
(2015) 04 RAJ CK 0078

In the Rajasthan High Court

Case No : Civil Revision Petition No. 219 of 2009

State of Rajasthan and Others

APPELLANT

Vs

Harish Gaurav

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 14, 115, 151

Citation : (2015) 04 RAJ CK 0078

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : S.M. Toshniwal, for the Appellant; B.P. Bohra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J.—Petitioners have filed this revision petition under Section 115 C.P.C. to challenge the impugned order dated 17.11.2006 passed by learned the Additional District and Sessions Judge (Fast Track) No. 2, Udaipur, whereby the learned Court below has rejected the application of the petitioners under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, "Act of 1996").

2. The facts, in brief, are that respondent-plaintiff, instituted a civil suit against the petitioners for recovery of a sum of Rs. 57,36,781/- for illegal deduction of amount in connection with the work carried out pursuant to job order dated 24.12.2001. In the suit, it is inter-alia averred by the respondent-plaintiff that the work entrusted to him was completed before the scheduled time yet the bills of requisite amount submitted by him were not paid to him and the amount has been illegally deducted. The suit is contested by the petitioners and written statement is submitted on 06.03.2006. Subsequently, while referring to the arbitration clause in agreement, petitioners laid a separate application under Section 8 of the Act of 1996 and urged that by virtue of arbitration clause, suit is

not maintainable. The application is contested by the respondent-plaintiff, and by the impugned the learned Court below rejected the same.

3. The revision petition came before this Court for admission on 30.07.2007 and was dismissed on the ground of delay. The order was challenged before the Hon''ble Apex Court, and while setting aside the order dismissing the revision petition, Hon''ble Apex Court remanded the matter back for deciding it on merits.

4. It is submitted by learned counsel for the parties that during pendency of this revision petition, and until remand order of the Hon''ble Apex Court, suit instituted by the respondent-plaintiff has materially progressed and evidence of the plaintiff has already been recorded. It is also submitted that the petitioner-defendants have tendered their affidavits in evidence, but evidence of defendants has yet not completed, as further proceedings in the suit are stayed by this Court and the record has been requisitioned. Thus, there is no further progress in the suit after stay order.

5. I have heard rival contentions and also perused the impugned order as well as scanned entire record of the case.

6. Before I proceed to examine the merits of the case, it is worthwhile to take cognizance of some important facts having ramification on the subject-matter. From the record of the learned trial Court, it emerges out that the suit was instituted by respondent-plaintiff on 30th September 2005. On the first date of hearing, i.e., 5th December 2005, counsel for the petitioner-defendants appeared and sought adjournment to file written statement and the matter was deferred for 18th January 2006. On 18th January 2006, the petitioners laid application under Section 8 of the Act of 1996 invoking arbitration clause in the agreement. After dismissal of the aforesaid application, vide order dated 17th November 2006, written statement was filed by the petitioner-defendants on 16th December, 2006. Subsequent to that, matter was deferred on 3-4 occasions and on 23rd July 2007 respondent-plaintiff tendered his evidence by submitting an affidavit. On 24th July 2007, he was cross-examined on his affidavit and closed his evidence. On 5th October 2007, application under Order 11 Rule 12 and 14 read with Section 151 CPC was allowed and matter was posted for recording evidence of petitioners-defendants. The proceedings in the suit continued and, on behalf of petitioner-defendants, affidavits of two witnesses; namely, D.W.1 Ram Chandra and D.W.2 Jagdish Prasad were tendered on 16th January 2008. On the next date of hearing, i.e., 8th February 2008, D.W.1 Ram Chandra was cross-examined. However, at the request of the learned counsel for the respondent-plaintiff, matter was deferred for cross-examination of D.W.2 Jagdish Prasad. In this view of the matter, further proceedings in the suit were stayed after commencement of evidence of the defendants and record was requisitioned. In the interregnum, Hon''ble Apex Court by order dated 23rd March 2009 allowed the appeal of the petitioners after condoning the delay and remitted the matter back for its disposal on merits in accordance with law.

7. Now in that background and taking into account the chronological events mentioned supra indicating progress in the suit and long lapse of time, I deem it just and appropriate to appreciate the submissions made by the learned counsel for the respondent.

