

**226 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR-5823-2019

Date of decision: 12th May, 2023

Punjab State Civil Supplies
Corporation Ltd and another

... Petitioners

Versus

M/s Ashok Rice Mills and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. H.S. Randhawa, Advocate for the petitioners.
Mr. Anshul Jain, Advocate for respondents No.1 and 2.

AVNEESH JHINGAN, J (Oral):

1. This revision petition is filed by petitioner- Punjab State Civil Supplies Corporation Ltd (for brevity 'PUNSUP') aggrieved of order dated 20th May, 2019, dismissing the execution petition .
2. The relevant facts are that PUNSUP and M/s Ashok Rice Mills (for short 'the miller') entered into Custom Rice Milling agreement for the crop year 2011-12. The terms and conditions provided for dispute resolution through arbitration. The arbitration proceedings initiated at the instance of petitioner culminated in award dated 27th June, 2017. The objections under Section 34 of Arbitration and Conciliation Act (for short 'the Act') were filed by the miller. The execution application filed by the PUNSUP was dismissed on the ground that the objections were pending and execution petition was filed after filing of the objections. Further that approach of PUNSUP was unethical as different counsel were engaged in similar cases between the same parties. It was held that during pendency of

objections PUNSUP had no right to file execution .

3. Learned counsel for the PUNSUP submits that there was no stay in favour of the miller and the execution petition could not have been dismissed due to pendency of objections under Section 34 of the Act. He further submits that there is no bar on engaging different counsels in different cases between the parties.

4. Learned counsel for the miller defends the impugned order.

5. Heard learned counsel for the parties and perused the pleadings.

6. Before proceeding further, it would be relevant to reproduce Section 36 of the Act:-

“Enforcement.-(1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the Court.

(2) Where an application to set aside the arbitral award has been filed in the Court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering

the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.”

7. As per Section 36(1) after expiry of limitation to file the application under Section 34 of the Act, subject to provisions of sub-Section (2), the arbitral award shall be enforced like a decree of court in accordance with provisions of CPC. Sub-Section 2 provides that the award shall not become unenforceable merely on filing of the application under Section 34 of the Act. The exception being the cases where the Court stays operation of the arbitral award. On application under sub-Section (3), the Court may stay operation of the arbitral award by imposing conditions it may deem fit. For granting the stay the Court shall record reasons. The proviso to sub-Section (3) provides that while granting the stay, provisions of Civil Procedure Code have to be given due regard.

8. There cannot be quarrel on the proposition that pendency of objections under Section 34 of the Act does not result in automatic stay.

9. The comment in the impugned order that approach of District Manager of PUNSUP was unethical as different advocates were engaged in other cases between the same parties has no basis. It is for the litigant to engage the counsel of its choice to pursue the matter. The question of concealing facts by PUNSUP never arose. The stay application and execution petition were fixed on the same day, the court was aware of the pendency of the objection and also of the fact that there was no stay for recovery of awarded amount.

10. The strange methodology was adopted by the Court concerned

in dealing with the execution petition and the stay application. *In spite* of the clear statutory provisions and settled position of law that pendency of the objections under Section 34 of the Act will not result in automatic stay, the execution petition was dismissed as not maintainable. At the same time, stay application was dismissed as infructuous due to dismissal of execution petition. In other words, without considering the application of stay on merits, the arbitral award was made enforceable during the pendency of the objections.

11. In view of the above the impugned order is set aside.
12. Since the main case is disposed of, pending application, if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

12th May, 2023
Parveen Sharma

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No