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**(2010) 11 AHC CK 0130**

**In the Allahabad High Court**

**Case No :** Arbitration Miscellaneous Case No. 26 of 2002

Sheodhan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 26-11-2010

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 11, 11(8)

**Citation :** (2011) 3 ADJ 483

**Hon'ble Judges :** F.I. Rebello, C.J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

F.I. Rebello, C.J.—This is an application to appoint an Arbitrator for settling the dispute as has been raised by the applicant.

2. The original applicant has expired and his legal heirs have come on record.

There is no dispute that there was an arbitration clause. The applicant was awarded the work for which an agreement was entered into on 7.4.1990. As per the agreement, work was to be completed by 2.5.1990. According to the applicant, the date for completion of work was extended without penalty up to 30.6.1990 and thereafter up to 5.10.1990 and 30.11.1990. According to the applicant, though he had completed the entire work, but while making payment, an amount of Rs. 50,000/- was not paid. Apart from that, the amount deposited by the applicant as earnest money and security money was also not refunded. In addition, a sum of Rs. 26,385/- recovered from the applicant for zone work was also not refunded. In spite of repeated demands for payment of the aforesaid amounts, no action was taken. According to the applicant, he sent an notice/application on 18.12.2000? for appointment of an Arbitrator, but the same was rejected as time barred on 9.7.2001 considering that in terms of G.C.C. (64) (i), the claim for arbitration could be made after 120 days but within 180 days of filing the representation of final claim on dispute.

A counter-affidavit has been filed on behalf of the Respondents, wherein also it has been stated that the claim of the applicant was rejected on the ground that the same was old and time barred and, as such, no arbitral proceedings could be drawn under the Arbitration and Conciliation Act, 1996. The applicant has not filed any rejoinder-affidavit contesting the issue of limitation.

The question for our consideration is, whether, in the facts and circumstances of the case, it is open to the Chief Justice in the exercise of jurisdiction u/s 11 of the Act 1996 to dismiss an application on the ground of limitation?

3. Ordinarily, a dispute as to whether a claim is time barred or not, is an issue which has to be decided by the Arbitral Tribunal. In case, however, on the face of the record, if it is apparent that the arbitral claim is beyond limitation, then is it open to the Chief Justice or his delegate not to proceed to refer the dispute for arbitration, on the ground that there is no arbitral dispute.

The position in law has been settled by the Supreme Court in the case of S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, . We may gainfully refer to the following observations of the Supreme Court:

39. It is necessary to define what exactly the Chief Justice, approached with an application u/s 11 of the Act, is to decide at that stage. Obviously, he has to decide his own jurisdiction in the sense whether the party making the motion has approached the right High Court. He has to decide whether there is an arbitration agreement, as defined in the Act and whether the person who has made the request before him, is a party to such an agreement. It is necessary to indicate that he can also decide the question whether the claim was a dead one; or a long-barred claim that was sought to be resurrected and whether the parties have concluded the transaction by recording satisfaction of their mutual rights and obligations or by receiving the final payment without objection. It may not be possible at that stage, to decide whether a live claim made, is one which comes within the purview of the arbitration clause. It will be appropriate to leave that question to be decided by the Arbitral Tribunal on taking evidence, alongwith the merits of the claims involved in the arbitration.

47. (i)....

(iv) The Chief Justice or the designated Judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgment. These will be his own jurisdiction to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the arbitrator or arbitrators. The Chief Justice or the designated Judge would be entitled to seek the opinion of an institution in the matter of nominating an arbitrator qualified in terms of Section 11(8) of the Act if the need arises but the order appointing the arbitrator could only be that of the Chief Justice or the designated Judge.

4. It would, thus, be clear that it is open to the Chief Justice or his delegate to consider whether the claim is barred by limitation or is alive. The issue of limitation, though a mixed question of fact and law, in a case on available evidence the Chief Justice comes to the conclusion that the claim is time barred, then it is within his jurisdiction to so decide. In the instant case, admittedly, from the pleadings itself, it is clear that the claim is time barred. Once that be the case, there can be no arbitral dispute and, consequently, the application for reference is rejected.