

CR No. 4663 of 2014

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No. 4663 of 2014 (O&M)

Date of decision: 3rd March, 2023

Chaman Lal

Petitioner

Versus

Food Corporation of India and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. H. S. Saggu, Advocate for the petitioner.
Mr. K. K. Gupta, Advocate for the respondents.

AVNEESH JHINGAN, J (Oral):

1. This revision petition is filed aggrieved of orders dated 13.10.2007 passed by the civil court and dated 9.1.2014 of the appellate court.
2. The brief facts are that the petitioner was awarded tender for sale of paddy for the crop year 1994-95 lying in the custody of Central Warehousing Corporation, Bhasaur (Dhuri) in the premises of Oswal Mill. The terms and conditions of tender provided for dispute resolution through arbitration.
3. The petitioner failed to lift the paddy and in January, 2001, Food Corporation of India (for short, 'the Corporation') sought initiation of arbitration proceedings. Application filed by the petitioner under Section 33 of the Arbitration Act, 1940 (for short, 'the 1940 Act') was dismissed on 13.10.2007 as the petitioner was not able to prove that the paddy was sub

standard or not fit for human consumption. The appeal preferred met with the same fate on 9.1.2014. The court took into consideration that as per the terms and conditions of the tender, the paddy was to be lifted “as is where is basis”. There was no condition in the tender that in case of sub standard paddy, the agreement would be rendered void. The petition filed under the 1940 Act was held to be non-maintainable as it was filed after the repeal of Act and enforcement of the Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act') on 27.8.1996.

4. Learned counsel for the petitioner submits that the petitioner was defrauded as the paddy stored in Oswal Mill premises was not fit for human consumption. The contention is that in such circumstances, the agreement between the parties no longer remained in existence.

5. Learned counsel for the respondents defends the impugned orders and submits that as per clause of the agreement, the dispute is to be resolved by arbitration. The Corporation had made an application for appointment of the arbitrator. Further submission is that the petitioner agreed to lift the paddy “as is where is basis”.

6. The concurrent findings recorded by the courts below are that the petitioner failed to adduce evidence to substantiate the allegations that the paddy stored in the premises of Oswal Mill was sub standard. Reliance was placed on the document produced in a civil suit pending between Saraswati Rice Mill and the Corporation and it was not proved that the said evidence was relevant vis-a-vis agreement of the petitioner.

7. It is not in dispute that the agreement was to lift the paddy “as is where is basis”. No evidence was produced for challenging the existence

or validity of the agreement between the parties. Rather, existence of agreement is not disputed even now.

8. There is no argument raised with regard to maintainability of the petition under Section 33 of the 1940 Act in view of repeal and saving clause of the 1996 Act.

9. It would not be out of place to mention that as per terms and conditions in Schedule I to tender, there was no guarantee by the Corporation to make any quality or quantity available.

10. No case has been made out for factual or legal infirmity in the impugned orders calling for interference.

11. The petition is dismissed.

[AVNEESH JHINGAN]

JUDGE

3rd March, 2023

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1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No