

(2013) 05 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision 7440 of 2012

M/s. Bansal Rice Mills

APPELLANT

Vs

Punjab State Co-operative Supply and Marketing Federation
Ltd. and Another

RESPONDENT

Date of Decision : 13-05-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2013) 171 PLR 599

Hon'ble Judges : T.P.S. Mann, J

Bench : Single Bench

Advocate : Pardeep Goyal for Mr. Abhishek Goyal, for the Appellant;

Final Decision : Allowed

Judgement

T.P.S. Mann, J.—The petitioner has challenged the order dated 1.10.2011 (Annexure P-1) passed by the Additional District Judge, Chandigarh whereby objection petition filed by him u/s 34 of the Arbitration and Conciliation Act for setting aside the arbitration award dated 12.6.2006 stands dismissed for want of prosecution. He has also challenged the order dated 20.9.2012 (Annexure P-3) passed by the aforementioned Court dismissing his application for recalling the order dated 1.10.2011. For the reasons that the case was called several times during the course of the day and neither the authorized representative of the petitioner was present nor any of its witness, learned Additional District Judge, Chandigarh considered it appropriate to dismiss the petition for want of prosecution. The petitioner then filed an application for recalling the aforementioned order on the ground that he had wrongly noted the date as 10.12.2011 instead of 1.10.2011 and for that reason, he could not put in appearance before the lower Court on 1.10.2011. That application was dismissed by the Court below on the ground that neither the counsel for the petitioner had placed on record the copy of his case diary nor the photocopy of the brief in order to substantiate his contention.

2. The present revision came up for preliminary hearing on 12.12.2012, when after hearing counsel for the petitioner, notice was issued to respondent No. 1 only. On the next date, i.e. 23.1.2013, none appeared on behalf of respondent No. 1 despite service having been effected. In the interest of justice, the hearing of the case was adjourned for today. Once again, none has put in appearance for respondent No. 1.

3. It is true that neither the petitioner nor his counsel was present before the lower Court on 1.10.2011. Even no evidence of the petitioner was available to be examined by the lower Court.

4. It is also true that counsel for the petitioner did not place on file either the copy of his case diary nor the photocopy of the brief. However, while filing the application (Annexure P-2) for recalling the order dated 1.10.2011, counsel for the petitioner had specifically averred therein that he had noted the date wrongly as 10.12.2011 instead of 1.10.2011. Along with the application for recalling the order dated 1.10.2011, affidavit (Annexure P-4) of counsel for the petitioner was also appended thereto to show to the lower Court that it was on account of the date being noted wrongly that neither the petitioner nor his counsel could put in appearance before the lower Court on 1.10.2011. Once the counsel for the petitioner had taken upon himself to explain as to why he could not put in appearance before the Court below on 1.10.2011, he could not have been expected to place on record the copy of his case diary or the photocopy of the brief. The affidavit of the counsel for the petitioner itself was sufficient to establish the fact that it was on account of the date being noted wrongly that the petitioner or his counsel as well as his evidence could not be there before the Court below on 1.10.2011. Even otherwise, despite service, there is no representation on behalf of contesting respondent No. 1 in the present revision. Under these circumstances, this Court has no other option but to grant relief to the petitioner by setting aside the order dated 1.10.2011 dismissing the petition u/s 34 of the Act in default and the order dated 20.9.2012 dismissing the application filed by the petitioner for recalling the aforementioned order. Resultantly, the revision is allowed, impugned orders dated 1.10.2011 and 20.9.2012 are set aside and the lower Court is directed to restore the petition filed by the petitioner u/s 34 of the Arbitration and Conciliation Act, 1996 and decide the same in accordance with law.