

Court No. - 46

Case :- ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 50 of 2020

Applicant :- Arora Enterprises

Opposite Party :- Larsen And Toubro Ltd.

Counsel for Applicant :- Amit Shukla

Counsel for Opposite Party :- Tarun Agrawal

Hon'ble Ashwani Kumar Mishra,J.

This application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.

According to applicant, it has entered into a contract with the opposite party on 30th January, 2015. All disputes or difference of opinion containing Clause S, which is reproduced hereinafter:-

"S. RESOLUTION OF DISPUTES:

Arbitration

All disputes or difference of opinions, on account of interpretation of clauses, technical specifications, etc. shall be resolved through direct and mutual discussions between the parties. If the dispute is not resolved upon such direct and mutual discussion, the same shall be referred for adjudication before a sole arbitrator L&T Railway BU Head. Arbitration shall be conducted as per Arbitration and Conciliation Act, 1996."

It is alleged that a dispute has arisen between the parties and though a request has been made for appointment of arbitrator, but such request has been declined on the ground that the dispute raised is not referable to the arbitration agreement. The application has been entertained and notices have been issued to the opposite party.

The opposite parties have entered appearance and according to them the claim of applicant is referable to Work Order No. E9021WOD6000068. This work order has been annexed alongwith the counter affidavit. Clause 25 provides that all disputes relating to this work order shall be subject to and be referred to the court of competent jurisdiction situated within the limits of Chennai City.

Sri Tarun Agrawal for the opposite party, therefore, submits that besides other issues raised this application itself is not maintainable as the jurisdiction to entertain such a plea would

be with the courts at Chennai and not at Allahabad. Respondents in support of such contention also rely upon para 17 and 18 of the counter affidavit which specifically refers to the claim of the applicant as being one arising out of the work order specified above.

A rejoinder affidavit has been filed in which para 17 and 18 have been denied stating that the entire work has been done as per the work order referred to above. Counsel for the applicant, however, has invited attention of this Court to para 5 and 10 of the rejoinder affidavit, which are reproduced hereinafter:-

"5. That the averment made in paragraph no.5 of the counter affidavit is absolutely false, baseless and hence denied. It is respectfully submitted that the applicant has not concealed any fact and has approached the Hon'ble court with clean hand. It is further submitted that the issue of the arbitral proceedings has been contained into the agreement that has been annexed with the application and as such there is no requirement of appending work order. It is also submitted that work order is merely a result of the agreement entered into between the parties hence the terms of agreement will always prevail over the work order.

10. That the averments made in para 12 of the counter affidavit is absolutely false, baseless and hence denied. The opposite party by making such averment is trying to mislead the Hon'ble court. The said letter of intent was issued in pursuance of main Agreement dated 30.01.2015 and there was no further agreement was signed by the applicant. Even without admission to the averments in para 12 of Counter affidavit, there was no place disclosed for Arbitration."

It is in the above context, that this Court is required to examine as to whether the application filed herein can be entertained by this Court or not?

From the materials placed on record, it is apparent that an agreement was executed between the parties on 30th January, 2015 containing an arbitration clause. This arbitration clause however does not specify the place where arbitration is to be conducted, nor the venue of arbitration is specified. It is further not in dispute that pursuant to first agreement dated 30th January, 2015, subsequent work orders have also been issued by the opposite party to the applicant which contains the work order in question. This work order has been served upon the applicant and it remains undisputed that the applicant has not only received it but has also proceeded to perform its part of the contract, which is in issue. From the materials that have been placed on record the receiving of work order as well as the fact that such work order was given effect to remains undisputed.

The agreement dated 30th January, 2015 as well as the

consequential work order in question, therefore, forms part of the agreement between the parties. The place of arbitration has not been specified in the first agreement. The subsequent work order being consequential to the original agreement dated 30th January, 2015 will thus have to be read in conjunction with the agreement such that the existence of arbitration clause between the parties as well as the jurisdiction of the courts at Chennai both forms part of the agreement.

Once that be so, the application for appointment of arbitrator would clearly not be maintainable before this Court. Leaving it open for the applicant to approach appropriate forum, this application is consigned to records.

Order Date :- 26.10.2023
Ranjeet Sahu