

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

1146

FAO-3846-2013 (O&M)

Date of Decision : 08.03.2018

Haryana Warehousing Corporation

..... Appellant

Versus

M/s Jivnas Marketing and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Ms. Madhu Dayal, Advocate
 for the non-applicant-appellant.

Mr. Madan Mohan, Advocate
for Mr. Yogesh Putney, Advocate
for the applicant-respondent No.1.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the Additional District Judge dated 04.03.2013 dismissing the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act').

The appellant had been allotted a tender for supply and erection of high mast and street light to the respondent No.1. Disputes having arisen the matter was referred to arbitration. Once of the objections filed by the appellant before the Arbitrator was that there was a specific term in the contract as per which arbitration could be claimed within a period of 180 days and, the arbitration having been claimed beyond a period of 180 days, it was outside limitation. The Arbitrator did not deal with this objection but

the Additional District Judge rejected this argument on the basis of provisions of Section 28 of the Indian Contract Act and held that this objection was not maintainable.

Counsel for the appellant has argued that in paragraph No.16 of the impugned order the Court has referred to the judgment of the Supreme Court in the matter of ***H.P. State Forest Company Ltd. vs. M/s United India Insurance Co. Ltd., 2009(1) RCR (Civil) 703 (SC)*** but without discussing the same the court has gone on to hold that Section 28 bars such a restriction of time whereas the above judgment hold to the contrary.

When the matter was taken up yesterday counsel for the respondent sought time to go through the said judgment. Today he accepted that he has not been able to lay his hands on this or any subsequent judgment which may take a contrary view. In H.P. State Forest Company Ltd.'s case (supra) Their Lordships have held as follows:

“While construing this provision vis-a-vis Section 28 of the Contract Act and the cases cited above and several other cases, in addition, this is what the Court ultimately concluded:

"16. From the case-law referred to above the legal position that emerges is that an agreement which in effect seeks to curtail the period of limitation and prescribes a shorter period than that prescribed by law would be void as offending Section 28 of the Contract Act. That is because such an agreement would seek to restrict the party from enforcing his right in Court after the period prescribed under the agreement expires even though the period prescribed by law for the enforcement of his right has yet not expired. But there could be agreements which do not seek to curtail the time for enforcement of the right but which provide for the forfeiture or waiver of the right itself if no action is commenced within the period stipulated by the agreement. Such a clause in the agreement would not fall within the mischief of Section 28 of the Contract Act. To put it differently, curtailment of the period of limitation is not permissible in view of

Section 28 but extinction of the right itself unless exercised within a specified time is permissible and can be enforced.....”

Counsel for the appellant has argued that even in the present case it was stipulated as follows:-

“Clause 25A.....as such at the time of reference within the 180 days of the final payments has been made or from the date a registered notice for receiving the final payment is sent to the Contractor, and in case of minus bill then from the date of signing by the contractor such bill or from the date of notice to the contractor for his bill being minus and his decision shall be final and binding and where the matter involves a claim for the payment or recovery of deduction money, only the amount if any awarded such arbitration shall be recoverable in respect of the matter so referred.”

As per the counsel for the appellant, after the expiration of 12 months it was not that the right to recovery would be barred by time but the right itself would be extinguished.

Keeping in view the law laid down in the above judgment, the appeal is allowed and the award is set aside.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 08, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No