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(2011) 03 P&H CK 0449

In the Punjab And Haryana At Chandigarh

Case No : Arbitration Case No. 156 of 2010

The Arya Nagar Co-op. L/C Society Ltd. — APPELLANT

Vs

MD, HVPN Ltd. and Others — RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:
Arbitration and Conciliation Act, 1996 — Section 11
Limitation Act, 1963 — Article 137

Citation : (2011) 03 P&H CK 0449

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The Petitioner has invoked the jurisdiction of this Court u/s 11 of the Arbitration and Conciliation Act, 1996 (for short ''the Act'') for appointment of an Arbitrator in respect of the disputes arising out an Agreement dated 11.10.2000. Vide the aforesaid agreement, the Petitioner was to construct switch house building including services for 132 kv Sub Station at Ellenabad.

2. The Petitioner completed the work on 01.10.2001 i.e. after the delay of 206 days from the stipulated period for completion of the project envisaged under the aforesaid agreement.

3. Initially, the Petitioner sought appointment of an Arbitrator by filing an application before the learned District Judge, Hisar. The said application was withdrawn on 19.01.2006 in view of the judgment rendered by Hon''ble Supreme Court in State Bank of Patiala v. Patel Engineering Limited and Anr. 2005 (8) SCC 618. Thereafter, the Petitioner filed a petition for appointment of an Arbitrator before this Court. The petition was registered as Arbitration Case No. 110 of 2007. The said petition was also withdrawn on 18.10.2007, when the following order was passed:

Counsel for the Petitioner wishes to withdrawn this petition and take appropriate

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steps in accordance with law.

Dismissed as withdrawn with liberty as prayed for.

4. In the present petition for appointment of an Arbitrator filed on 09.11.2010, the Petitioner inter-alia relied upon a notice dated 03.02.2004 seeking refund of the deducted amount of Rs. 1,12,500/-. The Petitioner did mention regarding arbitration clause between the parties in the said communication. In response to the said notice vide communication dated 04.07.2008 (Annexure P-5), it was pointed out that the Petitioner has been granted time extension for 147 days vide communication dated 29.01.2004 and that the Petitioner has made representation after a lapse of 4 years and has not adhered to the time schedule mentioned in Clause 25-A of the Agreement, which contemplates resolution of disputes by an Arbitrator. Learned Counsel for the Petitioner during the course of hearing submits that the payment of the final bill was made on 09.01.2002.

5. In reply to the petition, the Respondents have pointed out that the Petitioner was to raise dispute within a period of 60 days of the receipt of the decision of the Engineer-in-Charge of the competent authority. The reference for arbitration is maintainable only after the contractor furnishes to the satisfaction of Engineer-In-Charge, a cash security at the rate of 3% of the total amount claimed by him. It is pointed out that the Petitioner has not approached the competent authority within the time agreed for appointment of an Arbitrator and has invoked the jurisdiction of this Court at a belated stage.

6. After hearing learned Counsel for the parties, I find that the present petition for appointment of an Arbitrator is not maintainable for more than one reason.

7. Firstly, the Petitioner has invoked the jurisdiction of this Court vide Arbitration Case No. 110 of 2007, but withdrawn the same with liberty to take appropriate steps in accordance with law. There was no liberty sought or granted by this Court to seek appointment of an Arbitrator by invoking the jurisdiction of this Court again.

8. Secondly, Clause 25-A of the Agreement contemplates that the Contractor shall move the Engineer-In-Charge in writing for reference for such a claim or dispute to arbitration within a period of 180 days on receipt of decision of the competent authority. Clause 25-A of the Agreement reads as under:

Clause 25 A -If any question, difference or objection whatsoever shall arise in any way connected with or arising out of this instrument or the meaning or operation of any part thereof, the rights, duties or liabilities of either party, than save in so far the decision of any such matter is hereinbefore provide for and has been so decided every such matter including whether its decision has been so decided every such matter including whether its decision has been otherwise provide for and/or whether it has been finally decided accordingly, or whether the contract should be terminated or has been rightly terminated and as regards the rights and obligations of parties as the result of terminations shall be referred

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for arbitrator to the Arbitrator to be appointed by on a CE/CONST HSEB written request from the Executive Engineer who will act as such as the time of reference within one hundred eighty days or six months from the payments of final bills to the contractor or from the date when notice is sent to contractor and his decision shall be final and binding and where the matter involves a claim for or the payment of recovery or deduction of money only the amount, if any, awarded in such arbitration shall be recoverable respect of the matter so referred.

If the matter is not referred arbitrator within the specified period, all the rights and claims under the contract shall be demand to have been forfeited and absolutely time barred.

9. As per the said Clause, the Contractor was to seek appointment of an Arbitrator within 180 days from the payment of final bill to the contractor. In the present case, the payment of final bill was made to the Petitioner on 09.01.2002. The Petitioner has not sought appointment of an Arbitrator within a period 180 days.

10. Thirdly, even if Article 137 of the Limitation Act, 1963 is taken into consideration, which provides period of three years from the date cause of action arises, still the claim of the Petitioner is barred by limitation. The cause of action to seek appointment of an arbitrator would arise when the final payment was made i.e. 9th January 2002. But the present petition for appointment of an Arbitrator has been filed in November, 2010 much after the expiry of three years.

11. In view of the above, the present petition is dismissed.

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