

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

**Arb. Case No. 167 of 2025
Decided on : 03.07.2026**

Shashi Sharma

...Petitioner

Versus

The State of Himachal Pradesh and others

...Respondents

Coram

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.

Whether approved for reporting?¹

For the petitioner : Mr. Suneet Goel, Senior Advocate,
with Mr. Vishwas Kaushal,
Advocate.

For the respondent : Mr. Navlesh Verma, Additional
Advocate General.

G.S. Sandhawalia, Chief Justice (Oral)

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for appointment of an Arbitrator, for the work which was awarded as per letter of award dated 05.09.2012 (Annexure P-1) and agreement (Annexure P-2).

2. As per the petitioner, he had himself mobilized his manpower and machinery, which was for the construction of 10 bedded Ayurvedic Hospital building at Kandroul, District Bilaspur, H.P, and various disputes arose including the shifting of H.T electrical lines and it is his own case that the work was completed

¹ Whether reporters of the local papers may be allowed to see the judgment?

on 24.04.2016. The cause of action accrued on account of the fact that the final bill payment of more than Rs.50,600/- had been wrongly withheld and only Rs.35,71,104/- had been paid out of Rs.36,28,704/-. Notice invoking the arbitration clause was issued to the respondents on 22.03.2024 (Annexure P-3), after eight years.

3. In the reply, the State has objected on the ground of limitation that no action had been taken by the petitioner regarding the payments for 8 years, until he served the legal notice dated 22.03.2024, therefore, the claim is not maintainable, as the law will not assist those who are negligent and not vigilant for their rights. Final bill had not been submitted and the petitioner never followed up the respondents for payments. The timeline prescribed for the payment was 6 months from the completion of the work and final bill was to be submitted by the petitioner as per Clause 9 of the Agreement.

4. In the replication, the stand taken is that the final bill had not been prepared and as the cause of action had not arisen, therefore, the petition is maintainable.

5. Reliance placed upon the judgment of the Hon'ble Supreme Court of India passed in **Civil Appeal No. 4320 of 2026**, titled as **State of West Bengal and others Vs. M/s B.B.M. Enterprises**, dated 09.04.2026, by the State, is well justified.

6. Apparently, the dispute has long died as for a long period of eight years, nothing was done as such, by the petitioner and he was satisfied with the payments received. Merely, by serving a notice on 22.03.2024 as such, to claim the outstanding amount or raise a bill, would not give a fresh cause of action to the petitioner.

7. It is the settled principal that the limitation has to be considered on the basis of the facts disclosed and *prima facie*, if it is found that the claim is within limitation, it is only in those circumstances, the Arbitrator is to be appointed, leaving it open as such, to the Arbitrator to decide the issue. But on the face of it, if there is an inordinate delay and the respondents cannot be prejudiced by referring the matter to the arbitration.

8. Reliance can be placed upon the judgment passed by the Apex Court in ***Bharat Sanchar Nigam Limited and another Vs. M/s Nortel Networks India Private Limited (2021) 5 SCC 738***, wherein notice was issued 5 ½ years after the cause of action arose. Similarly, in the judgment referred to by the State in ***State of West Bengal and others Vs. M/s B.B.M. Enterprises (supra)***, there was a delay as the final bill had not been raised for a period of 22 years nor the arbitration proceedings were initiated and resultantly, the Apex Court was dissatisfied with the order of the High Court while dealing with the

application under Section 11 of the Act, by coming to the conclusion that limitation is three years as provided in Article 18 of the Limitation Act, 1963 for recovery of the amount and the claim was hopelessly time barred and the appeal was allowed.

9. The fundamental principle that 'law favours the vigilant and not the indolent', has to be kept in mind. Even though Arbitration is an alternate dispute resolution system, which has to be encouraged, it is not possible to deviate from the said principle.

10. Keeping in view the above, this Court is of the considered opinion that the respondents cannot be questioned to contest a patently time barred claim of eight years and therefore, the petitioner has to pay for its wrong done of not having woken up earlier.

11. Resultantly, no case is made out for appointment of the Arbitrator, therefore, the petition is dismissed. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(G.S. Sandhawalia)
Chief Justice

July 03, 2026
(Shivank Thakur)