IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

215 **RSA-3474-2016 (O&M)**
Date of decision: 26.09.2025

Punjab State Civil Supplies Corporation Ltd. And another ...Appellant(s)

Vs.

M/s. Madhur Rice Mills and another ...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr Deepak Sabherwal, Advocate and
Mr. Jasdeep Singh, Advocate
For the appellants.

Mr. Satish Singla, Advocate for the
Respondents.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiffs against the judgment of reversal dated 24.11.2015 passed by the learned Additional District Judge, Sangrur; whereby first Appeal filed by the defendant/respondents has been accepted and suit of the plaintiffs has been dismissed.

2. Brief facts of the case are that the appellant-Corporation is a company engaged in procurement of paddy at support price, and milling through allotted rice mills. The appellants had entered into an Agreement dated 08.10.2001 with the defendant for the crop year of 2001-2002. It was the pleaded case of the appellant that the PUNSUP had stored 41361 bags (20680 quintals 50 kg paddy) with defendant for milling after adjusting 1% driage. The defendant-Miller had to deliver 13,717 quintals

38 kg rice to FCI. However, the defendant had delivered 13,692 quintals and 36kg 500 gms rice. Thus, there was shortage of 25 quintals 1 kg rice. Accordingly, PUNSUP had claimed Rs.26,761 as cost of short rice; Rs.4,03,155 as cost of 22,998 gunny bags; and Rs.17,739 as sales tax. The Managing Director vide order dated 24.07.2002 had accepted the claim of PUNSUP of Rs.2,93,851 with 21% interest. The defendants paid the principal amount of Rs.1,47,007/-. The plaintiff, therefore, made a demand of Rs.1,54,357/- from the defendant including interest @ 21% p.a. However, defendants had refused to make the payment. As such, plaintiff had filed present Civil Suit No.39 dated 10.03.2008.

3. Vide judgment and decree dated 15.10.2013, the learned Civil Judge (Senior Division), Sangrur had decreed the suit of the plaintiffs for an amount of Rs.1,54,357/-, with interest of 6% per annum.

4. As such, plaintiff had filed Civil Appeal No. 283 dated 28.11.2013 for partial modification of the Decree dated 15.10.2013 for providing interest @ 21% p.a. instead of 6% p.a. Whereas the defendant had filed Civil Appeal No. 288 of 15.11.2013 seeking setting aside of the judgment and decree dated 15.10.2013. The learned Additional District Judge, Sangrur vide impugned judgment and decree dated 24.11.2015 had accepted the respondent's Civil Appeal No. 288 of 15.11.2013. The Civil Appeal No. 283 of 28.11.2013 filed by the appellant was dismissed as "*question of enhancing the interest from 6% per annum to 21% p.a. sought in this case does not arise*." Hence, present Second Appeal by the plaintiff.

5. It is *inter alia* submitted by learned counsel for the appellant/plaintiff that the learned lower Appellate Court has failed to appreciate that the order dated 24.07.2007 Ex.P8 passed by the Managing Director is not an Award under the Arbitration and Conciliation Act as, neither was the said clause of the Agreement invoked by either party; nor was an Arbitrator appointed; nor any notice was issued under the Arbitration Act; and in effect no procedure as envisaged under the Arbitration and Conciliation Act was followed. As such, the learned lower Appellate Court was in patent error in holding the order dated 24.07.2007 as an "Award" under the Act.

6. It is reiterated that the Ld. Lower appellate court has erred in holding the order dated 24.07.2007 as an Award as the procedure envisaged in the Arbitration & Conciliation Act has not been followed while passing the order, there was no letter sent to the defendants with regard to the appointment of the arbitrator nor was there any letter from the arbitrator describing the procedure to be adopted, place and time of arbitration process which clearly proves that the order dated 24.07.2007 was an order on the administrative side as per clause 8 of the agreement. It is accordingly prayed that the impugned judgment and decree of the first Appellate Court be set aside.

7. *Per contra,* it is submitted by learned counsel for the respondent/defendant that the principal amount already stands paid by the respondent. The dispute remains only with regard to interest payable. It is submitted that order of the learned first Appellate Court suffers from

no error as there was an Arbitration Clause No.21 in the Agreement dated 08.10.2001. Thus, order passed by the Managing Director would be taken as an Award. He, accordingly, prays for dismissal of the present Appeal.

8. No other argument has been raised on behalf of the parties. I have heard learned counsel and perused the case file in a great detail. I find no merit in the submissions advanced on behalf of the appellant/plaintiff.

