

(2010) 09 GUJ CK 0180
In the Gujarat High Court

Case No : Civil Revision Application No. 335 of 2000

Builders and Associates

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Arbitration Act, 1940 — Section 8
Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Article 137, 19

Citation : (2010) 09 GUJ CK 0180

Hon'ble Judges : Bankim N. Mehta, J

Bench : Single Bench

Advocate : G.R. Malhotra, for the Appellant; Bipin I. Mehta, for the Respondent

Judgement

Bankim N. Mehta, J.—The petitioner has filed this revision application u/s 115 of Code of Civil Procedure, 1908, and challenged the order passed by learned City Civil Judge, Ahmedabad on 13.1.2000 in Civil Misc. Application No. 65 of 1995 filed for appointment of arbitrator u/s 8 of Arbitration Act, 1940.

2. It is the case of petitioner that the respondent entered into contract with the petitioner for work of construction of wagon and an agreement was entered into between them on 11.6.1987, and as per the contract, the work was completed on 31.8.1990. Thereafter the petitioner was allegedly compelled to sign 'No Claim Certificate' in the printed form for release of the payment of final bill for the work carried out by the petitioner. Pursuant to the issue of 'No Claim Certificate' by the petitioner, the payment was made on 28.1.1992. The petitioner did not include various claim in the final bill and approached the respondent to settle the claims. Thereafter a notice dated 1.12.1994 was served to the respondent to appoint a sole arbitrator to adjudicate the legitimate claim as provided under Arbitration Clause No. 64 of the contract but the respondent failed to reply to the notice and refer the dispute to the arbitrator and therefore application was filed in the City Civil Court at Ahmedabad for appointment of

arbitrator. The Court after hearing the learned advocates for the parties dismissed the application and hence this revision application.

3. I have heard learned advocate Mr. Malhotra for the petitioner and learned advocate Mr. Bipin Mehta for the respondent at length and in great detail.

4. It appears from the impugned order that it is not in dispute that there was an agreement between the parties and there was an arbitration clause in the agreement to refer any dispute to an arbitrator.

5. The impugned order indicates that the learned trial Judge rejected the application only on the ground of limitation. According to the trial court, 'No Claim Certificate' dated 16.8.1991 was issued by the petitioner and he remained silent till 1.12.1994 and accepted full and final payment under the agreement and thereafter served a notice on 1.12.1994. Thereby cause of action accrued to the petitioner on 16.8.1991 and hence the action was barred by law of limitation under Article 137 of the Limitation Act.

6. It is submitted by learned advocate Mr. Mehta that as 'No Demand Certificate' was issued by the petitioner on 16.8.1991 he was aware about the amount which he was likely to get by virtue of 'No Demand Certificate' and the application was filed on 18.1.1995 and hence it was barred by limitation.

7. It appears that the application for appointment of arbitrator was made u/s 8 of Arbitration Act, 1940, it reads as under:

Section 8 Power to Court to appoint arbitrator or umpire: (1) In any of the following cases

(a) where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not after differences have arisen, concur in the appointment or appointments; or

(b) if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties or the arbitrators, as the case may be, do not supply the vacancy; or

(c) where the parties or the arbitrators are required to appoint an umpire and do not appoint him;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy.

(2) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as if he or they had been

appointed by consent of all parties.

8. There is no dispute that 'No Claim Certificate' was issued by the petitioner on 16.8.1991 and the respondent made payment pursuant to the 'No Claim Certificate' on 28.1.1992. It appears that the petitioner served a notice dated 1.12.1994 raising a dispute. Therefore till the payment was received by the petitioner, there was no occasion for him to raise a dispute in respect of his claim. Article 137 of the Limitation Act provides for period of limitation of three years when the right to apply accrues. Therefore on account of payment made on 28.1.1992 a fresh period of limitation shall start running u/s 19 of the Limitation Act, 1963, and therefore submission of Mr. Mehta cannot be accepted. In my view the learned trial Judge has committed error in recording finding that the claim was barred by limitation under Article 137 of the Limitation Act.

9. In view of above, the learned trial Judge committed jurisdictional error in dismissing the application and therefore the impugned order is required to be set aside and the matter is required to be remanded to the trial court to decide the matter afresh as the matter is decided only on the ground of limitation.

10. In view of above, this revision is allowed. The impugned passed by the learned City Civil Judge, Ahmedabad on 13.1.2000 in Civil Misc. Application No. 65 of 1995 is set aside and the matter is remanded to the trial court to decide afresh in accordance with law after giving opportunity of hearing to the parties on merits without influenced by the observations made in this order. Rule is made absolute to the aforesaid extent with no order as to costs.