

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

1.
+ ARB.P. 402/2008

SMT. KRISHNA MITTAL Petitioner
Through: Mr. Ranjeet Kumar, Advocate.

versus

MUNICIPAL CORPORATION
OF DELHI & ANR. Respondents
Through: Mr. Nalin Tripathi, Advocate.

AND

2.
+ ARB.P. 403/2008

SH. SURESH CHAND JAIN Petitioner
Through: Mr. Ranjeet Kumar, Advocate.

versus

MUNICIPAL CORPORATION
OF DELHI & ANR. Respondents
Through: Ms. Mini Pushkarna, Advocate.

% Date of Decision : MAY 21, 2010

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

MANMOHAN, J (ORAL)

1. Present petitions have been filed under Section 11 of Arbitration and Conciliation Act, 1996 for reference of disputes to arbitration.

2. Though the arbitration clauses in the contracts are not disputed, Mr. Nalin Tripathi, learned counsel for respondents submits that the present petitions are ex facie barred by limitation.

3. He points out that the present arbitration petitions have been filed in respect of work orders issued in the year, 2001 which were completed in the year, 2002. In fact, the notices invoking arbitration clauses were issued only in February 2008, i.e., beyond the limitation period of three years. Accordingly, it is submitted that there is no live claim which can be referred to arbitration.

4. On the other hand, Mr. Ranjeet Kumar, learned counsel for petitioners submits that in response to a Right to Information query in March, 2008, respondents had admitted that petitioners' bills could not be passed or processed due to non-submission of the bills and other records by the petitioners. Mr. Ranjeet Kumar further submits that law of limitation for civil matters is entirely different from those of arbitration matters. In this connection, he relies upon the judgments of Supreme Court in *Groupe Chimique Tunisien SA Vs. Southern Petrochemicals Industries Corpn. Ltd.* reported in (2006) 5 SCC 275 and *National Aluminum Company Limited And Another* reported in (2009) 14 SCC 365.

5. In my opinion, the submissions advanced by Mr. Ranjeet Kumar are untenable in law. It is settled law that the provisions of Limitation

Act apply to arbitrations and the period of limitation for commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued. In fact, ‘action’ and ‘cause of action’ have been construed as ‘arbitration’ and ‘causes of arbitration’. The cause of arbitration has been held to accrue when the claimant becomes entitled to raise the question, that is, when the claimant acquires right to require arbitration. Accordingly, it has been held that the claim for arbitration must be raised as soon as the ‘cause of arbitration arises’ as the ‘cause of action’ in a civil action.

6. The only difference in civil and arbitration matters is that by consent of parties, the Court of law is substituted for an arbitrator. The Supreme Court in ***Panchu Gopal Bose Vs. Board of Trustees for Port of Calcutta*** reported in ***AIR 1994 SC 1615*** has held as under:-

“8. It would, therefore, be clear that the provisions of the Limitation Act would apply to arbitrations and notwithstanding any term in the contract to the contrary, cause of arbitration for the purpose of limitation shall be deemed to have accrued to the party in respect of any such matter at the time when it should have accrued but for the contract.....

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11. In *West Riding of Yorkshire County Council v. Huddersfield Corporation*, (1957) 1 All ER 669, the Queens Bench Division, Lord Goddard, C.J. (as he then was) held that the Limitation Act applies to arbitrations as it applies to actions in the High Court and the making, after a claim has become statute-barred, of a submission of it to arbitration, does not prevent the statute of limitation being pleaded. Russell on Arbitration, 19th Edition, reiterates the above proposition. At page 4 it was further stated that the parties to

an arbitration agreement may provide therein, if they wish, that an arbitration must be commenced within a shorter period than that allowed by statute; but the court then has power to enlarge the time so agreed. The period of limitation for commencing an arbitration runs from the date on which the cause of arbitration accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration takes place upon the dispute concerned.

12. Therefore, the period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of civil action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.

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14. The Law of Arbitration by Justice Bachawat in Chapter XXXVII at p. 549 it is stated that just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the claim accrues, as also in the case of arbitrations, the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) ‘action’ and ‘cause of action’ in the Limitation Act should be construed as arbitration and cause of arbitration. The cause of arbitration, therefore, arises when the claimant becomes entitled to raise the question, i.e. when the claimant acquires the right to require arbitration. The limitation would run from the date when cause of arbitration would have accrued, but for the agreement.

15. Arbitration implies to charter out timous commencement of arbitration availing the arbitral agreement, as soon as difference or dispute has arisen. Delay defeats justice and equity aid the promptitude and resultant consequences. Defaulting party should bear the hardship and should not transmit the hardship to the other party, after the claim in the cause of arbitration was allowed to be barred. The question, therefore, as posed earlier is whether the court would be justified to permit a contracting party to rescind the contract or the court can revoke the authority to refer the disputes or differences to arbitration. Justice Bachawat in his Law of Arbitration, at p. 552 stated that “in an appropriate case leave should be given to revoke the authority of the arbitrator”. It was also stated that an ordinary submission

without special stipulation limiting or conditioning the functions of the arbitrator carried with it the implication that the arbitrator should give effect to all legal defences such as that of limitation. Accordingly the arbitrator was entitled and bound to apply the law of limitation. Section 3 of the Limitation Act applied by way of analogy to arbitration proceedings, and like interpretation was given to Section 14 of the Limitation Act. The proceedings before the arbitration are like civil proceedings before the court within the meaning of Section 14 of the Limitation Act. By consent the parties have substituted the arbitrator for a court of law to arbitrate their disputes or difficulties. It is, therefore, open to the parties to plead in the proceedings before him of limitation as a defence.”

(emphasis supplied)

7. Since in the present cases the contracts had been completed in the year 2002, petitioners should have invoked the arbitration clauses within three years from the date they became entitled to raise their claims, i.e., in the year 2002. As in the present cases there is no subsequent acknowledgment of debt by the respondents as contemplated by Section 18 of the Limitation Act, the period of limitation does not get extended.

8. However, I may clarify that petitioners could have availed of extended limitation if they could show that their claims were either under negotiation or under consideration during this period.

9. In fact, the Supreme Court in ***Shree Ram Mills Ltd. vs. Utility Premises (P) Ltd.*** reported in **(2007) 4 SCC 599** has held that if the disputes under a contract are under negotiation or consideration, then the limitation for arbitration purpose would be deemed to have not

commenced. But in the present case, petitioner has not filed any evidence to show that petitioners' claims were being considered by the respondents during the period 2002 to 2008.

10. Consequently, in my opinion, the claims of the petitioners as sought to be referred by the present petitions are not 'live claims' but 'stale claims' as they are ex facie barred by limitation. Accordingly, present petitions are dismissed but with no orders as to costs.

MANMOHAN,J

MAY 21, 2010

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