



FAO-1614-2016(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1614-2016(O&M)

Date of Order:-07.11.2024

Punjab State Civil Supplies Corporation Ltd., Chandigarh and another

...Appellants

Versus

M/s Shiv Shakti Rice Traders and another

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present :- Mr. Anil Sharma, Advocate
for the appellants.

None for respondent No.1.

SUVIR SEHGAL, J.

CM-5978-CII-2016 &
CM-5979-CII-2016

1. For the reasons given in the applications, which are supported with affidavits, they are allowed.

2. Delay of 4 days in re-filing and delay of 79 days in filing of the appeal is condoned.

CM-5980-CII-2016

3. Exemption, as prayed for, is granted.

4. Application is allowed.

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5. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act")



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assailing orders dated 30.05.2011 and 27.07.2015 passed in Arbitration Petition No.630 of 2013 and award dated 10.04.2007 passed by learned Arbitrator – respondent No.2.

6. Counsel for the appellants submits that an agreement dated 12.10.1994 was executed between the appellants and respondent No.1 for custom milling of paddy. He submits that some disputes between the parties were referred for adjudication to an arbitrator, which culminated in the passing of an award dated 10.04.2007 in favour of respondent No.1. Appellants filed objections under Section 34 of the Arbitration Act, which were dismissed in default by the learned Additional District Judge, Chandigarh vide impugned order dated 30.05.2011 and an application for recalling of the said order was declined by the subsequent order dated 27.07.2015, which has also been challenged. He contends that objections preferred under Section 34 of the Arbitration Act have to be adjudicated on merits and cannot be dismissed in default. He submits that learned Additional District Judge has erred in dismissing the application for recalling on the ground that the supporting application for condonation of delay was filed at a belated stage. He has requested that the matter be remanded for fresh adjudication.

7. Despite publication in the newspapers, pursuant to the order passed by this Court, there is no representation on behalf of respondent No.1, who is proceeded against ex-parte.

8. I have considered the submissions of the counsel for the appellants and examined the paper-book with his able assistance.

9. The question as to whether the Court in exercise of appellate power under Section 37 of the Arbitration Act can remand the



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matter has been settled in a recent judgment passed in case **Bombay Slum Redevelopment Corporation Private Limited Versus Samir Narain Bhojwani (2024) 7 SCC 218**. Hon'ble Supreme Court has observed as under:

“28. The provisions of the CPC have not been made applicable to the proceedings before the learned Arbitrator and the Court under Sections 34 and 37 of the Arbitration Act. The legislature's intention is reflected in Section 19(1) of the Arbitration Act, which provides that an Arbitral Tribunal is not bound by the provision of the CPC. That is why the provisions of the CPC have not been made applicable to the proceedings under Sections 34 and 37 (1) (c). We are not even suggesting that because the provisions of the CPC are not applicable, the Appellate Court dealing with an appeal under Section 37(1) (c) is powerless to pass an order of remand. The remedy of an appeal will not be effective unless there is a power of remand vesting in the appellate authority. In the Arbitration Act, there is no statutory embargo on the power of the Appellate Court under Section 37 (1) (c) to pass an order of remand. However, looking at the scheme of the Arbitration Act, the Appellate Court can exercise the power of remand only when exceptional circumstances make an order of remand unavoidable.

29. There may be exceptional cases where remand in an appeal under Section 37 of the Arbitration Act may be warranted. Some of the exceptional cases can be stated by way of illustration:



(a) Summary disposal of a petition under Section 34 of the Arbitration Act is made without consideration of merits;

(b) Without service of notice to the respondent in a petition under Section 34, interference is made with the award; and

(c) Decision in proceedings under Section 34 is rendered when one or more contesting parties are dead, and their legal representatives have not been brought on record.”

10. Undoubtedly, objections filed by the appellants under Section 34 of the Arbitration Act have not been adjudicated on merits. They were dismissed on 30.05.2011, on account of default in appearance of the counsel. An application for recalling of the order was moved before the learned Additional District Judge when the default came to the notice of the appellants. The application was filed more than a year after the passing of order dated 30.05.2011, but that in itself is not a sufficient ground for rejecting the application. The delay was explained by the appellants by moving another application seeking condonation of delay. Learned Additional District Judge has attached undue importance to the delay in the filing of the application for condonation of delay. Delay in filing the application for recalling has to be counted till the date of the institution of the said application and any delay in moving the application for condonation of delay is immaterial. Even if, there were some errors in the application for condonation of delay, the learned Additional District Judge could have given opportunity to the appellants to explain the same by calling for a better affidavit, if required. As the

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application for condonation of delay is not a part of the paper-book before this Court nor has the reason for the delay been explained by the counsel for the appellants, this Court is of the view that the matter deserves to be remitted to the learned Additional District Judge, Chandigarh to re-hear the application for recalling as well as the application for condonation of delay. Therefore, impugned order dated 27.07.2015 dismissing the application for recalling and condonation of delay cannot be sustained.

11. For the foregoing reasons, impugned order dated 27.07.2015 is set aside. Matter is remitted to the learned District Judge, Chandigarh to reconsider the application for recalling and application for condonation of delay and pass a fresh order while affording opportunity to the parties to bring more material on the record, if required.

12. Appeal is disposed of.

13. Parties are directed to appear before learned District Judge, Chandigarh on 10.01.2025, who may hear the matter himself or assign it to any Court of competent jurisdiction.

14. Pending application (s), if any, stand disposed of.

(SUVIR SEHGAL)
JUDGE

07.11.2024**Brij****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**