

IN THE COURT OF DINESH KUMAR,
ADDITIONAL DISTRICT JUDGE, MANSA.

(UID No.:PB0445)

Arbitration Case No.	11 dated 01.09.2016
Registration No.	ARB/5/2016
CNR No.	PBMN01-002536-2018
Date of Decision	04.01.2022

Punjab State Warehousing Corporation Chandigarh through Sh.Harbhajan Singh authorized person and District Manager of Punjab State Warehousing Corporation Mansa.

.....Petitioner

Versus

1. Sham Lal son of Dewan Chand;
2. Smt.Renu Bala wife of Vijay Kumar son of Dewan Chand;
3. Ajay Kumar son of Dewan Chand, all residents of Water Works Road, Mansa, opposite hospital of Dr.Parshotam Jindal Mansa, Tehsil and District Mansa partners of Shri Naina Devi Rice Mills, Mansa Khurd Road, Mansa, Tehsil and District Mansa.
4. Shri Naina Devi Rice Mills, Mansa Khurd Road, Mansa, Tehsil and District Mansa through its partner Sham Lal son of Dewan Chand resident of Water Works Road, Opposite Hospital of Dr.Parshotam Jindal Manda, Tehsil and District Mansa.
5. Sushil Kumar son of Jagdish Rai son of Kishor Chand resident of Water Works Road, Opposite Mauran Walian Dee Dharamshala, Mansa, sole proprietor of Maa Bhagwati Rice Mills Mansa, Teshil and District Mansa.

.....Respondents.

Petition under section 9 of The Arbitration and Conciliation Act, 1996 for for grant of interim protection by issuing permanent injunction against the respondents.

Present: Sh.S.K.Mehta, Learned Advocate for petitioner.

Sh.B.N.Goyal, Learned Advocate for respondents.

JUDGMENT :

1. The petitioner Punjab State Warehousing Corporation Chandigarh has filed this petitioner under section 9 of Arbitration and Conciliation Act 1996 (hereinafter called as Act) for grant of interim protection by way of issuing restraining the respondents from alienating their property.

2. It is the case of the petitioner that it is engaged in custom milling of paddy. During the crop year 2009-2010, petitioner corporation entered into an agreement for the custom milling of paddy at Mansa with Maa Bhagwati Rice Mills Mansa. Sushil Kumar (respondent no.5) is sole proprietor of the said rice mill. The rice mill was owned by respondents No.1 to 3 in partnership. Respondent no.4 is the name of firm of respondents No.1 to 3. Respondents No.1 to 4 had given the rice mill on lease to respondent no.5 vide lease agreement dated 29.01.2009. The petitioner corporation entrusted paddy to the respondent no.5 for custom milling as per agreement dated 11.11.2009. The respondent no.5 had to deposit the rice after milling of paddy with Food Corporation of India as per agreement. Respondent no.5 failed to deliver the rice to the Food Corporation of India, as per agreement after milling of the paddy. As per

record of petitioner corporation, there is an outstanding balance of Rs.4,18,43,316/- towards the respondents, on 30.11.2013. As per clause 26 of the agreement of custom milling, all the disputes and differences arising out of or in any manner or out of this agreement are to be referred to the sole arbitrator of the Managing Director of the petitioner or in any person appointed by him in this behalf. Therefore, matter in hand can only be decided by an arbitrator, as per agreement between the parties. It is the case of the petitioner corporation that respondents are adamant to alienate their property and are trying to dispose of the same. In case, they succeeded in doing so, the petitioner corporation shall suffer irreparable loss which shall not be compensated later on with costs. It is the case of the petitioner corporation that respondents no.1 to 3 are owners of 79/100 share out of land measuring 19 kanal 4 marla bearing khasra no.121//2 (7-7) 3/1 (1-17) 8/2 (2-0) 9 (8-0) khewat khatuni no.412/743, jamabandi for the year 2008-09, situated at village Malakpur, Tehsil and District Mansa. Respondent no.5 is owner of 1/3 share from out of land measuring 58 kanal 5 marlas bearing khasra no.6//23 (8-0) 16//3 (8-0) 4 (8-0) 6//24 (8-0) 6//16/2/2 (3-3) 17/2/1 (5-14) 16//2 (8-0) 8/3 (3-12) 9/1 (5-16) situated at village Gehle Tehsil and District Mansa along with land, building, machinery and other installations. It is prayed that respondents be restrained from alienating the above said land till the passing of the award by the arbitrator.

