

(2022) 09 OHC CK 0224
In the Orissa High Court
Case No : Writ Petition (C) No. 18536 Of 2022

Bhadra Products

APPELLANT

Vs

M/s. Indian Farmers Fertilizer Cooperative Ltd

RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Code of Civil Procedure, 1908 — Section 151

Citation : (2022) 09 OHC CK 0224

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Nilamadhab Bisoi, S. Grover

Judgement

Arindam Sinha, J

1. Mr. Bisoi, learned advocate appears on behalf of petitioner and submits, there be judicial review over order dated 8th July, 2022, made by the Court below in hearing his client's challenge under section 34 in Arbitration and Conciliation Act, 1996. He submits, there was nil award. Principal ground for rejecting the claim was that the invoices were not produced. His client sought to produce them as additional evidence, by petition made under section 151 in Code of Civil Procedure. The petition was rejected by impugned order. He relies on, inter alia, judgment of the Supreme Court in Canara Nidhi Limited v. M. Shashikala, reported in (2019) 9 SCC 462, to submit, on being allowed to produce the invoices there will be found apparent illegality in face of the award. Hence, this is an exceptional case, where the petition ought to have been allowed. He seeks interference. Mr. S. Grover, learned advocate appears on behalf of opposite party and submits, the presence or absence of invoices was not a ground for nil award.

2. Perused impugned order. It appears therefrom, the Court below perused the award and extracted certain paragraphs therefrom to demonstrate that no bills/invoices had been brought on record in the reference, to disprove testimony. On query from Court Mr. Grover submits, his client adduced oral evidence in the

reference. On further query from Court he submits, there was no question of disputing the invoices in the reference since, they were not produced.

3. Prima facie appreciation is that impugned order was passed on reliance in the award regarding omission to produce the invoices. Paragraphs from the award extracted in part, for reliance by the Court below to reject petitioner's prayer for producing additional affidavit evidence, record observations made by the tribunal on non-production of invoices.

4. On cursory perusal of impugned order, it does not reveal the Court below recorded reason contended for non-production of the documents in the reference. In paragraph 12 of the petition made under section 151, petitioner has said it was unable to locate the documents during the arbitral proceedings. This contention not having been noticed by the Court below, the finding on the petition of not disclosing exceptional circumstances, requires further scrutiny.

5. By consent, list on 13th October, 2022 marked at 2:00p.m. Interim order to continue till next date.

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