

In the High Court for the States of Punjab and Haryana, at
Chandigarh

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LPA No. 649 of 2015

Date of decision: August 11, 2015

SAB Industries Ltd.

..Appellant

Versus

Greater Mohali Area Development Authority and others

..Respondents

Coram: **Hon'ble Mr.Justice Satish Kumar Mittal**
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Mr. C.S.Pasricha, Advocate
for the appellant.

- 1.Whether to be referred to Reporter?
- 2.Whether the judgment should be reported in the
digest ?

Mahavir S.Chauhan, J.

Appellant was allotted work of widening of peripheral roads of Sector 62 SAS Nagar (Mohali) including public health services and maintenance for five years vide agreement dated 18.9.2008. After completion of the allotted work, completion certificate dated 4.2.2010 (Annexure P2) was issued by respondent No. 2. There arose some dispute with regard to the final amount payable to the appellant. Appellant, through its

Executive Director, invoked Clause 25A-*Disputes and Arbitration* of the agreement entered into between the parties vide claim petition dated 31.1.2013 (Annexure P5). However, respondent No.3, i.e., Superintending Engineer-cum-Sole Arbitrator, vide letter dated 3.5.2013 (Annexure P6) asked the appellant to deposit 10 % of the amount claimed by it in terms of Clause 25A (viii) of the agreement. Appellant then filed CWP No.15553 of 2013 praying for issuance of a writ of certiorari for quashing sub clause (viii) of Clause 25A of the Agreement dated 18.9.2008.

The writ petition was dismissed by the learned Single Judge of this Court vide order dated 22.7.2013 by holding that the appellant was estopped from challenging the validity of sub clause (viii) of Clause 25A of the agreement in view of said agreement having been entered into by the appellant with open eyes and the clause 25-A was an integral part thereof.

To challenge order dated 22.7.2013, appellant approached the Hon'ble Supreme Court vide Special Leave to Appeal (Civil) No. 3953 of 2014. However, vide order dated 21.2.2014, the Special Leave Petition was dismissed as withdrawn as the appellant wished to file a review petition before this Court.

Review petition brought by the appellant, however, came to be dismissed by the learned Single Judge vide order dated 8.8.2014.

Appellant once again approached the Hon'ble Supreme Court to challenge order dated 8.8.2014 by way of Special Leave to Appeal (Civil) No. 21778 of 2014, but when the

matter came up for hearing, learned counsel for the appellant prayed for permission to withdraw the same with liberty to file an intra- court appeal against the order passed by the learned Single Judge. Special Leave to Appeal Petition was, accordingly, dismissed as withdrawn reserving liberty to the appellant as prayed for, vide order dated 8.1.2015.

Now to challenge order dated 22.7.2013, appellant has brought the instant Letters Patent Appeal under Clause X of the Letters Patent, along with an application for condonation of delay of 548 days in filing and 17 days in re-filing the appeal.

We have heard learned counsel for the appellant on merits.

Though it is argued on behalf of the appellant that sub clause (viii) of Clause 25A of the Agreement dated 18.9.2008 is arbitrary and liable to be quashed in view of judgment of the Hon'ble Supreme Court in the case of **Central Inland Water Transport Corporation Ltd. and another** versus **Brojo Nath Ganguly and another**, AIR 1986 SC 1571, but the learned counsel representing the appellant has not been able to dispute that the agreement dated 18.9.2008 was entered into by the appellant with full knowledge of the fact that Clause 25A including sub clause (viii) forms part of the said agreement. Not only this, the appellant even invoked the said clause by filing a claim petition on 31.1.2013 before the Sole Arbitrator in terms of the aforestated agreement.

Having accepted the agreement dated 18.9.2008 and then having invoked Clause 25A thereof, the appellant is estopped

from making a challenge to the said clause.

As regards the contention that the aforestated clause in the agreement is arbitrary and is liable to be quashed in terms of judgment of the Hon'ble Supreme Court in **Brojo Nath Ganguli's** case (supra), suffice it to say that in view of the financial standing of the appellant and the contract being a commercial transaction, no benefit can be derived by the appellant from the aforesaid judgment.

In view of the above, we do not find any reason to interfere with the well reasoned order recorded by the learned Single Judge dismissing the writ petition brought by the appellant. However, it needs to be placed on record that the appellant firstly assailed Clause 25A of the Agreement knowing it fully well that it forms part of the agreement dated 18.9.2008 which was executed by appellant with eyes open and then invoked the said clause by moving a claim petition before the Sole Arbitrator thereunder. The appellant then rushed to the Hon'ble Supreme Court by way of Special Leave to Appeal (Civil) No. 3953 of 2014, withdrew it and then filed a review application before this Court and after the review application was dismissed, again rushed to the Hon'ble Supreme Court by way of Special Leave to Appeal (Civil) No. 21778 of 2014, which too was withdrawn to file the instant intra-court appeal.

From the circumstances appearing on record, as herein before enumerated, the appellant is found to be indulging in luxury litigation which amounts to blatant misuse of the process of the Court and law as by such a frivolous litigation, precious time of

the Court is consumed at the cost of the cases involving greater public interest.

In view of the above, Letters Patent Appeal is found to be bereft of any substance and is dismissed with costs amounting to Rs. One lac payable to Punjab State Legal Services Authority.

(SATISH KUMAR MITTAL)
JUDGE

(MAHAVIR S.CHAUHAN)
JUDGE

August 11,2015
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