SUPREME COURT OF INDIA

Punjab State Civil Supplies Corporation Ltd.

Vs.

Atwal Rice & General Mills

C.A.No.8943 of 2017

(Abhay Manohar Sapre and R.Banumathi,JJ.,)

11.07.2017

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(Civil)No.1552/2015

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 17.10.2014 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Revision No. 3602 of 2013 whereby the High Court dismissed the revision petition filed by the appellants herein and affirmed the order dated 03.11.2012 passed by Additional District Judge, Jalandhar in Execution SR. No. 37 of 2010 by which the execution petition relating to arbitration award dated 01.06.2001 was dismissed.

3. In order to appreciate the short controversy involved in this appeal, few relevant facts need mention infra.

4. The appellant is a State owned Corporation engaged in supply of civil commodities in the State of Punjab. Respondent No. 1 is a partnership firm whose partners are respondent Nos. 2 to 4. The firm is engaged in the business of running a rice Mill in Jalandhar.

5. On 01.01.1996, the appellant and Respondent No.1 entered into an agreement. In terms of this agreement, the appellant was to give their paddy to the respondents, who were to process the paddy in their Rice Mill and the resultant rice produced after processing paddy were to be delivered to the Food Corporation of India (FCI) for and on behalf of the appellant by the respondents. Since the agreement was in relation to processing of paddy and then supply of rice to public at large through FCI, the time was made the essence of the agreement so that the concerned departments would be able to supply the rice in time to public at large.

6. It is the case of the appellant that the appellant delivered 62944 bags weighing 40790 quintals of fine variety of paddy and 90303 bags weighing 58696.95 quintals of IR 8 variety of paddy to the respondents for processing and converting into Rice for being supplied to the FCI. The respondents duly acknowledged the receipt of paddy from the appellant on 27.11.1995 and 06.12.1995.

7. The respondents, however, could only process and deliver to the FCI 27950.75 quintals of fine variety rice and 22955.32 quintals of IR - 8 variety of rice till 30.06.1996. Thereafter the respondents could deliver 710.00 quintals of fine variety of rice and 14441.04.200 quintals of IR -8 variety of rice in 1075 bags after 30.06.1996.

8. Since the respondents failed to process and deliver the full quantity of rice in terms of agreement to the FCI much less within the time framed, it caused money losses to the appellant in addition to sustaining the damages due to non-delivery of the rice. According to the appellant, since the respondents committed breach of the agreement because they were not able to perform their part of the agreement, the appellant became entitled, in terms of the agreement, to recover from the respondents (1) 1% times economic cost of balance paddy, (2) the cost of balance bags and sales tax @ 4.4% thereon, besides TDS on income tax @ 2.34%, and (3) other recovery.

9. The agreement contained an arbitration clause for resolving all disputes arising between the parties in relation to the agreement. The appellant accordingly gave notice to the respondents requesting them for referring the disputes, which had arisen between them to the Arbitrator. The respondents acceded to the appellant's request and accordingly the disputes were referred to the sole Arbitrator-one Mr. O. P. Garg. The arbitrator embarked upon the reference made to him by the parties. The parties filed their respective claims and adduced evidence in support of their stand.

10. On 01.06.2001, the Arbitrator delivered a reasoned award. The Arbitrator allowed the appellant's claim in part and accordingly passed a money award for Rs.1024847.15 with interest payable at the rate of 21% w.e.f. 01.01.1999 till realization in appellant's favour and against the respondents.

11. The respondents, felt aggrieved of the award, filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") and questioned its legality and correctness before the Additional District Judge, Jalandhar. By order dated 04.06.2009, the Additional District Judge dismissed the application and upheld the award. The respondents, as the records indicate. though claimed to have filed appeal in the High Court but did not pursue the appeal and hence the order dated 04.06.2009 of the Additional District Judge and, in consequence, the award dated 01.06.2001 became final and attained finality.

12. The respondents did not pay the awarded amount to the appellants and, therefore, the appellant filed Execution Petition No.37/2010 under Section 36 of the Act before the Additional District Judge, Jalandhar for enforcement of the award against the respondents. The respondents on being served filed reply to the execution application and raised certain factual objections purporting to be under Section 47 of the Civil Procedure Code, 1908 (hereinafter referred to as "the Code"). The respondents also filed one application praying therein for a direction to the appellant to produce the statement of accounts and the transactions done pursuant to the agreement in question.

