

FAO No. 15936 of 2018

[1]

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

FAO No. 15936 of 2018 (O&M)

Date of decision: 23rd February, 2023

M/s Jai Bajrang Rice Mills Dhanauri District Jind through LRs of Suresh Kumar (Prop.) and others

Appellants

Versus

Haryana Agro Industries Corp. through its Managing Director, Panchkula and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Deepali Puri, Advocate for the appellants.
Mr. Padam Kant Dwivedi, Advocate for the respondents.

AVNEESH JHINGAN, J (Oral):

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is filed aggrieved of dismissal of objections under Section 34 of the Act.

2. The brief facts are that the parties entered into an agreement for custom milling of rice. The terms and conditions provided for dispute resolution through arbitration. For settling the dispute between the parties, arbitration proceedings were initiated which culminated in award dated 26.8.2013. Aggrieved of the award, the appellants filed objections under Section 34 of the Act on 5.5.2014. The petition was dismissed on the ground of limitation as well as on merits.

3. Learned counsel for the appellants submits that there was non-compliance of Section 31(5) of the Act, the signed copy of the arbitral

award was not supplied to the appellants and the objections were within limitation. She relies upon the arbitral record to show that apart from covering letter, there is no evidence on record that copy of the award was sent to the appellants. It is further contended that the Additional District Judge erred in making comments on the merits of the case after having concluded that the objections were time barred.

4. Learned counsel for the respondents defends the impugned order and submits that there is covering letter available on record to show that copies of the award were sent to the parties and the respondents had received the same.

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

6. There is no dispute on the fact that the arbitrator had reserved the decision on 12.4.2013. There is no evidence available in record to establish that copy of award was served upon the appellants. In the absence of date of service, the impugned order dismissing the objections under Section 34 of the Act cannot be sustained.

7. From the perusal of the impugned order, it is forthcoming that the objection application was dismissed as time barred but at the same time matter was considered on merits.

8. In **S. V. Matha v. Lal Chand Meghraj and others**, (2007) 14 SCC 722, the Supreme Court held:

“We, however, feel disinclined to go into the merits of the controversy, as we are of the opinion that the Division Bench ought to have confined its decision only to the question dealt with by the learned Single Judge viz. the question of limitation. The Division Bench has dealt with the issue of limitation in paragraphs 18 and 19 of the impugned judgment

and from a reading thereof, we observe that Application Nos. 1106-1108/2000 filed by the assignees in which notice had been issued on 19.4.1999 for 10.6.1999 by the Master were dismissed by the learned Single Judge by order dated 3.7.2000 without notice to the applicants i.e. the assignees. In this situation, the Division Bench was justified in holding that the order of the learned Single Judge was not sustainable. The learned counsel for the appellant, has, however, urged that no particulars had been spelt out in the application justifying the condonation of a delay of 971 days. We are of the opinion, however, that the applicants have explained the delay and we accordingly endorse the observations of the Division Bench on this aspect. As noted above, the learned Single Judge had dismissed the applications by order dated 3.7.2000 wholly on the ground of limitation. By the impugned judgment, the Division Bench has not only condoned the delay but taken a decision on merits as well. We are of the opinion that the second exercise was not justified as the only issue before the Division Bench was the question of limitation. We, accordingly, set aside the judgment of the Division Bench to the extent that it goes on to the merits of the controversy but maintain it in so far that it deals with the question of limitation. Ipso facto the matters are restored to a re-hearing on merits.”

9. The application under Section 34 of the Act was dismissed on the ground of limitation, thereafter the court had no occasion to take up the matter on merits.

10. Consequently, the impugned order is set aside and the matter is remitted back to the court concerned to decide the objection application under Section 34 of the Act afresh in accordance with law.

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11. The appeal is disposed of.

[AVNEESH JHINGAN]
JUDGE

23rd February, 2023

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1. Whether speaking/ reasoned

:

Yes / No

2. Whether reportable

:

Yes / No