
(1983) 11 OHC CK 0004
In the Orissa High Court
Case No : Civil Revision No. 501 of 1980

Ghanashyam Behera

APPELLANT

Vs

Orissa State Co-operative Marketing Federation and Another

RESPONDENT

Date of Decision : 07-11-1983

Acts Referred:

Arbitration Act, 1940 — Section 20, 8, 8(1) , 8(2)
Limitation Act, 1963 — Article 137

Citation : (1984) 1 OLR 581

Hon'ble Judges : P.C. Misra, J

Bench : Single Bench

Advocate : R.K. Rath, N.C. Panigrahi and B.K. Nayak, for the Appellant; K.C. Mohanty, for the Respondent

Judgement

P.C. Misra, J.—This Revision is directed against an order, dated 21. 7. 80, passed by the Sub-Judge, Bhubaneswar, in Misc. Case No. 242 of 1978 (A) holding that the application u/s 8 of the Arbitration Act is barred by limitation and consequently dismissing the application.

2. The petitioner's case before the Sub-Judge was that he is a registered Government contractor and was entrusted with some construction work and two agreements were separately executed in that behalf. He contended that in course of the execution of the work he was made to execute various extra items of work and the final bill which was prepared and said to not contain the extra items of work. He made demands for payment for the extra items of work in various letters which was refused by the concerned department. Ultimately he gave a notice u/s 8(1) of the Arbitration Act to appoint Arbitrator within 15 days and when no appointment was made within the prescribed period he came up with an application u/s 8(2) of the Arbitration Act. The opposite parties in their rejoinder disputed all questions of fact raised by the petitioner in the application u/s 8 of the Act. One of the points taken in the rejoinder was that the petition u/s 8(2) of the Act having been made more than 3 years after the cause of action arose, the

same is barred by limitation. According to the opposite parties the cause of action arose for filing an application u/s 8 on the date on which the payment under the final bill was made.

3. The Sub-Judge in the impugned order held that the claim for extra works made by the petitioner shall be deemed to have been denied by the opposite parties when the final bill was made minus the extra items claimed by the petitioner which is the date when cause of action arose. He further held that Article 137 of the Limitation Act would apply and the application u/s 8 having been filed 3 years after the date on which the cause of action arose, is barred by limitation.

4. It is not in dispute that in any of the cases falling under Clauses (a), (b) and (c) of Sub-section (1) of Section 8 of the Arbitration Act any party may serve the other parties with a written notice to concur in the appointment of Arbitrator, Sub-section (2) of Section 8 provides that if the appointment is not made within 15 clear days after 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 who shall have the power to enter the reference and make an award as if he has been appointed by consent of the parties. Therefore, the notice contemplated under Sub-section (1) of Section 8 is a condition precedent to the filing of an application u/s 8(2) of the Act. It is well settled in law that Limitation Act applies to applications to be filed in the Court and not to the notice contemplated under Sub-section (1) of Section 8 of the Act. Therefore, the cause of action for filing an application under Sub-section (2) arises only after a written notice is served as per the provisions of Sub-section (1) of Section 8 and fifteen clear days lapse thereafter. Even if the Article 137 applies to applications under Sub-section 8(2) of the Arbitration Act, it would begin to run on expiry of fifteen clear days, after the service of notice u/s 8(1). It is one thing to say that the claim made by the petitioner is barred by limitation and it is another thing to say that the application u/s 8(2) is barred by limitation. In the impugned order, the Sub-Judge has not appreciated that the limitation for filing application u/s 8(2) of the Arbitration Act does not have any relation with the cause of action for preferring a claim for realisation of the dues. It may be that the claim of the contractor has been barred by limitation, yet he may use a notice u/s 8(1) of the Act and pray for appointment of an Arbitrator u/s 8(2) of the Act on expiry of fifteen clear days after the service of notice. In such a situation the Court is not called upon to decide about the merits of the claim which the claimant might If y for adjudication by the Arbitrator or to decide as to whether the claim is barred by limitation. It is for the Arbitrator to decide those questions. In this view of the matter the application u/s 8(2) cannot be said to be barred by limitation.

5. Mr. Mohanty appearing for the opposite party, in course of his argument, has contended that this is a case where the Arbitrator has been named in the arbitration agreement. According to him in such a case Section 8 of the

Arbitration Act is wholly inapplicable and the only remedy available to the petitioner is u/s 20 of the Arbitration Act. This point is a question of maintainability of the application and should be decided when the Court finally disposes of the application u/s 8(2) of the Act, I, therefore, hold that the dismissal of the application on the ground of limitation was illegal and the impugned order is hereby set aside. The matter is remitted to the Sub-Judge, Bhubaneswar, to dispose of the application on merits. The opposite party is free to take any objection against the maintainability for such application and also on merits thereon in the trial Court. The matter should be disposed of within three months from the date of the receipt of the records by the Court with intimation to this Court. There would be no order as to costs of this Court.