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

FAO-4730-2007 (O&M)
Date of decision : 26.02.2016

Pritam Lal Sharma

...Appellant

Versus

HUDA and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harkesh Manuja, Advocate
for the appellant.

Mr. Manjeet Singh, Advocate
for respondent Nos.1 and 2.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? ***YES***
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

In pursuance to a Contract entered into between the parties containing a clause of raising a claim within a period of 180 days from the date of preparation of the final bill, a dispute arose which was referred to the Arbitrator. The Arbitrator vide its Award dated 31.03.2005 held that HUDA entitled to claim the certain amounts of compensation. Aggrieved of the aforementioned Award, the Contractor filed the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') and the same have been dismissed. In these circumstances, present appeal has been filed.

Mr. Harkesh Manuja, learned counsel appearing on behalf of the appellant-Contractor, submits that the claim of the HUDA was beyond the terms and conditions of the Contract, the Arbitrator exceeded its jurisdiction in not referring to the same, thus, there is blatant/statutory violation of sub-Section 3 of Section 28 of the 1996 Act, which, envisages that in case the Award is against the terms and conditions of the Contract, then the same was liable to objected to, as per the provisions of Section 34 of the 1996 Act. In support of his contentions, he relies upon the judgments of Hon'ble Supreme Court rendered in ***'National Insurance Company Ltd. V/s Sujir Ganesh Nayak and Company", 1997 AIR (SC) 2049*** and ***"M/s P. Manohar Reddy and Bros. V/s Maharashtra Krishna Valley Dev. Corp. and others", 2009 AIR (SC) 1776***, to contend that in case, the claim is not lodged strictly as per the terms and conditions of the Contract Act, the claim *ex facie* was barred by law of limitation, and therefore, HUDA cannot claim the benefit of Article 137 of the Limitation Act, thus, urges this Court for setting aside the Award as well as the order under challenge.

Mr. Manjit Singh, learned counsel appearing on behalf of the respondent(s)-HUDA, submits that Section 29 of the Limitation Act statutorily prescribes the provisions contained in sections 4 to 24 of the Limitation Act would apply, which are not expressly excluded by any special or local law. The terms and conditions restricting the claim to be lodged within 180 days was against the provisions of Section 23 of the contract Act and therefore, HUDA could not be prevented to lodge the claim within three years from the accrual of the formal action, which actually was filed and entertained by the Arbitrator. In support of his contentions, he relies upon the judgment rendered by Hon'ble Supreme Court in ***"Mukri Gopalan V/s Cheppilat Puthanpurayil Aboobacker" 1995 AIR (SC) 2272***.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no substance in the appeal.

It would be apt to reproduce the clause 25-A of the Agreement.

> *"**Clause 25-A** : If any question, difference or objection whatsoever shall arise in any way connected with or arising out of this instrument or the meaning or operation of any part there of the rights duties or liabilities or either party than save in so far as the decision of any such matter is hereinbefore provided for and has been so decided every such matter including whether it, decision has been otherwise provided for and or whether it has been finally decided accordingly, or whether the contract should be terminated or has been rightly termination will be referred for arbitration to the Superintendent Engineer Haryana Urban Development Authority Karnal circle or his successco acting as such at the time of reference by the contractor or Executive Engineer-in-charge within 180 days from the payment of the final bill to the contractor or from the date of issue of registered notice to the contractor to the effect at his final bill is ready for payment and decision shall be final and binding and where the matter involves a claim for the payment or recovery or deduction of money, only the amount in any, awarded in such arbitration shall be recoverable in respect of the matter so referred. The party invoking arbitration shall have to bear the expenses of arbitration,if the matter not referred to arbitration within the specified period, all the rights and claims under the contract shall be deemed to have been forfeited and absolutely time-barred."*

On going through the clause, it is evident that reference to the Arbitrator can be made within 180 days from the payment of the final bill to the Contractor or from the date of the issuance of the registered notice to the

Contractor i.e. when final bill is ready. The plea of Mr. Harkesh Manuja that the claim of the HUDA beyond 180 days was not maintainable and the Arbitrator exceeding its jurisdiction in entertaining the claim, is not sustainable as in my view, imposing of limitation of 180 days, is contrary to the provisions of Section 23 of the Contract Act, which reads thus:-

> *"23. What consideration and objects are lawful, and what not.—*
> *The consideration or object of an agreement is lawful, unless —*
> *it is forbidden by law;[1] or*
> *is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or*
> *involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.*
> *In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.*

Where the Limitation Act does not provide any specific period in filing the claim, Article 137 comes into play, which provides three years from the date, when the right to apply accrues. Sub-section 2 of Section 29 of the Limitation Act does not exclude the applicability of the provisions of the Limitation Act which are not expressly excluded by a specific or local law, in essence, the parties cannot by consent impose a period lesser than what prescribed in the Limitation Act for filing the claim. I duly supported by the findings rendered by Hon'ble Supreme Court in ***"Mukri Gopalan's case*** (supra). There is no dispute to the ratio decidendi culled out in ***National Insurance Company Ltd.'s case*** (supra) and as well as so, however, with all humility and respect to aforementioned judgments, the provisions of Section 23 of the Contract Act and as well as Section 29 of the Limitation Act have not been taken into consideration, whereas the judgment rendered in ***National***

Insurance Company Ltd.'s case (supra) is the interpretation of the provisions of Section 28 of the Insurance Contracts Act, viz-a-viz the findings rendered by the Hon'ble Supreme Court of India in ***M/s P. Manohar Reddy & Brothers' case*** (supra), the Court on the interpretation of the Arbitration Agreement held that the matter could not have been referred to the Arbitrator, however, the facts as narrated above, are different with the one, referred to above. There is another aspect of the matter that in ***"Chairman and MD, NTPC Ltd. V/s Reshmi Constructions, Builders and Contractors" 2004 (2) SCC 663***, it has been unequivocally held that where the party has given no objection viz-a-viz the settlement of the final payment, is not precluded/prevented to seek the vindication of the grievance through resolution of dispute by way of Arbitration.

At this stage, Mr. Harkesh Manuja, has drawn the attention of this Court to the judgment of Hon'ble Supreme Court rendered in ***"Union of India and others V/s Hari Singh" 2011 (1) RCR (Civil) 134***, wherein, the Contractor, after execution of the Contract, had entered into a supplementary agreement, a question arose whether the parties by a supplementary agreement obtained a full and final discharge, after paying the entire amount, was/is entitled to seek the reference by invoking the arbitration clause or not, the answer came in negative. However, while rendering the aforementioned finding, Hon'ble Supreme Court was not brought to its notice the ratio decidendi culled out in the judgment rendered by the same Court in ***"Chairman and MD, NTPC Ltd.'s case*** (supra), whereas in my view, the judgment rendered in ***Union of India's case*** (supra) would be rendered into a per incurium and as it is, as per the facts and circumstances of the case, particularly parties had entered into a supplementary agreement, after settling of settlement of the entire amount, therefore, the ratio decidendi culled out in the judgment rendered in ***__Union of India's case__*** (supra), would not be applicable. The claim was according to the HUDA was lodged within 180 days.

Keeping in view the aforementioned position of law and the facts noticed above, I am of the view that there is no substance in the plea in the objections under Section 34 of the 1996 Act, for setting aside the Award, in my view, the Award has been passed on the basis of the documentary evidence placed on record. No ground is made out for interference and accordingly, the appeal is dismissed.

26.02.2016 **(AMIT RAWAL)**
yogesh **JUDGE**