

(2014) 02 AP CK 0139

In the Andhra Pradesh High Court

Case No : Arbitration Application No. 101 of 2013

Ms. Sri Matha Manikeshawri Enterprises

APPELLANT

Vs

The General Manager, South Central Railways and Others

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Contract Act, 1872 — Section 25(3)

Limitation Act, 1963 — Section 18

Citation : (2015) 1 ALD 431 : (2014) 3 ALT 70 : (2014) 2 ARBLR 334

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J

Bench : Single Bench

Advocate : Keerthi Prabhakar, for the Appellant; C.V. Vinitha Reddy Counsel for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Kalyan Jyoti Sengupta, C.J.—This is an application for appointment of an arbitrator u/s 11 of the Arbitration and Conciliation Act, 1996 to adjudicate the disputes arising between the parties. In this matter, there is no dispute as to the existence, validity and legality of the arbitration agreement. Only dispute, as raised by the respondents, is that the claim has become a dead one.

2. Learned Counsel for the applicant submits that for the purpose of entertaining this application the period of limitation is to be reckoned from the date of refusal to refer the dispute. According to him, after making several demands and requests, the refusal came only on 20th January 2009 stating that the dispute is not required to be referred to the arbitrator under the arbitration mechanism as the claim has become barred. He says that the period of limitation under the provisions of Article 137 of the Limitation Act, 1963 will be computed from 20th January 2009, and this application has been made perfectly within the time as above. He further argues that the question of limitation with regard to the merit of the case should not be looked into at this stage on this application. Besides,

he says, number of documents having been exchanged between the parties and it will appear therefrom that there has been lawful acknowledgment of debts and the applicant in support of his contention submits that the Courts will not look into the question of limitation with regard to the merit of the claim and it is the domain of the learned arbitrator. He relied on the decision of the Hon'ble Supreme Court in the case of Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority, and also the decision in the case of Schlumberger Asia Services Ltd. Vs. Oil and Natural Gas Corporation Ltd.,

3. Learned Counsel for the respondents, on the other hand, showing the statement in the affidavit in reply itself, contends that the execution of the contractual work was completed in 1995 and since then there has been correspondence till 1996 and last correspondence took place on 27th September, 1996 and thereafter there was no correspondence in order to save the period of limitation. On 2nd July, 2007, there has been correspondence and this correspondence was made after the expiry of the period of limitation and by that time, the claim itself has become time barred. He contends that if the Court finds that the claim is patently barred by limitation for which no effort is required to find out, the matter shall not be referred to the arbitrator for the learned arbitrator has to decide live claim, not a dead one and, therefore, this application should be rejected.

4. I have heard the learned Counsel for the parties. The first question to be decided is whether the present application has been made within a period of three years from the date of last refusal to refer the matter to the arbitrator. It appears that the application has been made in 2011 and the respondent replied the letter by which the claim of arbitration was refuted on 20th January, 2009. Hence, the application has been made within the period of limitation under Article 137 of the Limitation Act, 1963 as has been ruled by the judgment of the Supreme Court in the case of Inder Singh Rekhi. In this case, the claim has been rejected in 2009 contending that the claim has become barred. Now, coming to the next question whether I should decide the question of limitation on the merits of the case while entertaining this application. The Constitution Bench of the Supreme Court in the case of S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, held that "the Chief Justice or the designated Judge can also decide whether the claim was a dead one or a long-barred claim." However, the observations made in the decision of the Constitution Bench were explained by the Supreme Court in Indian Oil Corporation Ltd. Vs. SPS Engineering Ltd., that the Chief Justice or the designated Judge can also decide whether the claim was a dead one or a long-barred claim. Meaning thereby, it is not imperative for the Chief Justice or his designate to decide the questions at the threshold and it can be left to be decided by the Arbitral Tribunal. The observations of the Supreme Court in the case of SBP and Company also make it clear as follows:

When it is said that the Chief Justice or his designate may choose to decide whether the claim is a dead claim, it is implied that he will do so only when the

claim is evidently and patently a long time-barred claim and there is no need for any detailed consideration of evidence.

5. Thus, it is clear that, in a fit case, the Chief Justice or his designate can decide whether the claim is a dead one or not before passing the order of reference. While bearing in mind this legal principle, I examine the matter on hand. It appears that the execution of the contractual work was completed in the year 1995 and the claim remains alive till 27th September, 1996. This fact has been deduced from the statement made by the applicant in its affidavit in reply. From 27th September, 1996, there has been no action on the part of the applicant, rather there has been correspondence from the respondent dated 2nd July 2007 and this correspondence does not appear to be a letter or document which constitutes promise to pay u/s 25(3) of the Indian Contract Act, 1872. Therefore, the claim, if any, as agitated by the applicant before me, was alive till 27th September 1999 and, as such, this application should have been made by 27th September 1999. However, no action was taken. Subsequent letters and correspondence do not make the claim alive, as the same cannot constitute jural relationship after the expiry of period of limitation. In this context, I quote Section 18 of the Limitation Act, 1963 as under: "18. Effect of acknowledgment in writing:--(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

6. It will be clear that, in order to have an acknowledgment in writing, this must be done within the period of limitation and, after the period of limitation, there will be no effect of acknowledgment. This is one of the factors for existence of the patently dead claim. Following the aforesaid Supreme Court judgment and without further deliberations, I can safely hold that the claim has become a dead one and there is no need to refer a dead claim for adjudication, for which the learned arbitrator cannot take up the task of adjudicating a closed chapter. Accordingly, the Arbitration Application is dismissed. No order as to costs.