3. Notice of the petition was given to the respondents. Sh.B.N.Goyal appeared on behalf of all the respondents. He filed separate

replies on behalf of respondents No.1 to 4 collectively and respondent no.5 individually. Respondents No.1 to 4 have taken legal objections that petition is bad for mis-joinder of parties; that petitioner has no cause of action or cause of file this petition against respondents no.1 to 4; that respondents no.1 to 4 have no liability to discharge against the petitioner so, petition is not maintainable; that arbitrator has already been appointed to resolve to resolve the dispute; that the arbitrator has already dismissed the similar application of the petitioner so, this application is liable to be dismissed. On merits, it is admitted that lease agreement dated 29.01.2009 was executed by respondents no.1 to 4 in favour of respondent no.5 for the period commencing from 01.09.2008 to 31.08.2009. Respondents No.1 to 4 never leased out their sheller to respondent no.5 in the year 2009-10 and therefore, respondents No.1 to 4 are not liable for any default committed by respondent no.5. The petitioner Corporation is not entitled to recover any from respondents No.1 to 4 as they have not committed any default against petitioner corporation. With these submissions, it is prayed that petition be dismissed against respondents no.1 to 4.

4. Written statement on behalf of respondent no.5 has been separately filed taking legal objections that petition is barred by principle of resjudicata as similar application of the petitioner moved before the Arbitrator stands dismissed vide order dated 05.10.2012. The petitioner has not moved this application with clean hands. The arbitrator has already been appointed to resolve the dispute between the petitioner and

respondent no.5 and therefore, present petition under section 9 of the Arbitration Act is not maintainable before this Court. With these submissions, a prayer for dismissal of the petition has been made.

5. I have heard the rival contentions of both sides and perused the record.

6. Section 9 of the Arbitration and Conciliation Act, 1996 talks about the interim measure taken by the Court for arbitral proceedings. The aforesaid section indicates that a party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before section 36 may apply to a Court for interim measure. In the present case, arbitrator has already been appointed between the parties to adjudicate the matter. It is settled law that after an arbitrator award is made, interim relief can only be sought to safeguard the fruits of the proceedings until the enforcement of the award. The purpose of providing interim relief before the enforcement of the arbitral award to secure its value for benefit of the party that seeks enforcement of the award.

7. Perusal of the record reveals that dispute has arisen between Punjab State Warehousing Corporation and M/s Maa Bhagwati Rice Mill Mansa through its sole proprietor Sushil Kumar. Section 26 of the agreement executed between the parties mandates that all the disputes and differences arising out of any manner touching or concern shall be referred to the sole arbitrator of the Managing PSWC or any other appointed by him in this regard. As per the record, claimant/petitioner

filed the claim before the arbitrator for recovery of Rs.3,25,77,363/- including interest and further interest @ 12% per annum till recovery against respondent miller. The aforesaid arbitration award has been passed against M/s Maa Bhagwati Rice Mills, Mansa, respondent no.5. As such, respondents no.1 to 4 have no concern or liability against the claimant/petitioner, Punjab State Warehousing Corporation. Respondents no.1 to 4 are not privy to the agreement executed between petitioner Punjab State Warehousing Corporation and M/s Maa Bhagwati Rice Mills. There is an independent contract between respondents no.1 to 4 on one side and respondent no.5 on other side regarding leasing out of the premises to respondent no.5. Respondent No.1 to 4 cannot be held liable for breach of agreement, if any, committed by the respondent No.5. Accordingly, this Court is of the considered view that no adverse order can be passed against respondents no.1 to 4 and therefore, present petition is dismissed against respondents no.1 to 4, however, respondent no.5 is restrained from alienating his share in the land measuring 58 kanal 5 marlas bearing khasra no.6//23 (8-0) 16//3 (8-0) 4 (8-0) 6//24 (8-0) 6//16/2/2 (3-3) 17/2/1 (5-14) 16//2 (8-0) 8/3 (3-12) 9/1 (5-16) situated at village Gehle Tehsil and District Mansa, in any manner till the execution of arbitration of award or disposal of petition under section 34 of the Act, filed by respondent No.5

8. In view of my aforesaid discussion, present petition is allowed partly to the effect that respondent no.5 is restrained from alienating his share in the land measuring 58 kanal 5 marlas bearing

khasra no.6//23 (8-0) 16//3 (8-0) 4 (8-0) 6//24 (8-0) 6//16/2/2 (3-3) 17/2/1 (5-14) 16//2 (8-0) 8/3 (3-12) 9/1 (5-16) situated at village Gehle Tehsil and District Mansa, in any manner till the execution of arbitration of award or disposal of petition under section 34 of the Act filed by respondent No.5. Memo of costs be prepared. File be consigned to Record Room and record of the arbitrator be sent back.

Pronounced in open Court

04.01.2022

(Dinesh Kumar),

Additional District Judge, Mansa,

(UID:PB0445)

Raj/SG-1

Pb. State Ware Housing Co-op Vs. Sham Lal etc.

Present: Sh.S.K.Mehta, Learned Advocate for petitioner.

Sh.B.N.Goyal, Learned Advocate for respondents.

Arguments heard. Vide my separate detailed judgment of today, present petition is allowed partly. Memo of costs be prepared. File be consigned to Record Room.

Pronounced in open Court

(Dinesh Kumar),

04.01.2022

Additional District Judge, Mansa,

(UID:PB0445)

Raj/SG-1