9. A perusal of the Agreement dated 08.10.2001 Ex.P-1 shows that as per Clause 21 thereof, no doubt there is option for appointment of Arbitrator. However, admittedly, in the present case, the said Arbitration Clause was never invoked. No arbitration proceedings were initiated as no Arbitrator was appointed; no place in time for conduct of arbitration proceedings was fixed; no notice as required under the Act was issued; in fact, no procedure as is required to be followed under the Arbitration and Conciliation Act was followed. In these circumstances, the learned first Appellate Court has incorrectly held the order dated 24.7.2007 to be an Award under the Act. The reasoning of the learned first Appellate Court in the Judgment date, 24.11.2015 is as follows: –

> *"13. A perusal of record further reveals that the provisions of Arbitration Act were invoked as per clause 21 of the agreement by PSCS Limited and the Id. Trial court also considered it as an Award, as per the above findings given by the Id. Court. When arbitration clause was there and an Award has been passed in terms of the same, then no separate civil suit lies against the order for the recovery of the amount which has already been awarded in the award.*

Only execution of the Award lies before the Court U/s 36 of the Arbitration and Conciliation Act. So, it is thus clear that the suit was wrongly filed by PSCS for the recovery of interest amount and the Id. Trial court wrongly decreed the suit and passed a judgment to that effect, granting interest @ 6% PA. Thus, the judgment and decree, passed by the Id. Trial court, are liable to be set aside as the suit was not maintainable. The appeal preferred by M/s Madhur Rice Mills stands allowed and the impugned judgment and decree are set aside and suit of PSCS stands dismissed."

10. It is my view that the above said reasoning of the learned first Appellate Court is absurd to say the very least. There is no basis to what is recorded in the impugned judgment. It is factually incorrect.

11. In holding as above, the learned first Appellate Court lost sight of the fact that, even in his written statement respondent has raised no plea or objection regarding invocation or non-invocation of the Arbitration Clause. In fact, the respondent in his written statement had taken a wholly different stance: to the effect that the very execution of the Agreement between the parties, has been denied by the defendant. It has been averred in the written statement that the officials of the PUNSUP had obtained the signatures of the defendant on blank paper as security; and that no Agreement was executed between the parties. It was further alleged that the Defendant had delivered rice as required; and that there was no shortfall in delivery et cetera. Nowhere it has been stated that the Arbitration Clause be invoked. Thus, the learned first Appellate Court, has

of itself carved out a whole different new case for the respondent, which is even beyond the pleadings.

12. Moreover, in holding as above the Lower Appellate Court also failed to take into consideration the covering letter of the Order dated 24.07.2007, which was sent to the defendants with the copy of the order. A bare perusal of the same would show that the subject of the letter clearly mentions "*With regard to the Deposit of the money under the order passed during the personal hearing by the Head Office for the Paddy season, Year 2001-02*". The same clearly shows that the money was demanded with regard to the order passed by the head office (Managing Director) under clause 8 of the Agreement and not in pursuance to any Arbitration Proceedings. Said Clause 8 reads as follows: –

> **"***8. The entire quantity of rice of all varieties delivered by the miller to the PUNSUP shall conform to the specifications laid down in the Punjab Rice Procurement (Levy) Order, 1983, as amended from time to time or in any other Order or Notification issued by the State Government from time to time. The stocks of rice not conforming to the specifications so laid down, shall be liable to be rejected in respect of such quantity of rice which is not found to be within the specifications and the miller shall be liable to pay to the PUNSUP for the quantity of rice short supplied, a penalty at the custom milling rate fixed by Govt. of India plus 21% interest from the date it becomes payable till the date of actual realisation of the converted variety of rice. The decision of the MANAGING DIRECTOR PUNSUP (hereinafter referred to as the Managing Director of the PUNSUP) in this behalf shall be final.*

iii) At the time of delivery, the stocks of rice shall be subjected to the inspection as per provisions of the Punjab Rice Procurement (Levy) Order, 1983. Any quality allowance determined at the time of inspection according to the specifications shall be recovered from the Miller's bills.

iii. The miller shall be required to manufacture rice as per specifications laid down by the Government of India and deliver the same to the Food Corporation of India at its depots by 30.06.2002. In the event of his failure to supply rice within the stipulated period he shall be liable for an interest @ 21% for the first year of default and @ 30% for the subsequent period on the custom milled price fixed by the Govt. of India from the date it becomes payable till the date of actual realisation towards the left over quantity /stocks of paddy. The decision of the Managing Director PUNSUP in this behalf shall be final."

13. Clearly, therefore, the order dated 24.7.2007 was passed by the Managing Director in exercise of the power conferred upon him under the above clause of the Agreement. The order dated 24.7.2007 can therefore, by no stretch of the imagination, be construed as an Award under the Act. The learned first Appellate Court was in error in considering the administrative order passed by the Managing Director as an Award.

14. Furthermore, in pursuance of order dated 24.07.2007 Ex.P8 passed by the Managing Director, the respondent had paid the principal amount demanded on the basis of the said order; and only the interest payable thereupon was remaining. Therefore, the respondents had not

only accepted the order dated 24.7.2007; but had also acted upon it. It is also admitted by learned counsel for the respondent that Managing Director had passed the order Ex.P8 under Clause 8 of the Agreement in question after according personal hearing to the respondent. Thus, the suit of the plaintiff was liable to be decreed.

15. Given the above admitted facts, I **allow** the present Appeal; and set aside the judgment and decree dated 24.11.2015 passed by the learned Additional District Judge, Sangrur in Civil Appeal No. 288 dated 15.11.2013; and restore the judgment and decree dated 15.10.2013 passed by the learned Civil Judge (Senior Division), Sangrur.

16. Pending applications, if any, stand disposed of.

26.09.2025 **(NIDHI GUPTA)**

Divyanshi **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No