

(2010) 04 P&H CK 0303
In the Punjab And Haryana At Chandigarh

Mahavir Rice and General Mills	Vs	APPELLANT
Punjab State Warehousing Corporation and Others		RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 4

Citation : (2011) 161 PLR 152 : (2010) 4 RCR(Civil) 535

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This appeal is directed against order dated 7.2.2006 passed by District Judge, Ferozepur on an application filed by the appellant u/s 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act") against the Arbitral award dated 21.3.2002.

2. The only argument raised by learned Counsel for the appellant is that learned Civil Court has erred in dismissing the objection on the ground that the appellant had waived off his right to object to the arbitral proceedings that it pertains to excepted matters, which is to be decided by the Managing Director of the Corporation and not by the Arbitrator. It is submitted that since it is an ex parte award, therefore, provisions of Section 4 of the Act would not apply as it cannot be presumed that the appellant was participating in the arbitration proceedings without raising the objection that it is the case of excepted matter which is not within the jurisdiction of the Arbitrator.

3. In reply, learned Counsel for respondent No. 2 has submitted that the appellant had appeared before the Arbitrator. He had filed written statement. Issues were framed on the pleadings of the parties but thereafter he did not choose to appear and was proceeded against ex parte. It is also submitted that in the written statement he did not take this plea that the matter falls in the excepted matters, which is to be decided by the Managing Director of the

Corporation, therefore, Arbitrator has no jurisdiction.

4. I have heard both learned Counsel for the parties.

5. I am of the view that the appellant does not have any case for the reasons that firstly, he did not take the plea in the written statement, which was filed before the Arbitrator, that the matter pertains to the excepted matter and secondly he did not choose to contest the proceedings before the Arbitrator as he did not appear after framing of the issues.

6. In my opinion, his case is worst because in case where a party is participating in the arbitration proceedings and does not raise a plea is one thing but in case where a party who had filed written statement and issues were framed thereafter but still chose not to appear cannot raise this objection u/s 34 of the Act that the Arbitrator had no jurisdiction to decide the matter as it pertains to the jurisdiction of the Managing Director of the Corporation.

7. In view of the above, I do not find any merit in the present appeal and the same is hereby dismissed.