

## **Jai Hanuman Traders Vs Punjab State Co-operative Supply and Marketing Federation Ltd. (Markfed)**

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Sept. 24, 2010

**Acts Referred:** Arbitration and Conciliation Act, 1996 â€” Section 34, 36

**Hon'ble Judges:** Alok Singh, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### **Judgement**

Alok Singh, J.

Present petition is filed challenging order dated 4.11.2009 passed by District Judge, Ferozepur whereby an application

moved by the petitioner herein to stay execution proceedings was dismissed. Dispute was referred for arbitration.

Arbitrator passed an award on

20.6.2003 which was modified on 27.2.2004. Petition u/s 34 of the Arbitration and Conciliation Act, 1996 was moved on 19.1.2009. Thereafter,

an application for stay of the execution was moved which was rejected by the impugned order.

2. Learned District Judge, while rejecting the application for stay of the execution on the ground that petition u/s 34 of the Act is pending, has

observed that since petition u/s 34 was filed after period of limitation, hence, there is no of question to stay the execution.

3. Section 36 of the Arbitration and Conciliation Act, 1996 reads as under:

36. Enforcement.- Where the time for making an application to set aside the arbitral award u/s 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.

4. From the perusal of Section 36 of the Act, I have no hesitation to hold that it is in two parts in first part it provides that award can be enforced

as decree of the Civil Court when time to set aside the arbitrator award u/s 34 has expired and in second part it provides if application is made to

set aside the award then it can only be enforced when application to set aside the award is rejected. In the opinion of this Court second part of

Section 36 has full application in the present case. Since application to set aside the award has already been made which is pending adjudication,

hence, in the opinion of this Court execution of the award is not permitted till application u/s 34 of the Act is finally decided.

5. In view of the above, present petition is allowed. Impugned order is quashed. Execution shall remain stay during the pendency of the petition u/s

34 of the Act. However, it is expected from the trial Court to expedite the hearing of the petition u/s 34 of the Arbitration and Conciliation Act,

1996 and every effort shall be made to decide the same preferably within 6 months from the day certified copy of this order is placed before the

Court below.