



**ARB-318-2019 and
ARB-435-2023**

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

107-2 cases

1.

ARB-318-2019

Date of decision:22.04.2024

SAIN DASS RICE MILL

... PETITIONER

V/S

STATE OF HARYANA

... RESPONDENT

2.

ARB-435-2023

M/S NAGPAL RICE MILL THR. ITS PARTNERS ...PETITIONER

V/S

DISTRICT FOOD AND SUPPLIES CONTROLLER

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

**Present: Mr. Nitin Jain, Advocate &
Mr. Sandeep, Advocate for the petitioner
in ARB-318-2019.**

**Mr. Harsh Aggarwal, Advocate
for the petitioner in ARB-435-2023.**

Mr. Aman Bahri, Addl. A.G., Haryana.

SUVIR SEHGAL J.

1. This order shall dispose of both the above-mentioned arbitration cases as they involve common questions of law and fact.



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2. For the sake of convenience, facts are being taken from ARB-318-2019.
3. By way of instant petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, (for short “the Act”), petitioner has approached this Court for appointment of an Arbitrator to decide the counter-claim as has been ordered by this Court vide order dated 14.07.2009, Annexure P-6.
4. Facts, in brief, are that an agreement dated 16.10.2002, Annexure P-1, was entered into between the petitioner and the respondents for custom milling of paddy for the year 2002-2003. A dispute arose between the parties and the respondent appointed an Arbitrator under Clause 23 of the agreement. Parties appeared before the Arbitrator and raised their claims and counter claims. Award dated 14.03.2006, Annexure P-4, was passed by the Arbitrator, however, the counter-claims filed by the petitioner remained un-adjudicated. Objections filed under Section 34 of the Act, were dismissed by the learned District Judge, Kurukshetra, on 03.10.2007, Annexure P-5, resulting in the challenge before this Court by filing an appeal. This Court vide judgment dated 14.07.2009, Annexure P-6, partly accepted the appeal and remitted the matter to the Arbitrator to consider the counter-claims of the petitioner. Petitioner remained unsuccessful in the review application as well as in the SLP before the Supreme Court, which



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was dismissed in February, 2010. Petitioner served a notice dated 23.07.2019, Annexure P-9, for appointment of an Arbitrator to adjudicate the counter-claims and when it did not yield any result, he filed the instant petition. Respondents separately challenged the judgment, Annexure P-6, and the Supreme Court by order dated 24.08.2023, dismissed the Civil Appeal and directed the petitioner to cause appearance before this Court in the present petition.

5. Upon notice, petition has been contested by the respondent by filing a short reply, which is taken on record, wherein it has been submitted that the instant petition is barred by time as the cause of action arose to the petitioner when judgment, Annexure P-6, was passed by this Court. It is further submitted that the Arbitrator, who passed the Award, Annexure P-4, has retired from the service of the Department.
6. Counsel for the petitioner has contended that as the counterclaims had been filed during the course of arbitral proceedings and remained pending, even though Award, Annexure P-4, was passed, they are required to be determined. On the other hand, State counsel urges that counterclaims have become barred by time as the petitioner did not seek reference within three years of the judgment dated 14.07.2009, Annexure P-6, passed by this Court. It is his argument that in the connected case (ARB-435-2023), petitioner has not served the mandatory notice invoking the



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arbitration clause and the petition is not maintainable. He has referred to the statutory provision contained in Sections 21 and 43 of the Act to support his contention.

7. I have heard counsel for both the sides and considered their respective submissions.
8. While disposing of the appeal filed by the petitioner, this Court passed the following order on 14.07.2009, Annexure P-6:-

“In the totality of the circumstances, these appeals partly succeed. The awards to the extent of awarding of interest are set aside. Insofar as the counter-claims are concerned, the matter is remitted to the Arbitrator to consider the counter-claims of the appellants and take decision thereon in accordance with law. The awards minus the component of interest are upheld. However, the awards to the extent of counter-claims raised in each case shall not be executed till the Arbitrator takes decision on the counter-claims and executability of the awards in respect to amount equivalent to counter-claims shall be subject to decision on counter-claims. The resultant award upheld hereunder shall carry interest at the rate of 12% per annum from the date of the judgment till the amount is actually realized.

Disposed of.”

