

(2014) 09 P&H CK 0173
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 542 of 2014

Punjab State Grains Procurement Corp. Ltd. and Others	APPELLANT
Vs	
Baba Ji Rice Mills	RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8, 8(2), 8[2]

Citation : (2015) 3 ARBLR 521 : (2015) 177 PLR 763

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Karan Gupta, Advocates for the Appellant

Judgement

Rakesh Kumar Jain, J.—The petitioners have challenged order dated 28.9.2013, dismissing the application filed under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, "the Act"), for referring the dispute to the Arbitrator in terms of the agreement. In short, the petitioners entered into an agreement with the dealer for custom milling of paddy for the year 2010-2011. The agreement contains Arbitration Clause 26 which provides that in the event of disputes/ differences arising out of or touching or concerning the agreement, the parties may invoke the arbitration clause.

2. Since the miller did not mill the entire stock of paddy and committed breach of contract, the matter was referred to the Arbitrator, who sent a notice of arbitration proceedings to the miller on 30.4.2013. The miller/respondent also filed a suit for mandatory injunction directing the defendants to settle the accounts of the plaintiff for the crop year 2010-11 and 2011-12, to refund the amount of cash guarantee, amount of four cheques and milling charges after deducting the costs of bardana retained by the miller, with consequential relief of permanent injunction restraining them, their servants and agents from interfering in the day to day business of the plaintiff.

3. The defendant appeared in the suit, filed an application under Section 8 of the

Act, along-with the written statement for referring the matter to the Arbitrator in terms of Clause 26 of the agreement. Attested copy of the agreement accompanied the application, but the application of the petitioners was dismissed by the Court, inter-alia, on two grounds namely, the application under Section 8 of the Act was not filed before filing the written statement and the certified copy or the original agreement is not attached.

4. Learned counsel for the petitioners has argued that the Court below has erred in interpreting Section 8 of the Act which provides that such application can be filed at the time of filing of the written statement because the word used is if a party so applies not later than when submitting his first statement. It is argued that the word "not later than" when submitting his first statement, would also include that the application could be filed at the time when written statement is filed.

5. It is further argued that Section 8(2) though provides that the application should be accompanied by the original arbitration agreement or a duly certified copy thereof would include an attested copy. In support of his contention, learned counsel has placed reliance upon a judgment of the Calcutta High Court in the case of Jessop and Co. Ltd. Vs. Tecpro Systems Ltd., .

6. No one has appeared on behalf of the respondent despite service.

7. I have heard learned counsel for the petitioners and perused the record with his able assistance.

8. There is no dispute about the facts of the case. Therefore, I would only deal with the questions of law raised by the learned counsel for the petitioners. In order to deal with the first question about the filing of the application, it would be relevant to refer to Section 8 of the Act, which reads as under:-

"8. Power to refer parties to arbitration where there is an arbitration agreement.-
(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the subsistence of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continue and an arbitral award made".

9. According to the aforesaid section, any matter which is subject matter of arbitration and conciliation before the Court could be referred to the Arbitrator not later than when submitting his first statement. The word "not later than" when submitting his first statement could also include filing of an application

along-with the written statement which has exactly been done by the petitioners in this case as the application is dated 03.9.2013 and the written statement is also of the same date. There is no dispute on this fact which can be found from the order dated 03.9.2013 passed by the Court below which reads as under:-

"Present: Counsel for the plaintiff.

Today, Shri A.C. Nanda, Advocate, has filed power of attorney on behalf of defendants No. 1 and 2. Written statement alongwith application for referring the suit filed on behalf of defendants No. 1 and 2.

Now to come up on 07.9.2013 for filing replication and for filing reply".

Insofar as the second question that the attested copy of the agreement could be accepted or not is concerned, learned counsel for the petitioners has relied upon a decision of the Calcutta High Court in Jessop's Case (Supra), in which it has been held as under:-

"The first is that Section 8 of the Arbitration and Conciliation Act, 1996 requires the original of the award or a certified copy of it to be filed along with the section 8 application (See section 8[2] of the Arbitration and Conciliation Act, 1996]. The copy of the arbitration agreement filed with the section 8 application is endorsed as a "true copy" by Mr. Swapan Roy, an officer of the defendant along-with the seal of the company. It is said that this is no certification in terms of section 8[2] of the Act.

I do not agree. I have examined Black's Law Dictionary, 7th Edition for the meaning of the words "certified copy". It is in the following term:

"certified copy. A duplication of an original [usu. Official] document, certified as an exact reproduction usu. By the officer responsible for issuing or keeping the original. Also termed attested copy; exemplified copy; verified copy; verification."

Therefore, a person having custody of the original document issues, a duplicate declaring that it is a true copy of the original. This is the plain and ordinary meaning of a "certified copy". No other qualification has been put to the expression by the legislature by adding that the certified copy should be attested by a public officer and so on. In the absence of such a qualification the certified copy of an arbitration agreement should be construed as a copy declared to be true by the officer responsible for its custody. In this case, it is an agreement between the two body corporates and no public officer is in custody of the original. The original is in the custody of both the parties. Therefore, the declaration "true copy" by an officer of the defendant with his signature and the stamp of the company complies, in my opinion, with the requirement of the section. So, this point is rejected."

According to the aforesaid observation of the Calcutta High Court, definition of certified copy can be seen from the Black's Law Dictionary 7th Edition which provides duplicate of an original (usu. Official] document certified as an exact

reproduction usual by the officer responsible for issuing or keeping the original also termed attested copy; exemplified copy; verified copy; verification."

In this case, the agreement has been signed by the District Manager, Punjab State Grain Procurement Corporation Limited, Gurdaspur, which would fall within the definition of certified copy and the aforesaid provision of Section 8(2) of the Act. Accordingly, the second question is also decided in favour of the petitioners and the accumulative effect of the answers given by the learned counsel for the petitioners is that this petition is found to be meritorious and the same is hereby allowed.