

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Arbitration Case No.280 of 2016 (O&M)
Date of Decision: 04.08.2017

M/s G.R.Associates through its partner Sh.Ranjit Singh

.....Petitioner

versus

Commissioner, Municipal Corporation, Ludhiana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE

Present : Mr. P.S.Rana, Advocate, for the petitioner.
Mr. D.S.Sobti, Advocate, for the respondents.

S.J.VAZIFDAR, CHIEF JUSTICE

This is an application under section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of a sole arbitrator to adjudicate upon the disputes and differences between the parties.

2. The contract between the parties is admitted. The disputes and differences fall within the ambit of the arbitration clause. Clause 14 of the agreement reads as under:-

“14. In case of any dispute or disagreement arising out of contract agreement, Commissioner, Municipal Corporation, Ludhiana, shall be the sole Arbitrator, whose decision shall be final and binding upon both the parties.”

3. In view of the amendment to the Act, the respondents' Commissioner cannot act as an Arbitrator. The learned counsel appearing on behalf of the respondents stated that the last payment under the contract was made on 30.09.2013. By a notice dated 10.12.2014, the petitioner raised various disputes and demanded various amounts from the respondents. The notice stated that in the event of the respondents failing to meet the same, the petitioner would initiate legal proceedings in a Court of competent jurisdiction.

4. The learned counsel appearing on behalf of the respondents stated that the security deposit was also released in the year 2016. Whether the release of the security deposit was a part payment of the dues or not is one of the issues that arise for consideration.

5. The petitioner filed a Civil Writ Petition No.2356 of 2015 inter-alia claiming payment of the said amount. The petition was disposed of by an order and judgment dated 12.02.2015. It would be convenient to quote the order which reads as under:-

“The writ is not appropriate remedy for claiming the relief for non-payment of the amount for the work done. It has been held to be so in a judgment of this court in **CWP No.14621 of 2014, dated 05.11.2014-M/s Dharam Pal Contractors Versus State of Punjab and others**. The petitioner will, however, be at liberty to engage the respondents in appropriate communication and if there is an admission of liability, may use such admission for securing the decree in an appropriate court or otherwise the petitioner will be at liberty to use all persuasions to realize the amount as and when the payment is feasible.

2. Writ petition is disposed of as above.”

6. The petitioner thereafter addressed a further letter dated 30.03.2015 once again seeking payment of the said amounts. Ultimately, the petitioners by their Advocate's letter dated 30.11.2016 raised disputes and invoked the arbitration clause.

7. Another issue that arises is whether the period during the pendency of the writ petition would entitle the petitioner to avail the benefit of Section 14 of the Limitation Act. There has been a divergence of opinion on this issue not as regards a writ petition but as regards other proceedings such as in respect of a winding up petition. (See for instance *Maharashtra State Farming Corporation Ltd. v. Belapur Sugar and Allied Industries Ltd.* 2004 SCC Online Bom 136 and *Niyogi Offset Printing Press Ltd. v. Doctor Morepen Limited* 2007 SCC Online Del 358). Which of the two views ought to be followed and whether the judgments apply to such cases is itself a dispute. I do not consider it appropriate for me to express my views on the issue for that would be encroaching upon the jurisdiction of the Arbitrator. Moreover, the nature of the payment of the security deposit would also have to be considered.

8. Mr. Sobti's reliance upon paragraph 5 of the judgment of the Supreme Court in *Union of India and others v. Onkar Nath Bhalla and sons* (2009) 7 Supreme Court Cases 350 is not well founded. It is, however, necessary to set out paragraph Nos. 3 and 5 of the judgment which read as under:-

“3. The facts in brief are: the appellant, Engineer-in-Chief, had entered into a contract agreement with the respondent/contractor. The

contract was completed on 20-9-2002. A final bill was prepared, settling all claims, by the respondent and was forwarded to the appellants. The respondent after receiving payment of final bill signed the same, without any protest or reservation on 27-3-2001. Again after two years, the respondent submitted a list of twenty claims to the appellants. The appellants in their reply stated that as per Condition 65 of IAFW 2249 (General Conditions of Contract) forming part of CA, no further claim shall be made by the contractor after submission of the final bill and the claim now submitted are deemed to have been waived and extinguished. The respondent then approached the Engineer-in-Chief for appointment of the arbitrator on 17-8-2003. The appellants did not appoint an arbitrator as no dispute existed.

5. The learned counsel for the appellants would contend, that the final bill of the work was signed by the applicant on 21-12-2000 and the payment for the same was made to the applicant on 27-3-2001. The applicant signed the final bill and no-further-claim certificate was also signed without any reservation and also got the payment of final bill by signing the same without any protest.”

.....(emphasis supplied).

In that case, the decision did not turn only on account of the applicant having signed the final bill. The applicant also executed a ‘No Further Claim Certificate’ without any reservation. Further, the applicant there obtained the payment of the final bill by signing the same without protest. Moreover, in that case condition No.65 of the General Conditions of Contract specified that no further claim shall be made by the contractor after submission of the final bill. The Supreme Court did not hold that the mere existence of the amount stipulated in a final bill prohibits a party raising a claim subsequently. It may be strong evidence to indicate that the payee received the amount in full and final satisfaction of its claim. That, however, would be subject to the payee proving otherwise. In *Union of India and others v. Onkar Nath Bhalla’s*

case (supra), the payment as per the final bill was received but only after the payee executed the No Further Claim Certificate. Moreover, Condition No. 65 of General Conditions of Contract in that case barred a further claim being made by a contractor after submission of the final bill. The judgment is clearly distinguishable from the facts of this case.

9. In the circumstances, the petition is disposed of by appointing Mr. Justice K.S.Garewal, a former Judge of this Court, as the sole arbitrator to adjudicate upon the disputes and differences between the parties. The fees shall be as per the Chandigarh Arbitration Centre (CAC) (Administrative Cost and Arbitrator's Fees) Rules, 2014. The venue of the arbitration shall be the Chandigarh Arbitration Centre.

(S.J. VAZIFDAR)
CHIEF JUSTICE

04.08.2017
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No