9. Undisputedly, petitioner filed counter-claims before the learned Arbitrator, but they remained undecided when the Award, Annexure P-4, was passed by the Arbitrator. It is not the case of the respondents that the counterclaims were not maintainable or that the petitioner could not raise them.



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10. Noticing this position, this Court by order, Annexure P-6, remitted the matter to the Arbitrator to consider the counter-claims and to decide them in accordance with law. The execution of the award to the extent of the counter-claims was also stayed. Upon the passing of the order by this Court, it was incumbent upon the respondents to appoint an Arbitrator so that the counter-claims could be adjudicated. However, the respondents did not do so and rather they preferred to wait for the decision of the Supreme Court, whereby they had challenged the judgment passed by this Court. The counterclaims of the petitioner were alive throughout. In such a situation, this Court is of the view that it was not incumbent upon the petitioner to issue a fresh notice under Section 21 of the Act invoking the arbitration clause, although, it had done so in the present case. Limitation in such a situation would not start and has no relevance insofar as the adjudication of the counter-claims is concerned.
11. Noticing the provisions of Sections 21 and 43 of the Act, Supreme Court in **State of Goa Versus Praveen Enterprises (2012) 12 SCC 581**, has held as under:-

“16. The purpose of Section 21 is to specify, in the absence of a provision in the arbitration agreement in that behalf, as to when an arbitral proceedings in regard to a dispute commences. This becomes relevant for the purpose of Section 43 of the Act. Sub-section (1) of Section 43 provides



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that the Limitation Act, 1963 shall apply to arbitrations as it applies to proceedings in courts. Sub-section (2) of Section 43 provides that for the purposes of Section 43 and the Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred to in Section 21 of the Act. Having regard to Section 43 of the Act, any claim made beyond the period of limitation prescribed by the Limitation Act, 1963 will be barred by limitation and the arbitral tribunal will have to reject such claims as barred by limitation.”

12. Supreme Court has held that in view of Section 21 of the Act, arbitral proceedings shall be deemed to commence, on the date, on which, the request for referring that dispute to arbitration is received by the respondent. The purpose of Section 21 of the Act is to determine the date of commencement of the arbitration proceedings, relevant mainly for deciding whether the claims of the claimant are barred by limitation or not. Dealing with the counter-claims, it has been observed by the Supreme Court as under:-

“20. As far as counterclaims are concerned, there is no room for ambiguity in regard to the relevant date for determining the limitation. Section 3(2)(b) of the Limitation Act, 1963 provides that in regard to a counterclaim in suits, the date on which the counterclaim is made in court shall be deemed to be the date of institution of the counterclaim. As the Limitation Act, 1963 is made applicable to arbitrations, in the case of a counterclaim by a respondent in an arbitral proceeding, the date on which the counterclaim is made before the arbitrator will be the date of "institution" insofar as



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counterclaim is concerned. There is, therefore, no need to provide a date of “commencement” as in the case of claims of a claimant. Section 21 of the Act is therefore not relevant for counterclaims. There is however one exception. Where the respondent against whom a claim is made, had also made a claim against the claimant and sought arbitration by serving a notice to the claimant but subsequently raises that claim as a counterclaim in the arbitration proceedings initiated by the claimant, instead of filing a separate application under Section 11 of the Act, the limitation for such counterclaim should be computed, as on the date of service of notice of such claim on the claimant and not on the date of filing of the counterclaim.”

13. Insofar as the facts of the present case are concerned, undoubtedly the counter-claims were pending, when the Award, Annexure P-4, was passed and had remained undecided. Petitioner, therefore, cannot be blamed nor can he be made to suffer for the default committed by the Arbitrator. There is no force in the arguments raised by counsel for the respondents, which are hereby rejected.
14. Resultantly, the prayer made in both the petitions merits acceptance. Both the petitions are allowed.
15. Mr. Justice (Retd.) Harinder Singh Sidhu, a former judge of this Court, House No.15, Sector 2-A Chandigarh, is requested to act as a sole Arbitrator to adjudicate the counter-claims preferred by the petitioner, subject to compliance of statutory requirements.
16. Parties are directed to appear before the learned Arbitrator on a day, time and place to be communicated by him.

17. Liberty is granted to the respondents to raise all the defences, pleas etc. before the Arbitrator.
18. Needless to mention that all the questions arising between the parties in this matter shall remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.
19. A request letter alongwith a copy of this order be sent to Mr. Justice (Retd.) Harinder Singh Sidhu.

22.04.2024
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No