13. By order dated 03.11.2012, the Executing Court upheld the objections raised by the respondents and, in consequence, dismissed the appellant's execution application. It was held that the respondents having paid a sum of Rs.3,37,885/- towards decreetal amount to the appellant, the award/decree in question stood satisfied fully and hence the execution application filed by the appellant is liable to be dismissed. It was, accordingly, dismissed.

14. The appellant, felt aggrieved, filed revision being Civil Revision No. 3602 of 2013 before the High Court. By impugned order, the High Court dismissed the revision and upheld the order of the Executing Court. It is against this order, the appellant(claimant) has filed this appeal by way of special leave before this Court.

15. Heard Mr. Ashish Wad, learned counsel for the appellant and Mr. Abhishek Vikas, learned counsel for the respondents.

16. Having heard learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal and set aside the impugned order.

17. Sections 35 and Section 36 of the Act as it stood at the relevant time are relevant for this appeal. It reads as under:

> "35. Finality of arbitral awards. Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.
>
> 36. Enforcement - Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court."

18. Section 35 gives finality to every arbitral award and makes the award binding on the parties and all persons claiming under them. So far as Section 36 is concerned, it deals with execution of the award. It says that once the Court dismisses the application filed under Section 34 of the Act or if no such application is made and time has expired for making such application, the award shall be enforced as if it is a decree of the Court and the enforcement of the award shall be under the Code.

19. In other words, the arbitral award has been given the status of a decree of the Civil Court and, therefore, it is enforced like a decree of the Civil Court by applying the provisions of Order 21 of the Code and all other provisions, which deal with the execution of the decree of the Civil Court.

20.Coming to the facts of the case, we find that firstly, the award is under the Act; Secondly, the award was challenged under Section 34 by the respondents before the Additional District Judge but the challenge failed vide order dated 03.11.2012 of the Additional District Judge, Jalandhar; Thirdly, the order dated 03.11.2012 attained finality because the matter was not pursued by the respondents in appeal to the High Court; Fourthly, the award, in consequence, also attained the finality by virtue of Sections 35 and 36 of the Act; Fifthly, the award was and continues to be binding on the appellant and the respondents; Sixthly, the award acquired the status of a decree of the civil court by virtue of Section 36 of the Act; Seventhly, the award has to be enforced for recovery of the awarded amount from the respondents like a decree of the civil court under the Code.

21. It is a well-settled principle of law that the executing Court has to execute the decree as it is and it cannot go behind the decree. Likewise, the executing Court cannot hold any kind of factual inquiry which may have the effect of nullifying the decree itself but it can undertake limited inquiry regarding jurisdictional issues which goes to the root of the decree and has the effect of rendering the decree nullity (see- *Kiran Singh & Ors. vs. Chaman Paswan & Ors*[1].,)

22. Let us now see the nature of the objections raised by the respondents in execution proceedings with a view to find out as to whether they or anyone out of them were legally sustainable and which, according to the respondents, resulted in fully satisfying the award/decree in their favour and rightly found acceptance by the Courts below for so holding.

23. The respondents in their application filed under Section 47 of the Code contended that firstly, the award being vague, it is incapable of execution for recovering any sum awarded therein from the respondents; Secondly, the Arbitrator has failed to specify the rates at which the interest were to be charged; Thirdly, the Arbitrator did not mention the words "per annum" to qualify the rate of interest, i.e.,21% awarded; Fourthly, the Arbitrator awarded simple interest whereas the appellant had claimed compound interest which is not permissible; Fifthly, the Arbitrator was not competent to award pendent lite and future interest; Sixthly, mandatory consent of the Managing Director of the appellant-Corporation was not obtained by the Arbitrator for awarding interest at the rate of 21%; Seventhly, the calculations made by the appellant in their execution application is wrong being excessive in nature; Eighthly, no notice of execution application was served on the respondents because the application was filed beyond two years from the date of award; Ninthly, the execution application is not maintainable because the respondents have filed appeal before the High Court against the order rejecting their application under Section 34 of the Act.

