

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 18.10.2019****Order Delivered on 14/11/2019****WPC No. 3673 of 2019**

1. M/s Shree Mahamaya Constructions 231, 2nd Floor, Rishabh Complex, M.G. Road, Raipur Chhattisgarh. Through Sole Proprietor Sh. Sandeep Rungta, S/o. Late G.R. Rungta, Aged About 46 Years, R/o Navkar Apartments, 3rd Block, 2nd Floor, Choubey Colony, Raipur Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Public Health Engineering Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh.
2. Superintendent Engineer, Public Health Engineering Department, Jagdalpur Circle, District Jagdalpur (CG)
3. Executive Engineer, Public Health Engineering Department, Jagdalpur Division, District Jagdalpur (CG)
4. Chief Engineer, Public Health Engineering Department, Jagdalpur Zone, District Jagdalpur (CG)

---- Respondents

For Petitioner	: Shri Saurabh Dangi, Advocate
For Respondents	: Shri Sudeep Agrawal, Dy. Adv. General

Hon'ble Shri P. R. Ramchandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****CAV Order****Per Parth Prateem Sahu, J**

1. Rejection of application of the petitioner submitted before the 2nd respondent for referring his claim to the Arbitrator under Clause 29 of the contract agreement made the petitioner to approach this Court by filing this writ petition.
2. Facts of the case, in nutshell, are that the petitioner was

awarded with a contract for providing, laying, jointing, interconnection, testing and commissioning of 56644 meters distribution network of 80, 100, 150, 200 & 250 mm dia Ductile Iron Pipes class K-7 with valves, specials & all allied civil works from overhead tanks under Bastar Augmentation Water Supply Scheme for Nagar Panchayat, Bastar. Total value of the contract work awarded to the petitioner was Rs.890.90 lakhs. The work order was issued in favour of petitioner on 22.1.2015 mentioning that period of completion of work is 16 months excluding rainy season. The petitioner could not complete the work within prescribed time and even after granting extension by the Competent Authority for completion of work. The contract was terminated vide letter of termination dated 31.10.2017 against which the petitioner preferred writ petition bearing WPC No.3044/17. The said writ petition came to be dismissed vide order dated 20.8.2019 with liberty to seek remedy available in accordance with law outside the writ jurisdiction. Petitioner thereafter filed a review petition before this Court seeking review of the order dated 20.3.2019 passed in WPC No.3044/17 and the same was also dismissed on 12.9.2019. After dismissal of review petition, on 20.9.2019 the petitioner submitted an application before the 2nd respondent for referring his claim to the Arbitrator, which came to be rejected vide order dated 30.9.2019 mentioning therein that limitation provided under Clause 29 of the contract agreement, for referring the dispute to the Arbitrator is 30 days and as the application has not been made within 30 days, therefore, the same cannot be entertained.

3. Learned counsel for the petitioner submits that the petitioner was very much diligent for his rights available to him under the contract and he has approached the High Court against the termination of contract immediately in the year 2017 itself and thereafter he also filed review petition before the High Court which only came to be dismissed on 12.9.2019 and thereafter within a period of 30 days i.e. on 20.9.2019, the application for

referring the dispute to the Arbitrator has been submitted by the petitioner, which cannot be said to be barred by limitation as prescribed under the contract agreement. He further submits that the petitioner was diligently contesting his case before other fora wherein the respondents were also parties and therefore it cannot be said that the petitioner has approached the authority concerned for referring the dispute to the Arbitrator after the prescribed period of limitation. He submits that as his petition came to be dismissed by the High Court after long time and therefore he cannot be left without any remedy for redressal of his grievance.

