

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 346 of 2015

Date of decision : 11.12.2015

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M/s Santosh Associates Pvt. Ltd.

.....Petitioners

Versus

HUDA and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Yogesh Goyal, Advocate for the petitioner.

None for the respondents.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

Present petition has been filed against the order dated 2.12.2014 passed by the Additional District Judge, Gurgaon, whereby the application made by the petitioner-applicant under Section 12(2), 13, 14(1)(A) and 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') read with Section 151 CPC for termination of the mandate of the Arbitrator and appointment of substitute, competent independent and impartial person as Arbitrator regarding the work of "Construction of master road falling between Sector-42/54, Gurgaon, Earth work in embankment blasting of hard rock, breaking of rock stone soling and stone metal, preparation of

sub grade laying of stone soling and stone metal and first coat of surfacing and all other contingent thereto” has been dismissed.

The case of the petitioner-applicant was that on his application under Section 9 of the Act, Executive Engineer, PWD (B&R), Gurgaon was appointed as Local Commissioner by the then District Judge, Gurgaon. Thereafter on 4.6.2005, Arbitrator-cum-Superintending Engineer, HUDA, Circle-I, Sector-14, Gurgaon-respondent no.2 in this very application entered upon the reference as Arbitrator as per the terms and clauses of the Contract Agreement and since then the arbitration is pending adjudication. Arbitration proceedings had already been delayed for a period of approximately ten years when the present application for appointment of a new arbitrator was filed.

On notice, the respondents took the stand that the applicant had failed to fulfill his commitments as per Bar chart and had delayed the projects abnormally and stopped the work. The applicant had filed the present application to avoid payment of Rs.5,10,307/- which was payable by the applicant. It was further submitted that in fact it was the applicant who was responsible for the delay in the conclusion of arbitration proceedings and that appointment of new arbitrator would further delay the proceedings.

The application was dismissed on the ground that the appropriate remedy with the petitioner was to make an application before the High Court to decide the issue of appointment of arbitrator as per the provisions of the Appointment of Arbitrators by the Chief

Justice of India Scheme, 1996 and that the Civil court had no jurisdiction to entertain the request of the applicant to appoint an arbitrator.

Learned counsel for the petitioner-applicant in support of his contentions has referred to a judgment passed by a Co-ordinate Bench of Delhi High Court in **Ariba India Private Limited vs. Ispat Industries Ltd., 2011 (125) DRJ 91**, wherein a petition was filed under Section 14 of the 1996 Act to seek a declaration that the mandate of the arbitral tribunal stands terminated on the ground that the arbitral tribunal had failed to act without undue delay. A direction was sought for reconstitution of arbitral tribunal with a direction that it continues the arbitration proceedings from the point where the existing arbitral tribunal had reached and that it should conclude the proceedings within the next 6 months. As per the petitioner, the said delay had occurred primarily due to repeated default of the respondent and the repeated adjournments sought by the respondent and granted by the tribunal. Considering the facts and circumstances of the case that proceedings were stretched for over four years without any progress, the petition was allowed and the Mandate of Arbitral Tribunal stood terminated.

Counsel for the appellant further made reference to a judgment passed by the **Allahabad High Court** in the case of **M/s BMG Construction vs. National Small Industries Corporation Ltd. And others 2013(60 RAJ 354** to contend that the application was maintainable as the Civil Court had the original jurisdiction to

entertain the said application. In ***M/s BMG Construction's case (Supra)***, the petitioner had sought termination of the mandate of the arbitrator by filing an application. It was held that mandate of an arbitrator is terminable on an application to be moved before principal Civil Court to original jurisdiction in a district. The High Court of Allahabad is not a 'Court' under Section 2(1) (e) of the Act before whom an application for seeking termination of the mandate of the arbitrator can be maintained.

Following the ratio laid down by the judgments in the case of ***Ariba India Private Limited's case (supra)*** and ***M/s BMG Construction's case (supra)***, order dated 2.12.2014 is set aside. Accordingly present revision petition is¹ allowed.

11.12.2015
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(RITU BAHRI)
JUDGE