

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

CR No.1229 of 1996

Decided on.05.09.2016.

Haryana State Electricity Board

.....Petitioner

Versus

M/s Singla Steel Corporation

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Mohnish Sharma, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 13.10.1995 passed by the learned Additional District Judge, Chandigarh, whereby the appeal filed by the respondent against the order dated 07.09.1991 passed by the learned Special Judge First Class, Chandigarh, has been allowed.

2. Erstwhile, Haryana State Electricity Board (for short 'Board') filed the application under Order 20 of the Arbitration Act, 1940 (for short 'Act') for referring the dispute to the arbitrator.

3. As per averments in the application, petitioner-Board invited the tenders for the supply of M.S. Channels 75 x 40 mm 40 M.T and M.S. Channels 100 x 50 mm 40 M.T. In response to the tenders inquiry, respondents submitted its tender inquiry which was accepted by the petitioner and purchase order dated 27.12.1984 was placed with the respondents and a valid contract was entered into between the parties. There was a clause for referring the dispute to the Arbitrator as per the provisions of the Act. As per the time schedule, respondents were required to supply the material up to 03.01.1985. But, it failed to supply the

material within stipulated period. Thereafter, number of letters were written to the respondent to comply with the terms and conditions of the contract and to supply the material. But, respondents failed and neglected to carry out the commitment as laid down in the contract agreement. On account of the failure of the respondent, the petitioner-Board suffered a loss of Rs. 48,600/- which is recoverable from the respondents. Hence the petition.

4. The said application-petition was contested by the respondent on the grounds inter alia that respondents has not committed any breach of contract. Rather, respondent had supplied material from time to time. But, the petitioner-Board rejected the same without assigning any reason. It was further pleaded that no risk purchase has been made by the petitioner-Board of the channels of the local made. So, no dispute could be referred to the Arbitrator. It was also pleaded that application was time barred.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether dispute between the parties are referable to the arbitrator?
OPA
2. Whether application is time barred?OPR
3. Whether the petition is bad for non-issuance of notice?OPR
4. Relief.

6. On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned trial Court accepted the petition and directed the dispute between the parties to be referred to the Arbitrator as agreed between the parties and the award was ordered to be announced by the Arbitrator within a period of four months.

7. Feeling aggrieved with the aforesaid order, the respondent-Corporation preferred the appeal. The same has been allowed by the

learned Additional District Judge, Chandigarh, vide impugned judgment dated 13.10.1995 primarily on the ground that the application moved by the petitioner-Board was time barred.

8. I have heard Mr. Mohnish Sharma, Advocate, learned counsel for the petitioner-Board and have meticulously gone through the record of the case.

9. Initiating the arguments, learned counsel for the petitioner-Board contended that the learned First Appellate Court has wrongly reversed the well reasoned order passed by the learned trial Court. He contended that the period of limitation is to be reckoned from the date of demand and not from the last date of the delivery of the material. He contended that the demand was raised by the petitioner-Board for the first time on 10.06.1987, which is clear from the letter Ex.P-5, so the petition was within limitation. Thus, he contended that the impugned judgment passed by the learned First Appellate Court is not sustainable in the eyes of law.

10. I have duly considered the aforesaid contentions.

11. The legal position is well settled that the provisions of the Limitation Act, 1963 are applicable to the application under Section 20 of the Act. The Division Bench of the Hon'ble Delhi High Court in case **Shah Construction Company Ltd., Bombay Vs. Municipal Corporation of Delhi, 1985 AIR (Delhi) 358** has laid down that Article 137 of the Limitation Act is applicable to the application under Section 20 of the Act and the limitation to file the application is three years.

12. The Hon'ble Apex Court also in case **Union of India Vs. M/s Momin Construction Company 1995 AIR (SC) 1927** has categorically laid down that Article 137 of the Limitation Act is applicable to the

Application under Section 20 of the Act and application moved after the expiry of three years from the date of cause of action shall be barred by limitation.

13. It was the duty of the petitioner-Board to plead specifically in the petition the date of cause of action. The perusal of the petition moved by the petitioner under Section 20 of the Act shows that in the entire petition, the petitioner-Board has nowhere mentioned as to on which date the cause of action has arisen. Learned counsel for the petitioner has contended that the cause of action has arisen to the petitioner from the date of demand i.e. 10.06.1987. But, no such fact has been pleaded in the petition, which was incumbent upon the petitioner-Board to plead and prove the date of accrual of the cause of action and that how the petition falls within the period of limitation. But, all these essential facts are totally missing from the petition filed by the petitioner-Board. In the absence of any later date of cause of action pleaded by the petitioner-Board, the date i.e. 03.01.1985 fixed for supply of material shall be taken into consideration to reckon the period of limitation. Admittedly, the petition has been filed by the petitioner after the expiry of more than three years from 03.01.1985 so, this Court have no reason to differ with the findings recorded by the learned First Appellate Court that the petition filed by the petitioner-Board was time barred.

14. Thus, the present revision petition having no merits, is hereby dismissed.

(DARSHAN SINGH)
JUDGE

05.09.2016

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No