

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ARB-189-2014 (O&M)
Date of decision:- 04.09.2015

M/s Trehan Construction

...Petitioner

Versus

Union of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

Present: Mr. Dheeraj Mahajan, Advocate,
for the petitioner.

Mr. Nitin Kumar, Advocate,
for the respondents.

* * * *

S.J. VAZIFDAR, A.C.J. (ORAL)

This is an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator.

2. The agreement is admitted. The arbitration clause contained therein is also admitted. The only question is whether the petitioner ought to be permitted to raise claims after the entire payment had been made in full and final satisfaction of the petitioner's claims. A final bill was submitted. The same was processed. The petitioner agreed as under:-

*"I have no other claim outstanding against the Northern Railway for work done or for labour supplied or any other account and the payment of **this bill shall be in final settlement of all my claims in respect of work to which Agreement Work Order No. _____ dated ____200__ which the Railway relates.**"*

3. The respondents rely upon a document titled supplementary agreement which is executed between the parties. This supplementary agreement is Annexure-B to the main agreement which the parties are required to sign upon the completion of the contract. The concluding para of this supplementary agreement reads as under:-

“Now it is hereby agreed by and between the parties in the consideration of sums already paid by the party hereto of the first part to the party hereto of the second part against all outstanding dues and claims for, all works done under the aforesaid Principal Agreement including/excluding the security deposit, the party hereto of the second part have no further dues of claims against the party hereto the first part under the said principal agreement. It is further agreed by and between the parties that the party hereto of the second part has accepted the said sums mentioned above in full and final satisfaction of all its dues and claims under the said Principal Agreement.”

4. Absent anything else, there is no dispute between the parties. The fresh claims would be a mere afterthought and the petitioner ought not to be permitted to raise the same. However, the petitioner relies upon clause 9.8 of the agreement which reads as under:-

“9.8 Supplementary Agreement

After the work is completed and taken over by the Railway as per terms and conditions of the contract agreement or otherwise concluded by the parties with mutual consent and full and final payment is made by the Railway to the contractor for work done under the contract the parties shall execute the supplementary agreement annexed here to as Annexure-B”

5. The petitioner contended that the supplementary agreement and the earlier endorsement on the final bill was taken under coercion and was also taken fraudulently. The petitioner further contended that it was made to sign the document the effect whereof was not known to it.

6. It is difficult to accept the contention on merits. The petitioner is a regular contractor. Coercion and fraud were not even alleged in the first instance. It was only after its additional claims were rejected that these contentions were raised.

7. It was then contended that after the supplementary agreement was executed payments were made. This, according to the petitioner, indicates that

there was in fact no full and final settlement and that the document was got executed by fraud or coercion. The supplementary agreement read by itself and the fact of payment having been made subsequently may have supported the contention to the limited extent of the issue having to be left for the arbitrator's decision. However, this supplementary agreement must be read with the endorsement at the foot of the final bill which I quoted earlier. The petitioner stated that it had no other claim outstanding against the respondents for work done or for labour supplied or any other account and that "the payment of this bill shall be in final settlement of all my claims". This endorsement is also made on the same date as the settlement agreement i.e. 05.03.2012. Thus, the parties contemplated that the final amount was yet to be paid. It is not as if a further amount not within the contemplation of the parties on the date of execution of this document was paid subsequently.

8. It is difficult to accept the case of coercion for another reason. The contract for an amount of about ₹ 9.42 lacs stood enhanced to ₹ 16 lacs. The amount paid after the execution of the supplementary agreement was only ₹ 44,852/-. It is difficult to believe that the petitioner was coerced into signing the document merely because otherwise the respondents would not have paid the amount of ₹ 45,000/-.

9. The petition is, therefore, dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

04.09.2015
Amodh