24. The respondents (judgment debtors) also filed one application seeking direction against the appellant to produce the entire record of the case including the accounts relating to the transactions done pursuant to the agreement in question.

25. It is pertinent to mention here that the executing Court did not decide any of the objections (nine) set out above but confined its inquiry to one statement of accounts filed by the respondents, which according to them, was given to them by the appellant. The executing Court, on perusal of the account statement, held that a sum of Rs.3,37,885/- was paid by the respondents to the appellant on 29.08.2011 which, as per the statement, was credited in appellant's account and hence such payment having been made has resulted in fully satisfying the decree in question and, therefore, the respondents are not liable to pay any amount towards decree in question. It is essentially with this factual finding, the executing Court came to a conclusion that the award/decree stood fully satisfied and hence no recovery of any awarded amount can be made and, therefore, dismissed the appellant's execution application.

26. It is apposite to reproduce the finding of the executing Court hereinbelow because it is this finding which was upheld by the High Court by impugned order giving rise to filing of this appeal by special leave.

> "8. I have thoroughly considered the contentions of the learned counsel for both the parties and have gone through the documents as referred to by the learned counsel for both the parties. It is clear that statement of account was supplied by the decree holder department itself to the judgment debtor, copy of which has been placed on file and even it is not denied by the decree holder. This statement of account dated 29.08.2011 shows that as on 29.08.2011, a sum of Rs.3,37,885/- was outstanding to be paid by the judgment debtor to the decree holder as per this statement of account supplied by the decree holder. Nor corresponding to the other document, i.e., certificate issued by Punjab National Bank, said amount of Rs.3,37,885/- was paid by the judgment debtor and was credited in the account of the decree holder M/s Punjab State Civil Supplies Corporation Limited, Jalandhar. The plea of the learned counsel for the decree holder that the other statement of account, which shows that a sum of Rs.8,86,248/- is to be repaid may be considered, is not acceptable for the reason that the statement of account supplied by the decree holder department itself shows that the judgment debtor was given said statement of account on 29.8.2011 and this statement of account is admitted to have been issued by the decree holder itself. The statement of account as relied upon by the counsel for the decree holder does not mention any date. More so, it is not justified by the decree holder as to how the amount of Rs.8,86,248/- has swollen to the amount of Rs.3495,886.15 paise regarding which the present execution is filed. On the other hand, the statement of account dated 29.8.2011 shows that a sum of Rs.3,37,885/- was found to be due against the judgment debtor, which was paid by the judgment debtor and deposited in the account of the decree holder and this fact is clear from the certificate given by the concerned bank. Hence, considering all these documents, it is clear that whatever money was due to be paid by

the judgment debtor to the decree holder as per statement of account supplied by the decree holder itself, has been paid by the judgment debtor and as such award regarding which the present execution has been filed stands fully satisfied. Resultantly, objections filed by the judgment debtor are accepted and the execution petition stands dismissed. Whatever property belonging to the judgment debtor, which has been attached in the present execution is ordered to be released henceforth. File be consigned to the record room."

27. We are constrained to observe that the executing Court and the High Court either did not understand the controversy or if understood, miserably failed to decide the same in accordance with law. Indeed, both the orders clearly show the total non-application of mind by the two Courts because both the Courts neither set out the facts much less properly nor dealt the issues arising in the case and nor applied the principle of law which governs the controversy.

28. Both the orders are, therefore, wholly perverse, illegal and without jurisdiction. This we say for more than one reason as detailed by us hereinbelow.

29. In the first place, none of the objections (nine) raised by the respondents were decided by the executing Court or/and the High Court. Indeed, they were not even referred to in the orders. If the objections had been raised by the judgment debtor under Section 47 of the Code challenging the decree then it was necessary for the executing Court to deal with the objections and record its finding one way or other in accordance with law. Secondly, assuming that these objections were to be decided then also, in our opinion, none of them had any merit whatsoever and they simply deserved rejection at the outset.

30. Thirdly, all the objections referred above ought to have been raised by the respondents before the Arbitrator or/and Additional District Judge under Section 34 of the Act but certainly none of them could be allowed to be raised in execution once the award became final and attained finality as decree of the Civil Court.

