

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Arbitration Case No.27 of 2015 (O&M)
DATE OF DECISION: 04.09.2015

M/s Arihant Builders

.... Applicant/Petitioner

versus

Engineer-in-Chief, Army Head Quarters, New Delhi and others

.....Respondents

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

Present: Mr. S.K. Chuhan, Advocate for the applicant

Ms. Aashika Jain, Advocate for the respondents

..

S.J. VAZIFDAR, ACTING CHIEF JUSTICE (Oral):

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

2. The agreement is admitted. The arbitration clause therein is also admitted. The only question is whether there is any genuine dispute that survives even after the written confirmation of the applicant that the amounts contained in the final bill submitted by him included the final amount and that he had no further claims.

3. Admittedly, a certificate was issued by the applicant stating that he had prepared the final bill; that the final bill includes all the claims raised from time to time; that he had no more claims in respect of the contract beyond those included in the final bill and that the amount so claimed by him would be in full and final satisfaction of all the claims under the contract. The petitioner only reserves to himself right to raise claim to the extent disallowed to him from the final bill.

4. It is true that the certificate is executed on the basis of the proforma prescribed by the respondents. The tender was accepted on 26.08.2005 and the work was completed on 25.07.2008. The final bill was raised on 25.09.2008. The certificate that I have referred to is undated, but the petitioner states that it was executed by him the same day i.e. on 06.12.2008. The payment pursuant to the final bill was made on 25.06.2009.

5. Two and a half years later, the petitioner contended that he signed the said certificate under coercion. He apprehended that if he did not sign the certificate, he would not have been granted an extension of time for completing another contract. His explanation for having raised this contention along with the new claim for over a crore of rupees is that he unfortunately suffered a heart-attack on 11.05.2009. It is difficult to accept this explanation for the delay in raising the contention that he signed the certificate on 06.12.2008 under coercion. The other contract was completed on 28.03.2009. It is true that the petitioner unfortunately suffered a heart-attack, but that was on 11.05.2009 i.e. after the work under the second contract was completed. He could, therefore, immediately thereafter have raised the contention. The contention that the certificate was given under coercion as an extension would not be given for the other contract is, therefore, clearly incorrect.

6. Faced with this, it was contended that the payment under the said contract was made only in the year 2010. The contention is that if he had raised the ground of coercion and duress, his payment would have been withheld. The present claim runs into over a crore of rupees. The balance payment was less than a lakh of rupees. It is difficult to believe that a party who has a claim for

over a crore of rupees would feel pressurized into issuing such a certificate for fear that a sum of less than a lakh of rupees would not be paid.

7. Faced with this, it was further contended that coercion was also on the ground that the guarantees were outstanding and the petitioner's property was mortgaged. This, however, loses sight of the fact that the respondents had not made any claim pursuant to which or in respect whereof they were threatening to encash the bank guarantees or to exercise their right as mortgagees of the property.

8. It is important to note that on 10.07.2009, the petitioner in respect of the other contract accepted the payment expressly under protest. No such protest was lodged in respect of the contract under consideration. There is no explanation why a protest was lodged in respect of the second contract, but not in respect of this contract. Moreover, even thereafter the case of coercion and duress has been raised in the present case only in November/December, 2011 i.e. more than a year after the payments were received under the contract.

9. In the circumstances, the fact that the final bill has not been signed would make no difference. The claims now sought to be made are not on the basis that certain amounts remain to be claimed in respect of the work done and which ought to have been included in the final bill.

10. In the circumstances, the application is dismissed.

04.09.2015
parkash*

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

