
(1994) 08 AHC CK 0059
In the Allahabad High Court
Case No : F.A.F.O. No. 370 of 1986

Chief Engineer, Betwa River Board, Nandanpura and another	APPELLANT
Vs	
L.N. Garg	RESPONDENT

Date of Decision : 18-08-1994

Acts Referred:

Arbitration Act, 1940 — Section 20, 39

Citation : AIR 1995 All 44

Hon'ble Judges : S.C. Mohapatra, J;C.A. Rahim, J

Bench : Division Bench

Advocate : Ashok Mohiley, for the Appellant; Swaraj Prakash, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—In this appeal u/s 39 of the Arbitration Act, 1940 (hereinafter referred to as "the Act"), defendant is appellant against an order u/s 20 of the Act.

2. Plaintiff is a works contractor. On 21 -4-1979 it entered into an agreement with defendant to construct fourteen A-II quarters at Nandapura Colony, Jhansi, Alleging that there are many defects in the construction plaintiff was called upon by letter dated 24-8-1982 to rectify the defects. Last payment was made to the contractor on 23-1-1981. As the contractor was not paid for the work done by him, he filed an application u/s 20 of the Arbitration Act in the Trial Court for directing defendant to appoint a suitable arbitrator failing which to appoint an arbitrator by the Court.

3. Defendants in their written statement contested the application on the ground that as per clause 25 of the agreement, all claims of plaintiff stood waived since it did not request Chief Engineer for appointment of an arbitrator within 90 days of payment of the last bill.

4. Trial Court having directed Chief Engineer to appoint an arbitrator as envisaged in the agreement, defendant has felt aggrieved and has preferred this

appeal.

5. Request to defendant for appointment of an arbitrator as envisaged in the agreement is not a condition precedent for applying to Court u/s 20 of the Act though the same is a precondition u/s 8 of the Act. Scope of consideration of an application u/s 20 of the Act is very limited. On finding that there is an arbitration clause and a dispute exists between the parties. Court is to examine whether application u/s 20 is beyond the period of limitation provided under the limitation Act. Whether by lapse of time limited in the arbitration agreement, a liability otherwise found has stood discharged, is a matter for the arbitrator to decide. Court is not to enter into the said question. Therefore, objection of appellant that liability having stood discharged, there is no dispute, cannot be accepted.

6. In result, there is no merit in this appeal which is dismissed. There shall be no order as to costs.

7. Appeal dismissed.