

(2001) 08 DEL CK 0133
In the Delhi High Court
Case No : AA No. 112 of 1996

Ashok K. Tiwari

APPELLANT

Vs

Una Cooperative Group Housing Society Ltd.

RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

Arbitration Act, 1940 — Section 20, 30
Arbitration and Conciliation Act, 1996 — Section 11
Limitation Act, 1963 — Article 137

Citation : (2001) 08 DEL CK 0133

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : B.P. Lathwal, for the Appellant; Suresh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.

1. Ashok Tiwari, hereinafter described as the petitioner has filed the present petition no. AA-112/96 u/s 11 of the Arbitration and Conciliation Act, 1996, hereinafter described as the Act. The facts alleged are that the petitioner is an electrical contractor, is doing the business in the name and style of M/s Power Technical Engineers. respondent Una Cooperative Group Housing Society Ltd. is a cooperative society registered under the Cooperative Group Housing Societies. The respondent had awarded a contract of electrical installations of its 100 dwelling units at plot no.3, Mandawali,, Fazal Pur, Patparganj on 6.8.1998.

2. The petitioner applicant asserts that contract was executed on 6.8.1998 with stipulated date as 6.2.1990 i.e. 18 months after signing and execution of the contract. The respondent is alleged to have failed in its obligation to get the civil construction work in time and hand over vacant possession to the applicant in time. It was the obligation of the respondent to pay the running bills within 14 days after the submissions of the bills. Petitioner contends that he had submitted 13 running bills on 9.3.1992, but it has not been paid. The final bill was

submitted on 20th April, 1993 but still remains unpaid. The work is stated to have been completed. As per the applicant there is an arbitration clause in the agreement for settlement of disputes and since the disputes have arisen with respect to the payment he has prayed for reference of the disputes mentioned in paragraph 7 of the petition.

3. In the reply field petitions as such has been contested. It has been pleaded that there is no such agreement of arbitration between the parties. The petitioner refers to an agreement dated 6.8.1988. The respondent has not been able to search any such agreement. It is denied that the amount claimed as such is due. Furthermore it is the respondents contention that work was never completed despite the written reminders nor the petitioner had done the said liaison work which was required to be due. On 8th May, 2000 this court had framed the following issues:-

1. Whether the petition is within time?

2. Whether the matter is liable to be referred to an arbitrator?

3. Relief.

4. Issue No.1- The main controversy between the parties was with respect to the said issue as to if the present petition is within time. In this regard one can conveniently travel back to the assertions of the petitioner. With respect to the submissions of the bills the petitioner has pleaded:

That it was obligation on the part of the respondent pay the running bills within 14 days after submission of bills to the architects of the respondent society but the respondent never made the payments in time. The applicant submitted the 13 running bills on 9.3.92 but it has not been paid yet. The applicant submitted the final bill on 20.4.93 but it was also not paid.

In other words, as per the petitioner he had submitted the final bill on 20th April, 1993 which is stated to have not been paid. Learned counsel for the petitioner urged that limitation would not run from the said date but would start running from the late date when the notice of demand had been sent.

5. The argument so advanced must be held to be misconceived. The limitation would start running from the date the amount became due. As per the petitioner himself he submitted the final bill on 20th April, 1993. The limitation period would start from the said date because it is the time when the final claim is laid by submission of the bill.

6. It becomes unnecessary for this court to ponder further in this regard because the matter is concluded by the decision of the Supreme Court in the case of Union of India Vs. M/s. Momin Construction Company, . This was a controversy that arose under the Arbitration Act, 1940. No objection had been issued by the respondent on 11.8.1965 and final bill was passed. The Supreme Court held that period of limitation would start running from the time the final bill had been

passed and Article 137 of the Limitation Act would apply. The petition having been filed after the expiry of the period of three years was held to be barred by time.

7. A Division Bench of this court in the case of R.K. Aneja vs. Delhi Development Authority reported as 2000 II AD (Del) 354 had taken into consideration the same controversy. In paragraph 5 while dealing with the same this court held:

The Supreme Court has in the case of Union of India Vs. M/s. Momin Construction Company, held that under Article 137 of the Limitation Act the period of limitation for an Application u/s 30 of the Arbitration Act, 1940 would start from the date when a "No Claim Certificate" and the final bill in respect of the construction were issued. In this case the final bill was issued on 12th August, 1988. The period of limitation thus starts from that date. The petitioner u/s 20 having been filed on 14th October, 1993 would thus be barred by limitation. The law laid down by the Supreme Court is binding on this Court. Thus this Appeal will have to and stands dismissed.

8. Position in the present case is identical. Herein the final bill was submitted on 20th April, 1993. In other words, this was the claim laid by the petitioner and period of limitation would start running from that date. The petition has filed on 29th September, 1996 i.e. to say after the expiry of the period of three years. Therefore, it must be held to be barred by time. Issue No. 1 is decided against the petitioner.

9. Issue No.2.- Keeping in view in findings on issue no.1, subsequent issue does not survive for consideration.

10. Relief. For this reason the petition being time barred must fail and accordingly is dismissed.