31. In other words, having regard to the nature of objections, it is clear that such objections were not capable of being tried in execution proceedings to challenge the award. It is for the reason that they were on facts and pertained to the merits of the controversy, which stood decided by the Arbitrator resulting in passing of an award. None of the objections were in relation to the jurisdiction of the Court affecting the root of the very passing of the decree. If the executing Court had probed these objections then it would have travelled behind the decree, which was not permissible in law. An inquiry into facts, which ought to have been done in a suit or in an appeal arising out of the suit or in proceedings under Section 34 of the Act, cannot be held in execution proceedings in relation to such award/decree.

32. Fourthly, and apart from what is held above, by no stretch of imagination, the award/decree could be held fully satisfied on alleged making of the payment of Rs.3,37,885/-

by the respondents to the appellant. This factual finding to say the least is perverse to its extreme.

33. It is not in dispute that the awarded principal sum even without interest was for Rs.10,24847.15. In these circumstances, we are at loss to understand as to how and on what basis, the executing Court could ever come to a conclusion that the entire money decree which was admittedly for more than Rs.10 lacs could be held fully satisfied against making of so-called payment of Rs.3,37,885/- by the respondents to the appellant assuming that such payment was held to had been made.

34. Order 21 Rule 1 of the Code prescribes the modes of paying money under the decree. Sub- clause^) provides that the decreetal money has to be deposited in Court or by postal money order or through Bank. Clause(b) provides that amount, if paid out of court, then it has to be by postal money order or through Bank or by any mode where payment is evidenced in writing. If the payment is made under clause(b) then clause(c) prescribes the procedure as to how the money has to be paid and what details are required to be given by the judgment debtor in support of making payment.

35. Order 21 Rule 2 of the Code deals with the cases where the judgment debtor makes the payment of decreetal amount either full or part out of the Court to the decree holder. Sub-clause(1) empowers the decree holder to apply to the executing Court to get the amount received from the judgment debtor certified from the Court and it is only when the Court certifies the amount to have been paid, it can be adjusted against the decreetal sum. Clause(2) empowers the judgment debtor to apply to the executing Court and get the certification done by the Court of the amount paid by them to the decree holder after notice to the decree holder. Rule 2(A) provides that no payment made by the judgment debtor shall be adjusted unless he ensures compliance of sub clause (a) or (b) or (c). Rule 3 provides that if the Court does not certify the payment made by the judgment debtor then such payment shall not be recognized by any Court executing the decree for the purpose of giving adjustment to the judgment debtor against the decretal amount.

36. Keeping in view the mandatory requirements of Order 21 Rules 1 and 2 relating to payment of decretal dues made by the judgment debtor and applying the said provisions to the undisputed facts of this case, we have no hesitation in holding that the sum of Rs.3,37,885/- which the respondents claimed to have paid to the appellant towards the decretal sum and which found acceptance to the two Courts below could never have been regarded as the payment made by the respondents to the appellant in conformity with the requirements of either Rule 1 or Rule 2 of Order 21. It is not in dispute that such payment was never certified by the Court as contemplated under Rule 2 of Order 21 at the instance of respondents or at the instance of the appellant. Indeed, there was neither any evidence to prove the factum of payment except one copy of the statement which also remained unproved nor any evidence was led to prove the certification done by the Court as required under Order 21 Rule 2 so as to recognize making of such payment by the respondents to the appellant.

37. We are, therefore, of the considered opinion that firstly, the execution application filed by the appellant (decree holder) for execution of the award/decree dated 01.06.2001 was maintainable and it should have been so held; Secondly, no amount was paid by the respondents to the appellant pursuant to the award/decree so as to enable the executing Court to record its full satisfaction in accordance with the provisions of Order 21 Rules 1 and 2 and lastly, all objections raised by the respondents under Section 47 of the Code against the award/decree are liable to be rejected as being wholly devoid of any merits. We, accordingly, hold so against the respondents.

38. In view of foregoing discussion, the appeal succeeds and is allowed with cost quantified at Rs.25,000/- payable by the respondents to the appellant. The impugned order and the order of the executing Court dated 03.11.2012 are set aside.

39. As a consequence thereof, the executing Court is directed to issue warrant for recovery of the entire awarded decretal amount against the respondents after verifying and calculating the decretal amount till date in terms of award/decree.

40. Let this be done within one month.

Judgment Referred.

[1]*AIR1954 SC 0340*