8. Mr. B.P. Bohra, learned counsel for the respondent has relied on a decision of Hon"ble Apex Court in case of The State of Uttar Pradesh and Another Vs. Janki Saran Kailash Chandra and Another, AIR 1973 SC 2071 : (1973) 2 SCC 96 : (1974) 1 SCR 31 , wherein the Apex Court has examined the peculiar facts of that case, more particularly long passage of time after institution of the suit, and held that in such circumstances it is not desirable to relegate the parties to alternate dispute resolution forum like arbitration, and it is in fitness of things to get the matter adjudicated by a Court of competent civil jurisdiction. The Court, while examining the peculiar facts and circumstance of the case, held as under:--

"Finally, as a result of the decision of the High Court the only consequence is that the suit will now have to be tried by a competent court on the merits in accordance with law. Keeping in view the long delay after the institution of the suit and the fact that the suit is for a very heavy amount by way of damages for breach of contract, it will, in our opinion, be more satisfactory on the whole to have the suit tried in a competent court of law in the normal course rather than by a lay arbitrator who is not bound either by the law of evidence or by the law of procedure. This course can certainly in no way be considered unjust or prejudicial to the appellant as to require interference by this Court."

9. There remain no quarrel that suit was instituted by the respondent-plaintiff in 2005, and since then almost ten years have elapsed and evidence of the plaintiff has also been recorded, therefore, in the peculiar facts and circumstances, it is not desirable to examine the legality of the impugned order and restart the process of adjudication by alternate dispute resolution forum like arbitration because that may take considerable time. Due to passage of time, at this belated stage, relegating the parties to the litigation for arbitration would unnecessarily prolong the matter and may frustrate the cause of justice.

10. Well it is true that Clause 23 of the agreement is in the nature of arbitration clause within the meaning of Section 8 of the Act of 1996, but nonetheless looking to its constitution, its efficacy and workability is seriously questionable. In view of constitution of standing committee with five members, its periodical meeting for redressal of grievances of either of the parties appears to be an uneasy task. This sort of situation may also have ramification on workability and efficacy of the standing committee. One more redeeming fact, that at the relevant point of time the post of Chief Engineer was not available in Udaipur Division, has also its impact on the efficacy of the standing committee. Even if it is assumed that the broad based empowered committee can deliberate on various issues for arriving at consensus. The active participation of members of the empowered committee to find out some plausible solution after meeting of minds may not be possible within a reasonable period. This sort of awkward

situation is likely to cause undue delay in decision making, which may hamper the path of justice, if the parties are relegated for arbitration instead continuance of proceedings in the suit. In the impugned order, this particular aspect has impressed the learned Court below for rejecting the application of the petitioners under Section 8 of the Act of 1996.

11. While dilating on merits of the case, learned counsel for the parties have made sincere endeavour to canvass their submissions for and against the impugned order. Learned counsel for the petitioners has essentially relied on the relevant arbitration clause in the agreement wherein Clause 23 envisages settlement of disputes by standing committee having five members. Placing reliance on Clause 23 of the agreement, learned counsel for the petitioners would contend that proceedings in the suit cannot be continued and under Section 8 of the Act of 1996 matter is liable to be referred for arbitration.

12. To counter the arguments of the learned counsel for the petitioners, learned counsel for the respondent submits that constitution of standing committee itself is under cloud inasmuch as at the relevant point of time, there was no post of Chief Engineer in the petitioner-department in Udaipur Division who is member secretary of the standing committee. Therefore, according to learned counsel for the respondent, there was no possibility of settlement of dispute by the standing committee in the matter and that has left the respondent-plaintiff with remedy of a civil suit only.

13. Be that as it may, the fact remains that before expressing any opinion on workability and efficacy of the standing committee, for the reasons aforesaid, I feel dissuaded to interfere with the impugned order and accordingly revision petition is dismissed.

14. It is made clear that the petitioners shall be at liberty to file requisite record/documents before the learned Court below, if need be, for just decision of the case and may be permitted to adduce their evidence in accordance with law. As the suit is pending since 2005, learned trial Court is expected to proceed with the trial expeditiously and decide the same within a period of one year from the date of receipt of the record.