

203

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

**Civil Revision No.5106 of 2008 (O&M)
Date of Decision: 03.07.2019**

Union of India and another

.....Petitioners

Vs

Rai Sahib Mehta and another

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. A.K. Bansal, Advocate
for the petitioners.

Mr. P.S. Rana, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the judgment dated 06.06.2008 passed by the Addl. District Judge, Amritsar vide which order dated 05.06.1995 passed by the Sub Judge First Class, Amritsar was set aside.

[2]. Brief facts are that the Arbitrator passed the award on 13.08.1993. Firstly, five claims were set up by the respondent-contractor and thereafter further 15 claims were also made, thereby total 20 claims were made after accomplishing the work assignment as awarded by the petitioners. Further, 11 counter

claims were set up by the petitioners. The Arbitrator found that the counter claims were not referred by the Chief Engineer. A total amount of the counter claims as given in CSF did not contain Rs.2,14,090/- as referred by the Chief Engineer as counter claim No.1. While referring the counter claim No.1, the Chief Engineer recorded in the remarks column that the Arbitrator would decide whether the claim was justified or not and if, the claim was justified then to what extent it was justified.

[3]. After rejection of counter claim being not referred by the Chief Engineer, no modified counter claims were received by the Arbitrator and thus the counter claim as referred by the Chief Engineer were found to be defective as no details of the counter claims were furnished. As a consequence of the aforesaid anomaly, nothing was awarded to the petitioners and the counter claims as given by the petitioners in their CSF were not adjudicated upon being not referred by the Chief Engineer. The award was passed to which objections were filed by the petitioners at the time of making the award as rule of the Court in a petition under Section 14(2) read with Section 17 of the Arbitration Act. The objections were filed under Section 30 of the Arbitration Act on behalf of the petitioners.

[4]. The trial Court vide order dated 05.06.1995 accepted the objections of the petitioners and set aside the award dated

13.08.1993 made by the Arbitrator. The application for making the award rule of the Court was accordingly dismissed by the Sub Judge First Class, Amritsar.

[5]. Feeling aggrieved against the aforesaid order, the respondent-Contractor filed appeal before the Addl. District Judge, Amritsar. The lower Appellate Court found that Sh. S.S. Juneja, Arbitrator was appointed by the petitioners' Department itself by referring the claims and additional claims of the respondent No.1. The objections raised by the petitioners were duly met by the lower Appellate Court. The award was held to be speaking. The documents produced by both the parties were duly considered by the Arbitrator. The Arbitrator has specifically mentioned that the counter claims submitted by the petitioners were not submitted through proper channel i.e. through the Chief Engineer, therefore, counter claims were held to be defective and were accordingly rejected.

[6]. The objection with regard to time barred claims No.6 to 20 was met by the lower Appellate Court with reference to record. It was established on record that there was contractual/ bilateral obligation on the part of the Department/petitioners to supply final bills of the respondent. The alleged intimation by the petitioners made on 27.09.1989, was held to be no intimation regarding the actual payment to be made to the respondent

No.1. It was established on record that final bills were supplied to the respondent No.1 only on 28.06.1991 and thereafter contractor could make his mind either to accept the same or to challenge the same. After supply of final bills on 28.06.1991, dispute arose between the parties and the claims submitted by the contractor in the form of claims No.1 to 5 were referred by the Department/petitioners to the Arbitrator. Thereafter additional claims No.6 to 20 were submitted on 01.07.1991 and these documents were also within limitation from the date of receipt of final bills by the respondent on 28.06.1991.

[7]. In view of aforesaid factual position, it is found that error has been committed by the trial Court to allege that permission was required to be obtained from the Court while submitting the claim beyond the period of 90 days. From the record it was established that contractual work started on 07.07.1988 and the same was to be completed on 10.08.1988. The date for completion of work was extended upto 30.05.1989 and further due to unprecedented flood situation and circumstances prevailing at the site, the work could not be accomplished. The limitation was to be considered from the date on which final bills were received by the respondents. Communication of the final bills on 27.07.1989 would not give rise to any cause of action in favour of the petitioners to allege

that the claims No.6 to 20 were time barred.

[8]. The arbitration proceedings were concluded on 14.02.1991. Time was extended with the consent of the parties and the award was announced on 13.08.1993. The period of limitation was to be counted from 28.06.1991, when the bills were received by the respondent and, therefore, provision in terms of Section 37(4) of the Arbitration Act was not attracted to the facts and circumstances of the case.

[9]. During course of arguments, it has been found that even claims No.8, 9, 12, 13, 14 and 15 of the Contractor fully coincided with counter claims No.3, 4, 7, 8, 9 and 10 in pith and substance. The total amount forming subject matter of counter claim No.1 was Rs.2,14,090/-. The said amount has already been paid to the respondent-Contractor.

[10]. After filing of the revision petition in the year 2008, no stay was granted by this Court. The amount has already been paid to the respondents in the execution. At this stage, in view of the facts noticed hereinabove, I do not find any justification to differ with the findings recorded by the Addl. District Judge, Amritsar in the order dated 06.06.2008. The findings recorded by the Addl. District Judge are not found to be erroneous or the result of misreading of evidence on record.

[11]. Since nothing is due towards the petitioners as on date

and the petitioners have already paid the dues of the respondent-Contractor, therefore, nothing survives in this revision petition for consideration by this Court. This revision petition is accordingly dismissed.

July 03, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No