
(2009) 03 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Arbitration Case No. 9 of 2003

Civtech Engineers Pvt. Ltd.

APPELLANT

Vs

Haryana Officer Cooperative Group Housing Society and
Others

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(4), 11(5), 11(6)

Citation : (2010) 5 RCR(Civil) 708

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Judgement

Hemant Gupta, J.—The present petition u/s 11 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") is for an appointment of an Arbitrator in respect of dispute arising between the parties out of the agreement dated 22-01-1997.

2. Vide the aforesaid agreement, the petitioner was given contract for construction of 100 flats at Group Housing-2, Sector-5, Mansa Devi Complex, Panchkula. The said agreement contains an Arbitration Clause 25-A. The petitioner informed the Secretary of the respondent-Society on 22-01-2001 (P-13) that the work under the aforesaid contract was completed on 15-10-2000 and the possession of 80 flats has been handed over to the respective owners. In respect of the remaining flats, the petitioner claimed watch and ward charges, if the possession is not taken by the respective owners by 31-01-2001. The petitioner submitted Final Bill (P-14) claiming a sum of Rs. 83,06,632.18. The petitioner reiterated its demand on 05-09-2001 of the said amount. The respondent-Society checked the Final Bill submitted by the petitioner and sought comments on certain items. The petitioner responded to such communication on 16-09-2003 (Annexures P-17 and P-18). But payments were not made. It was on 1-11-2003 vide Annexure P-19, the petitioner raised a demand to seek an appointment of an Arbitrator to adjudicate the dispute between the parties

arising out of contract given to the petitioner for construction of flats. In response to the said letter, the respondent-Society has communicated on 16-11-2003 to the following effect:

M/s. Civtech Engineers, B-231, Ground Floor, Greater Kailash, Part 1, New Delhi.
- 110048.

Sub: completed Work on The Contract for Construction of 100 Nos. flats at Gh-2, Sector-5, Mansa Devi Complex, Panchkula Appointment of Arbitrator.

Dear Sir,

Please refer to your letter No. 6/C 01-03/1123 dated 01-11-2003 one copy of which received on 03-11-2003 through Courier Services and second copy received through registered letter on 05-11-2003.

Your request for appointment of an Arbitrator by invoking Clause 25-A of the Agreement of work has been considered. The undersigned is in the process of selecting a competent, honest, un-biased and qualified Arbitrator. In this regard I would like to hear you and the Society regarding qualifications etc. of the Arbitrator.

You are requested to attend the meeting for appointment of Arbitrator on 3rd December, 2003 at 4.30 P.M. at the office of the Society in Panchkula. In the event of your not attending the meeting as scheduled, I shall proceed to appoint an Arbitrator as per agreement within 3 weeks of the date of the aforesaid meeting.

Thanking you,

Yours sincerely, (Ram S. Varma) President

3. It is the case of the petitioner that the Arbitrator has not been appointed within 30 days, therefore, the jurisdiction of this Court was invoked by filing the present petition on 17-12-2003.

4. In response to the notices issued, the respondents have filed its reply raising inter alia an objection that in terms of Clause 25-A of the Agreement, the President is to appoint the Sole Arbitrator but the said President has not been impleaded as the respondent, therefore, for not impleading the necessary party, the petition is liable to be dismissed. It has also been pointed out that Shri M.K. Aggarwal, Engineer-in-Chief, Haryana (B and R) Branch has been appointed as Arbitrator on 5-2-2004 after soliciting his consent to act as an Arbitrator. Therefore, once an Arbitrator has been appointed by the President of the Society in terms of Clause 25-A of the Agreement, the present petition is not maintainable.

5. Learned Counsel for the petitioner has relied upon Datar Switchgears Ltd. Vs. Tata Finance Ltd. and Another, and Punj Lloyd Ltd. v. Petronet MHB Ltd. (2006) 2 SCC 638 and the order dated February 27, 2009 in Arbitration Case No. 80 of

2006 titled as M/s. Bhagwan Dass and Sons v. Union of India, to contend that after the filing of the present application u/s 11(6) of the Act, the right of the respondents to appoint an Arbitrator stands extinguished. Therefore, the Arbitrator appointed by the respondents on 5-2-2004 cannot take cognizance of the dispute to adjudicate the same. It is contended that the society was impleaded through its President in the original petition itself therefore, the plea that the President is required to be impleaded separately is not tenable. It is contended that in any case, the President by designation has been impleaded subsequently therefore, the objection does not stand. It was further argued that authority to appoint an Arbitrator is required to be impleaded if the Arbitral Tribunal is to be appointed by third person or an institution and not where the Arbitrator is required to be appointed by party to the Agreement itself.

6. On the other hand, Mr. A.K. Pathania, learned Counsel for the respondents has argued that in terms of scheme for appointment of Arbitrator by the Chief Justice of Punjab and Haryana High Court, 2003, the name and addresses of the institution, if any, to whom, the function of the appointment of the Arbitrator has been entrusted by the parties to the arbitration agreement, has not been impleaded, therefore, the application filed on 17-12-2003 cannot be treated as an application so as to extinguish the right of the respondent to appoint an Arbitrator. It is further argued that President of the Society was impleaded as the respondent No. 3 only on 28-5-2007 on an application filed by the petitioner on 20-12-2005. Therefore, the application as was filed on 17-12-2003 was not a proper application, the notice of which can not be taken by this Court so as to extinguish the jurisdiction of the respondents to appoint an Arbitrator.

7. Before examining the arguments raised by learned Counsel for the respondent, it will be relevant to reproduce Clause 2(d) of the Scheme framed by Hon"ble Chief Justice for appointment of arbitrators:

2. Submission of Request. The request under Sub-section (4) or Sub-section (5) or Sub-section (6) of Section 11 of the Act shall be made in writing, signed and verified and accompanied by:

(d) the names and addresses of the person or institution, if any, to whom or which any function has been entrusted by the parties to the arbitration agreement under the appointment procedure agreed upon by him;

8. A perusal of the said clause would show that name and addresses of the person or institution is required to be disclosed if function of an appointment of arbitrator has been entrusted by the parties to the arbitration agreement under the appointment procedure agreed upon. Such clause would show that a person or institution referred to is other than the parties. The name and addresses of the person or institution is to be disclosed if such function has been entrusted "by the parties" to the arbitration agreement to some other person or institution. In the present case, power to appoint an arbitrator is with a party to the agreement. Therefore, the President of the society is not a person or institution

required to be impleaded separately in terms of Clause 2(d) of the scheme.

9. Further, I am of the opinion that it is wholly immaterial and inconsequential if the President of the Society was not impleaded as a separate respondent. The Society itself was impleaded to be sued through its President. It is also well-settled that procedural laws are handmaid of justice. The procedure is not unruly horse which can be permitted to defeat the justifiable and reasonable claim of the petitioner. Consequently the argument raised by learned Counsel for the respondents is without any merit.

10. In view of the judgments relied upon by the petitioner, the right of the respondents to appoint an Arbitrator stands extinguished after an application u/s 11(6) of the Act was filed by the petitioner. The Arbitrator has been appointed during the pendency of the present petition, therefore, the appointment of such an Arbitrator is not legal and permissible.

11. In view thereof, in exercise of the power u/s 11(6) of the Act, Hon''ble Mr. Justice N.K. Aggarwal, former Judge of this Court is appointed as an Arbitrator. The Arbitrator shall be entitled to fix his fee in consultation with the parties.