

FAO No. 4590 of 2018 and connected case [1]

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

Date of decision: 13th March, 2023

(1) FAO No. 4590 of 2018 (O&M)

The Punjab State Co-operative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Prem Kumar & Co. and others

Respondents

(2) FAO No. 4595 of 2018 (O&M)

The Punjab State Co-operative Supply and Marketing Federation Ltd.

Appellant

Versus

M/s Prem Kumar & Co. and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. APS Mann, Advocate for the appellant(s).

AVNEESH JHINGAN, J (Oral):

This order shall dispose of the above mentioned two appeals as the issues are similar and parties are common.

For the sake of convenience, facts have been taken from FAO No. 4590 of 2018.

This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') filed by Punjab State Cooperative Supply and Marketing Federation Ltd. (hereinafter referred to as 'Markfed') aggrieved of dismissal of objections under Section 34 of the

Act. The appeal is accompanied by an application for condonation of delay of 201 days in filing thereof.

The brief facts are that the appellant entered into an agreement dated 4.8.2009 with M/s Prem Kumar and Company (hereinafter referred to as 'the respondent') for safe custody of wheat crop for the year 2009-10 alongwith wheat stored for the years 2007-08 and 2008-09 in Guruharsahai Markfed Branch. Similar agreement was entered for Markfed Branch, Makhu for the crop year 2010-11. The appellant raised a dispute claiming damages of shortage of foodgrains. Four claims were raised, first with regard to shortage of bags detected during physical verification; second with regard to shortage of 27895 bags; third with regard to labour charges and cost of new bardana and fourth claim was with regard to likelihood of detection of shortage. The fourth claim was rejected by the arbitrator and the relevant portion is reproduced below:

“The claim of amounts mentioned at Sr. No. (i), (ii) and (iii) is justified and its total amounts comes to Rs.82816030/-. However claim amount as at Sr. No. (iv) i.e. Rs.229755188/- for the likelihood of loss which is presumptive is not at all justified and is not allowed. The wheat stocks are over lying in the custody of the respondent and the claimant should have taken over the same and if any shortage or damage loss had been detected, then could have claimed the cost of damage as the case may be. But that is not the case. It is specified in the claim petition that there is 'likelihood' of detection of shortage. On that 'likelihood' basis claim cannot

be allowed. Thus this claim of Rs.229755188/- is not allowed.”

The objections filed by the appellant were dismissed on 16.12.2016, hence the present appeal.

Learned counsel for the appellant submits that dismissal of claim of likelihood shortage would prejudice the case of the appellant for subsequent remedies available on actual detection of shortage of the remaining stock, if any.

There is no factual or legal infirmity in the award and impugned order.

It would not be out of place to mention that the arbitrator while rejecting the claim had taken note of the fact that the loss claimed is presumptive.

Consequently, the appeals are dismissed.

Since the main appeals have been dismissed, the application for condonation of delay is also dismissed.

[AVNEESH JHINGAN]
JUDGE

13th March, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |