

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

FAO-2873-2018 (O&M)
Date of Decision:-10.10.2023

Sukhdev Singh

....Petitioner

Versus

The Punjab State Grain Procurement Corporation and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Ishan Gupta, Advocate with
Ms. Deepali, Advocate, for the appellant.

Mr. Vipul Sharma and Mr. Dhruv Sharma, Advocates,
for respondent No.1.

GURVINDER SINGH GILL, J. (Oral)

1. The appellant assails award dated 29.08.2014 (Annexure A-13) and also judgment dated 02.12.2017 (Annexure A-14) vide which the objections filed under Section 34 of the Arbitration Act, against the aforesaid award have been dismissed.
2. Learned counsel for the appellant submits that there is a mathematical error in the calculations, as made in award itself inasmuch as the quantity of rice sold by the respondents pursuant to order dated 11.7.2012 (Annexure A-7) has been mentioned as 4589.80 qunitals instead of 5387.52 qunitals.
3. The learned counsel has drawn the attention of this Court to the calculations made in with regard to the concluding para of the award which is reproduced as under:

Weight (In qtls.)	Amount
4589.80.000	61,10,000.00
	Figure in Qtls.
Total paddy stored	23835.00
Rice due	15969.45
Rice delivered to FCI	9693.85
Balance rice	6276.00
Rice sold till dated 22.1.2013	4589.80
Short rice delivered by the miller	1686.20

4. The learned counsel has submitted that as a matter of fact the correct calculations ought to have been made in the following manner:

	Figure in qtls.
Total paddy stored	23835.00
(Less) Driage	238.35
Rice due	15809.75 Qtl (Equal to 23596.65 Qtl. Of paddy)
(Less) Rice delivered to FCI	9693.85
Balance rice	6116.30
Rice sold till dated 22.1.2013	5387.52.300 (as admitted in document Ex.C-8)
Short rice delivered by the miller	728.77.700

5. It has thus been submitted that at best the shortage in respect of rice which had been delivered by the miller could have been assessed as 728.77 quintals and not 1686.20 quintals.

6. It has further been submitted that the mistake occurred because of a mistake in revised claim (Annexure A-9), where the quantity of rice already delivered came to be incorrectly mentioned as 4589.80 quintals instead of 5387.52 quintals. The learned counsel in order to hammer forth his aforesaid submissions has drawn the attention of this Court to the cross-examination of the witness of the respondent-claimant PW-1-Manish Narula, District

Manager, Pungrain, Sangrur, who during the course of cross-examination admitted the factum of a clerical mistake while stating as under:-

“In the revised claim, there is clerical mistake regarding amount of sale proceed as per interim order of the arbitrator.”

7. Learned counsel further submitted that the respondents have also admitted the fact that the rice sold till 22.01.2013 was 5387.52.300 quintals, as would be evident from the receipt (Annexure A-8), which although issued by the petitioner, but the respondents themselves are relying upon the said receipt in their statement of revised claim.
8. On the other hand, learned counsel for respondent has submitted that there is no clerical error so as to justify any interference. The learned counsel however, could not point out any document so as to contradict the contentions made by appellant before this Court. Since, the receipt Annexure A-8 is stated to have been relied upon by respondent-claimant itself and is stated to be a part of the revised claim and further the witness examined by the claimant in his cross-examination i.e Manish Narula, District Manager, Sangrur has also virtually admitted that there is some error, the award dated 29.08.2014 (Annexure A-13) passed by the Arbitrator and also judgment dated 02.12.2017 passed by learned Additional District Judge-I, Sangrur, are set aside.
9. It shall be open to the parties to avail remedies in accordance with law for initiation of fresh arbitration keeping in view the ratio of judgment of Hon'ble the Supreme Court in Dr. A. Parthasarathy Versus E. Springs Avenues Pvt. Ltd., 2022 (1) Apex Court Judgments (SC) 130, wherein it has been held as follows:

“3. By the impugned judgment and order passed by the High Court in exercise of power under Section 37 of the Arbitration and Conciliation Act, 1996, the High Court has set aside the award passed by the learned Arbitrator and has remanded the matter to the Arbitrator for fresh decision. As per the law laid down by this Court in the case of *Kinnari Mullick v. Ghanshyam Das Damani* (2018) 11 SCC 328 and *I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.* (2022) SCC OnLine SC 4, the same is wholly impermissible. Only two options are available to the Court considering the appeal under Section 37 of the Arbitration Act. The High Court either may relegate the parties for fresh arbitration or to consider the appeal on merits on the basis of the material available on record within the scope and ambit of the jurisdiction under Section 37 of the Arbitration Act. However, the High Court has no jurisdiction to remand the matter to the same Arbitrator unless it is consented by both the parties that the matter be remanded to the same Arbitrator.”

10. The appeal stands accepted accordingly.

10.10.2023

Mohan

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No