punjab Agro Food Grains Corporation Ltd. and another …Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Anupam Singla, Advocate
for the respondents.

JAISHREE THAKUR, J.

1. The petitioner has approached this court under Articles 226/227 of the Constitution of India seeking to challenge notice dated 4.5.2015 (Annexure P-11) issued for the recovery of shortfall in the delivery of rice for the crop year 2001 – 2002, with a further prayer for issuance of a writ in the nature of mandamus restraining the respondents from initiating any recovery process pursuant to the notice issued.

2. In brief, the facts as emerge from the petition are that on 16.10.2001, petitioner-Mill entered into an agreement with the respondents to mill paddy and supply Custom Milled Rice for the crop year 2001 –2002 to Food Corporation of India. The petitioner-Mill was unable to deliver the entire milled rice in terms of the agreement, as a result of which it was charged for shortfall in delivery and recovery proceedings were initiated. The petitioner-Mill had instituted a civil suit seeking mandatory injunction directing the

respondents to submit the accounts for paddy delivered to the petitioner for the crop year 2001- 2002. Arbitration proceedings were initiated against the petitioner by Punjab Agro, in which proceedings, objection was taken that the dispute could not have been referred to arbitration, as it fell within the excepted clause of the agreement. Despite the objection raised, an award was passed against the petitioner on 29.09.2005 holding that respondent Punjab Agro was entitled to recover an amount of ₹ 66,188,726/-. The award was challenged by the petitioner by approaching this Court by way of Civil Revision No. 3697 of 2006 on the ground that the arbitration proceedings could not have been initiated , which petition was allowed vide order dated 3.3.2011 *"with liberty to respondent No.1 to proceed in accordance with law."* The respondent thereafter again initiated proceedings against the petitioner, and the Managing Director appointed as an Arbitrator initiated proceeding and proceeded to pass an ex parte *award* dated 29.04.2014 against the petitioner-Mill. The said award again was challenged by the petitioner-Mill by filing a contempt petition i.e COCP No.2143 of 2014. On the filing of the contempt petition, the award dated 29.04.2014 was withdrawn and a statement made before the Contempt court to that effect. It is thereafter the impugned notice was issued on 04.05.2015 by the Managing Director seeking to recover Rs.4,26,26,704/- on account of shortfall in the milled rice supplied to the respondent. Hence, this writ petition.

3. Mr. Dheeraj Mahajan, learned counsel appearing on behalf of the petitioners assailed the impugned notice issued under Clause 8 of the agreement dated 16.10.2001 by the Managing Director for recovery of Rs.4,26,26,704/- on the ground of limitation. He would submit that the

impugned notice has been issued beyond the period of three years from the date of the order passed by this court in Civil Revision No.3697 Of 2006 decided on 3.3.2011 wherein liberty was given to them to avail alternate remedy in accordance with law. It is submitted that though there was no period specified under the agreement as to when proceedings could be instituted against a miller by the procurement agency for non- compliance of the terms of the agreement, but by virtue of Article 137 of the Limitation Act, it would be three years which expired on 02.03.2014, whereas the recovery notice has been issued on 04.05.2015.

4. Mr. Anupam Singla, learned counsel appearing on behalf of the respondent-PAIC submitted that the notice issued was in consonance with the agreement dated 16.10.2001, as the petitioner had caused a loss to the respondents by not supplying milled rice within time and as per specifications. It is submitted that the respondents would be entitled to the benefit of Article 14 of the Limitation Act, which would allow the time spent in proceedings bona fide in Court with jurisdiction to be excluded from computing the period of limitation as, the Managing Director bonafidely had initiated arbitration proceeding afresh after the Civil Revision was allowed by this Court on the premise that he was taking action under Clause 8 of the agreement. It is submitted that if the period spent during the proceedings initiated under the second arbitration is excluded, the notice issued on 04.05.2015 would be within the period of limitation.

5. I have heard the counsel for the parties and have perused the pleadings with the assistance of respective counsel.

6. The admitted facts are that an agreement dated 16.10.2001 had been entered into between the petitioner-Mill and the respondent No.1 and in terms of the agreement, the petitioner-Mill was to supply CMR within a specified time frame. The award as first passed by the Arbitrator was challenged before this Court on the ground that the Arbitrator did not have the jurisdiction to decide the dispute, which contention was accepted by this Court and vide order dated 03.03.2011, the proceedings before the Arbitrator were terminated. This Court while terminating the proceedings before the arbitrator allowed the respondents to proceed in accordance with law. However, instead of proceeding under the agreement and getting the matter decided by the Managing Director in terms of Clause 8 of the agreement dated 16.10.2001, the Managing Director again proceeded in the capacity of Arbitrator and passed an award on 29.4.2014 against the petitioner-Mill, which was eventually withdrawn on 08.12.2014 in view of the affidavit given before the Contempt Court on 22.01.2015. The benefit of Section 14 of the Limitation Act 1963 would have been allowed to the respondents, in case the respondents had been able to establish that the proceedings initiated against the petitioner-Mill again by appointing an Arbitrator and passing an award, was on account of a *bona fide* mistake and in good faith and that such remedy was being perused diligently.

7. Section 14 of the Limitation Act, 1963 is reproduced as under:

> *"14 Exclusion of time of proceeding bona fide in court without jurisdiction.*
> *(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first*

> *instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
>
> *(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
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> *XXXXXXXXXXX"*

8. In the case in hand, once it was in the knowledge of the respondents that an Arbitrator could not be appointed to settle the dispute, the respondents made the same mistake by appointing an Arbitrator, who passed an award again. It was only after the award passed was withdrawn that proceedings were initiated afresh by issuing a notice under Clause 8 of the agreement dated 16.10.2001. The impugned notice for recovery of Rs.4,26,26,704/- for not delivering the milled rice within the stipulated time was issued on 04.05.2015 i.e. after a period of 14 years of the default, if any had occurred, and after a period of 4 years of liberty given to the respondents by this Court in its order dated 03.03.2011. There is nothing available with this court to be persuaded that the benefit of Article 14 of the Limitation Act 1963 is to be allowed to the respondents, who prosecuted the petitioner-Mill while appointing an Arbitrator again, when the earlier arbitration proceedings had been set aside. Since there is no period of limitation prescribed under the

agreement, Article 137 of the Limitation Act will be applicable which allows a suit to be filed within a period of three years. Consequently, the impugned notice for recovery issued three years after this Court had allowed the respondents to proceed in accordance with law, is set aside, being barred by limitation and the writ petition stands allowed.

(JAISHREE THAKUR)
JUDGE

September 29, 2022
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No