

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.8 of 2017

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M/s Prasad Construction & Co. having office at Leela Mohan Niwas Mohalla Nai Sarai, P.O. Bihar Sharif Distt. Nalanda a registered partnership firm through Patner Arun Kunar

.... Petitioner/s

Versus

1. The Union of India through the General Manager, E.C. Railway, at & P.O. Hajipur, Distt. Vaishali
2. The Deputy Chief (Con), I E.C. Railway, Hazaribag, At & P.O. Hazaribag, District- Hazaribag (Jharkhand)

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Kumar, Advocate
		Mr. Nand Kishore Singh, Advocate
For the Respondent/s	:	Mrs. Nivedita Nirvikar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 28-06-2017

Having heard learned counsel for the parties, it is seen that Clause 63 of the agreement in question mandates that a claim has to be raised by the petitioner before the Arbitrator and thereafter the applicant has to wait for 120 days and then only the application for appointment of Arbitrator can be made. In this case, the petitioner took recourse to the remedy available under Section 63 by raising the claim before the respondents on 15.11.2016 vide Annexure-P-1 and even before the period of 120 days was completed, this application was filed invoking the jurisdiction of this Court on 25th of January, 2017 i.e. before the period of 120 days.

A period of 120 days after 15.11.2016 would have been over only on 15.02.2017 and, therefore, the preliminary objection is



raised to say that the application was not maintainable. That apart, it is pointed out that the provisions of Clause 64(1)(i) demanding Arbitrator was not invoked before filing of this application. It was only invoked vide Annexure-P-3 on 01.05.2017 i.e. after filling of this application. That being so, respondents contend that in view of the statutory breach committed in the matter of raising of the demand and seeking appointment of Arbitrator under Clause 64(1)(i), this application is not maintainable.

I find much force in the aforesaid objection raised by the respondents. The application filed being not in conformity with the Arbitration Agreement, is liable to be dismissed. Learned counsel for the applicant argues that now as the period of 120 days is over, this Court can exercise jurisdiction.

I am not inclined to accept the aforesaid contention. The application for seeking appointment of Arbitrator should have been filed after complying with the requirement of the arbitration agreement and when this application was filed on 25.01.2017 invoking the jurisdiction of this Court under Section 11, as the requirement under the provisions of Clause 63 and 64 of the Arbitration and Conciliation Act, 1996 was not fulfilled, the application itself is not maintainable. Therefore, the contention that now the application is maintainable, cannot be accepted. It was not



maintainable on the day it was presented on 25.01.2017 and, therefore, the objection of the respondents are accepted. The application is dismissed.

Learned counsel prayed for grant of leave to appeal before the Supreme Court.

As the substantial question of law is involved in the matter, the leave prayer is rejected.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	30.06.2017
Transmission Date	