4. Per contra, learned counsel for the State submits that conditions of contract are part of the agreement signed by petitioner and respondent concerned and therefore the same are binding on both the parties. He submits that contract of the petitioner was terminated on 31.10.2017, whereas application for referring his claim to the Arbitrator has been filed only on 20.9.2019, which is beyond the period of 30 days as prescribed under Clause 29 of the agreement and therefore the respondent No.2 has rightly rejected application of the petitioner.
5. We have heard learned counsel for the parties and perused the documents annexed along with writ petition.
6. It is not in dispute that after termination of contract on 31.10.2017, the petitioner filed writ petition before this Court on 7.11.2017 i.e. within a period of 7 days from the date on which cause of action arose. The said writ petition was contested by the respondents and ultimately it came to be dismissed only on 20.3.2019. In the said order of dismissal it was observed by this Court that the petitioner may avail other remedy available to him under the law. The petitioner thereafter filed a review petition before this Court on 11.4.2019, within limitation as prescribed under the law, and the said review petition was also dismissed on 12.9.2019. Annexure P-1 order of rejection of

application for referring petitioner's claim to the Arbitrator reveals that the application was received by the office of the 2nd respondent on 20.9.2019, which shows that within a period of 8 days from the passing of order of dismissal of review petition, the petitioner has invoked the arbitration clause as provided under Clause 20 of the contract.

7. From the above facts and events of the case, it is evident that the petitioner was diligent for his rights and therefore he had initially approached the High Court within a period of 6 days of termination of contract by filing writ petition and after dismissal of his writ petition and review petition, he again approached the authority within a period of 8 days. The petitioner was continuously contesting his case for his rights and therefore it cannot be said there is some negligence on the part of the petitioner in approaching the authority concerned for his claim/right under the contract.
8. There is no dispute that conditions of contract provide for reference of dispute to the authority within a period of 30 days from the date of accrual of cause of action, but Section 14 of the Limitation Act, 1963 provides for exclusion of time of proceeding bona fide in Court without jurisdiction. Relevant portion of Section 14 of the Limitation Act, 1963 is reproduced below for ready reference:-

“14 Exclusion of time of proceeding bona fide in court without jurisdiction. — (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any

application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.”

9. Hon'ble Supreme Court in the matter of Rameshwarlal v. Municipal Council, Tonk reported in (1996) 6 SCC100 has held thus:-

“3. Normally for application of Section 14, the court dealing with the matter in the first instance, which is the subject of the issue in the later case, must be found to have lack of jurisdiction or other cause of like nature to entertain the matter. However, since the High Court expressly declined to grant relief relegating the petitioner to a suit in the civil court, the petitioner cannot be left remediless. Accordingly, the time taken in prosecuting the proceedings before the High Court and this Court, obviously pursued diligently and bona fide, needs to be excluded.”

10. Hon'ble Supreme Court in its another decision rendered in the matter of Union of India vs. West Coast Paper Mills Ltd. reported in (2004) 3 SCC 458 has again considered the application of Section 14 of the Limitation Act, 1963 and held thus:-

“14....."In the submission of the learned Senior Counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it was not an appropriate remedy for seeking money relief cannot be said to be "defect of jurisdiction or other cause of a like nature" within the

meaning of Section 14 of the Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. However, Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression "other cause of like nature" came up for the consideration of this Court in *Roshanlal Kuthalia v. R.B. Mohan Singh Oberoi* (1975) 4 SCC 628 and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance, legal or factual, which inhibits entertainment or consideration by the court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right."

11. The object of the provisions of the Limitation Act and particularly Section 14, is not to leave a person remediless when the time provided under any law or condition of contract, as in this case, and said person has challenged the action or filed his case before any other forum but subsequently it has been found that appropriate forum would be the other forum as provided under any statute or condition of contract.
12. In the case at hand, after dismissal of review petition on 12.9.2019, an application under Clause 29 of the contract has been made on 16.9.2019 itself specifically explaining therein as to how the application could not be filed within 30 days. Respondent No.2 has not taken into consideration the specific facts pleaded in application/representation that after accrual of cause of action, writ petition and review petition were filed and

passed the order impugned rejecting application/representation for referring the dispute of the petitioner for arbitration.

13. Taking into consideration the overall facts and diligence shown by the petitioner for redressal of his grievances, firstly by filing writ petition and thereafter review petition promptly, we quash the order dated 30.9.2019 passed by respondent No.2 and direct respondent No.2 to pass fresh orders on petitioner's application dated 16.9.2019 referring the case/dispute raised by petitioner for arbitration, as provided under Clause 29 of the conditions of contract.

14. The writ petition is accordingly disposed off.

Sd/-
(P.R. Ramchandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-