
(2000) 05 P&H CK 0061
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2305 of 1999

Pappu Rice Mills

APPELLANT

Vs

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

RESPONDENT

Date of Decision : 31-05-2000

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : AIR 2000 P&H 276 : (2000) 126 PLR 557 : (2000) 3 RCR(Civil) 462

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : Deepak Arora, for the Appellant; S.D. Bhalla, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Jain, J.—This judgment shall dispose of Civil Revisions 2305, 1032, 1033, 1096 and 1097, all of 1999 as common question of law and fact are involved in these revisions and all these revisions are directed against the same judgment dated 30-11-1998 passed by the District Judge, while disposing of the appeals against orders dated 8-6-1998 passed by the trial Court.

2. For the purposes of convenience, the facts of the case Civil Revision 2305 of 1999 Pappu Rice Mills v. The Punjab State Cooperative Supply and Marketing Federation Ltd. and others may be noticed.

3. M/s Pappu Rice Mills (plaintiff) had filed a suit for declaration and injunction against the defendant-respondents to the effect that the order dated 22-11-1996 passed by the Managing Director of the defendant Federation, vide which Sh. K. K. Dixit, District Manager, was appointed as Arbitrator to adjudicate the dispute between the parties and consequently, the notice dated 9-12-1996 issued by aforesaid Sh. K. K. Dixit was illegal and void. Along with the said suit, the plaintiff had also filed application under Order 39, Rules 1 and 2, read with Section 151, CPC for grant of ad interim injunction. The suit and the application

were contested by the defendants by filing written statement/reply. The stand taken by the defendants was that as per Clause 18 of the agreement, all disputes and differences arising out of or in any manner touching or concerning the agreement, shall be referred to the sole arbitrator of the Managing Director or any person appointed by him in this behalf. It was further pleaded that it was in pursuance of the said clause in the agreement that the Arbitrator was appointed and the Arbitrator was proceeding with the arbitration proceedings and that the arbitrator was yet to decide the dispute between the parties. The learned trial Court, after hearing both the sides and perusing the record, dismissed the ad interim injunction application of the plaintiff. Aggrieved against the order, the plaintiff filed appeal before the District Judge. The learned District Judge, vide judgment dated 30-11-1998, dismissed the appeal. Still aggrieved, the plaintiff filed the present revision.

4. Notice of motion was issued in all the five revisions. Counsel for the parties have been heard and record perused.

5. Learned counsel for the plaintiff-petitioners submitted before me that since the plaintiff had challenged the very appointment of defendant No. 3 Sh. K. K. Dixit, as Arbitrator, the Courts below should have stayed the arbitration proceedings before the Arbitrator. On the other hand, learned counsel for the defendant-respondents submitted before me that the arbitration proceedings pending before the Arbitrator could not be stayed by the Civil Court and that the plaintiff would be at liberty to take up all the points before the Arbitrator including the question of his own Jurisdiction. Reliance was placed on the law laid down by their Lordships of Supreme Court in Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and Others, , Herike Rice Mills Vs. State of Punjab and Others, , PSEB, Patiala v. Indure Ltd. ILR (2000) P& H 183 and Civil Revision 769 of 1998 Manjit Singh Sodhi v. Markfed decided on 12-8-1998.

6. After hearing both the sides and perusing the record, I find no merit in these revisions which are liable to be dismissed.

7. Section 5 of the Arbitration and Conciliation Act, 1996 ((hereinafter referred to as the Act) provides that, notwithstanding anything contained in any other law for the time being in force, in matters governed by this part, no Judicial authority shall intervene, except where so provided in this part. Section 8(3) of the Act provides that, notwithstanding that an application has been made under Sub-section (1) and that the issues pending before the judicial authority, the arbitration may be commenced or continued and an arbitral award made. Section 16 of the said Act provides that, Arbitral Tribunal may rule on its own jurisdiction including ruling on any objections with respect to the existence or validity of the arbitration agreement. It is further provided therein that a plea that the Arbitral Tribunal does not have jurisdiction, shall be raised not later than the submission of the statement of defence. It is further provided that the Arbitral Tribunal may admit such plea even at a later stage if the delay is justified. It is further provided therein that the Arbitral Tribunal shall decide on a plea regarding

jurisdiction and where Arbitral Tribunal takes a decision rejecting the plea, it would continue with the arbitral proceedings and make an arbitral award. It is further provided that a party aggrieved by such an arbitral award may make an application for setting aside such an award in accordance with Section 34 of the said Act.

8. In the present case, admittedly, the Managing Director of the defendant Federation and already appointed KK Dixit as the Arbitrator, in respect of the dispute between the parties. The Arbitrator has already issued notice to the parties in the arbitral proceedings pending before him. The plaintiff would be competent to raise all sorts of pleas regarding jurisdiction of the Arbitrator by making necessary-application in this regard before the Arbitral Tribunal. The Arbitral Tribunal would be competent to decide the questions of its own jurisdiction and where it rejects the plea of the object or regarding jurisdiction, the Arbitral Tribunal would be competent to proceed with the arbitration proceedings and to give its Award and the aggrieved party would be competent to challenge the same u/s 34 of the said Act. Thus, remedy is available to the plaintiff under the provisions of the said Act. That being so, the civil Court would not be competent to restrain the Arbitrator to proceed with the arbitration proceedings, in view of the provisions of Section 5 of the Act.

9. In *Herike Rice Mills Vs. State of Punjab and Others*, , after noticing various provisions of the Act, it was held by a Division Bench of this Court that even if the appointment of the arbitrator was invalid, the same will have to be decided by the Court before which the validity of the Award would be challenged. It was further held in the said authority that an unsuccessful party even cannot challenge the order of the Arbitrator rejecting the challenge to his appointment even before the civil Court before the Award is made and as such even a petition under Article 226 of the Constitution of India challenging the order of the Arbitrator would not lie, when the Award is yet to be made. In *Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and Others*, , it was held by their Lordships of Supreme Court that u/s 34 of the Act, arbitral award may be set aside by the Court if the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration. In ILR (2000) 1 Punj & Har 183 (supra), reliance was placed on the law laid down by a Division Bench of this Court in *Herike Rice Mills Vs. State of Punjab and Others*, and it was held that In *M/s. Harike Rice Mills*" case, a Division Bench had already considered a similar issue and had taken the view with regard to the stage at which appointment of an Arbitrator could be challenged by the aggrieved party. In Civil Revision 769 of 1998 decided on 12-8-1998, It was held by this Court that the person aggrieved by the Award could certainly make an application for setting aside the award and in such an application, he could take the plea of jurisdiction of the Arbitrator among other grounds. Thus, a remedy is provided under the Act to the persons who are aggrieved by the decision of the Arbitrator excepting the plea regarding jurisdiction.

10. In view of the law laid down in the abovementioned authorities and in view of various provisions of the Act referred to above, in my opinion the Courts below are perfectly justified in refusing to grant interim injunction in favour of the plaintiff in all these five cases. I am further of the opinion that the Courts below have exercised judicial discretion while refusing to grant ad interim injunction in favour of the plaintiff and that being so, no case is made out for interference by this Court in the exercise of its revisional jurisdiction.

11. For the reasons recorded above, finding no merit in all these five revisions petitions, I hereby dismiss them. No costs.