
(2016) 11 P&H CK 0069
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 5587 of 2012 (O&M)

M/s R.K. Rice Mills

APPELLANT

Vs

Punjab State Civil Supply Corporation Ltd.

RESPONDENT

Date of Decision : 03-11-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2017) 2 PLR 230

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Mr. Vijay Sharma, Advocate, for the Appellants; Ms. Deepali Puri, Advocate, for the Respondent No.1

Final Decision : Disposed Off

Judgement

Amit Rawal, J. (Oral)—CM-25847-CII-2012

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the delay of 211 days in re-filing the appeal is condoned.

CM stands disposed of.

FAO No.5587 of 2012

The appellant(s)-Contractor is aggrieved of the impugned order dated 14.10.2011, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act") for setting aside the Award dated 20.04.2004 have been dismissed on the ground of limitation, though, there is a passing reference qua merits also.

2. Mr. Vijay Sharma, learned counsel appearing on behalf of the appellants submits, that in pursuance to the dispute having arisen between the parties, the matter was referred to the Arbitrator. The matter was contested before the Arbitrator and the Arbitrator pronounced the Award on 20.04.2004. However, the

Award does not contain the compliance of the provisions of sub-Section 5 of Section 31 of the 1996 Act. The Award purported to have been enclosed with the letter dated 21st/23rd April, 2004 has not been proved to have been sent as postal receipt has not seen the light of day. The appellant(s)-Contractor applied for a certified copy of the Award vide application dated 19.01.2005 and was supplied by the Arbitrator vide letter dated 27.01.2005 (Ex.P-2). The Objecting Court has only given the reference to the previous letter and formed an opinion by raising the presumption that the Award must have been received.

3. He further submits that on receipt of the Award vide letter dated 27.01.2005, the objections were filed on 16.02.2005. There was no delay of filing of the objections after acquiring the knowledge. Even on merits, he submits that a specific objection was taken qua the maintainability of the Award as there is a misreading and non-reference to the certain documentary evidence, thus, urges this Court for setting aside the findings under challenge.

4. Per contra, Ms. Deepali Puri, learned counsel appearing on behalf of respondent No.1-PUNSUP submits, that the limitation to file the objections starts running from the date of the award, in fact, the Award was passed in the presence of the respective parties. No explanation has come forth in not filing the objections from the date of the Award as it was the bounden duty of the appellant(s)-Miller to obtain the copy of the Award. Filing of the application is nothing, but to cover up the period of limitation by taking the benefit of the judgments that could not help the appellant(s)- Miller. The objections have not solely been dismissed on the ground of limitation, but there is a reference on merits too. There is a very limited scope for interference, even if the Objecting Court had to form a different opinion than the one arrived at by the Arbitrator, thus, urges this Court for dismissal of the appeal by upholding the findings under challenge.

5. I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no reference with regard to the postal receipt placed on record or not with the letter dated 21st/23rd April, 2004. Had it been so perhaps the Court would have drawn the presumption as per the provisions of Section 27 of the General Clauses Act. In the absence of the same, I am of the view that the period of limitation prima facie has to be reckoned from the date of supply of the copy of the Award, but this aspect has not been appreciated by the Objecting Court. Even the reasoning assigned with regard to merits of the matter, is only a cover up and there is no reference to the objection taken in this regard. I am of the view that the matter requires to be reconsidered by the Objecting Court keeping in view the aforementioned observations made herein above.

6. For the foregoing reasons, the impugned order dated 14.10.2011 is hereby set aside and the matter is remitted back to the Objecting Court to decide the objections afresh in view of the observations made herein above.

7. The parties shall be at liberty to raise all the possible plea with regard to the date of the knowledge of the Award, much less, the presumption under Section 27 of the General Clause Act or otherwise.
8. Learned counsel for the parties and as well as the parties are directed to appear before the Objecting Court on 01.12.2016.
9. In case, the Objecting Court arrives at a conclusion that objections were within the limitation, it will not preclude it to decide the objections on merits.
10. The appeal stands disposed of.