

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

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**CM No.1059-CII of 2019 in
CR No.7680 of 2018 (O&M)
Date of Decision : 05.03.2019**

PARBATI KOLDAM TRANSMISSION CO. LIMITED.

....PETITIONER

V/S

AMARJIT SINGH AND OTHERS.

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. I.S. Sidhu, Advocate for the petitioner.

B.S. WALIA, J. (ORAL)

CM No.1059-CII of 2019

For the reasons as are mentioned in the application, the same is allowed. Civil revision petition is restored to its original number and the case is taken up for hearing today itself.

CR No.7680 of 2018

[1] Learned counsel contends that order Annexure P-4 dated 05.10.2018, passed by the learned District Judge, Rupnagar, dismissing the application under Order 7 Rule 11 (d) read with Section 151 CPC is legally unsustainable as the plaint was time barred.

[2] Learned counsel contends that the petitioner-Company was granted licence to evacuate electric power from 800 MW Koldam Hydro Electric Project to 400 KV Power Grid Sub Station in Ludhiana and for

establishing transmission line for the same standing trees and crops in the land

of respondent No.1 were required to be cut for which due compensation was paid to respondent No.1 vide cheque No.183205 dated 19.12.2013. However, respondent No.1 filed an application Annexure P-1 under Section 16(3) of the Telegraph Act, 1885 (for short 'the Act, 1885') and Section 10 of the Electricity (Supply) Act, 1910 (for short 'the Act, 1910') seeking enhancement of compensation.

[3] Learned counsel further contends that the petitioner filed application Annexure P-2 under Order 7 Rule 11 (d) read with Section 151 CPC for rejection of the plaint but the same was dismissed vide order Annexure P-4 dated 05.10.2018.

[4] Learned counsel further contends that an application under Section 16(3) read with Section 10(d) of the Act, 1885 is governed under Article 137 of The Limitation Act, 1963 in view of the decision of Hon'ble the Supreme Court in 'Kerala State Electricity Board, Trivandrum versus T.P.K.K. Amsom and Besom, Kerala', AIR 1977 (SC) (282). In other words period of limitation for filing the aforementioned application was three years from the time when the right to apply accrued and as per Article 137 of the Limitation Act, the period of limitation would accruing to begin to run from the date when payment as aforesaid was received under protest or otherwise for making an application under Section 16(3) of the Act, 1885.

[5] Learned counsel contends that respondent No.1 intentionally withheld the dates, on which amount of compensation according to the assertion of respondent No.1 was received by him and it was on that date that a dispute in terms of Section 16(3) of the Act, 1885 arose giving rise to cause of action if any to claim enhanced compensation than what had already been paid

[6] Learned counsel further contends that the averment in paragraph No.9 of the petition for enhancement i.e. (Annexure P-1) that respondent No.1 had come to know in the second week of December, 2017 about enhanced compensation having been awarded to the land owners of Village Chotti Jhakian, Madhopur whereafter he approached the petitioner and on being refused grant of enhanced compensation chose to file the petition for enhancement (Annexure P-1) did not confer any right on respondent No.1 as limitation for filing the application did not extend to a date on which respondent No.1 gained knowledge of enhanced compensation having been awarded to other land owners and period of limitation as per Article 137 was only three years from the date when the right to apply accrued and the same accrued when he received payment of compensation vide cheque under protest on 19.12.2013.

[7] Learned counsel further contends that the impugned order was also vitiated on the ground that in holding that the payments made to respondent No.1 were part of installments which gave rise to expectation to respondent No.1 to receive more compensation whereas the valuation reports of the damage ascertained on account of cutting of trees/crops mentioned that it was the last payment made.

[8] Learned counsel lastly contended that the impugned order was further vitiated as the learned District Judge fell in error in holding that the point of limitation raised by the petitioner was a disputed question of fact for which an issue would have to be framed and decided on the basis of evidence.

[9] I have considered the submissions of learned counsel.

[10] A perusal of paragraph No. 4 of the application under Section 16(3) of the Act, 1885 and Section 10 of the Act, 1910 reveals the averments that the petitioner made payment totaling ₹28,000/- to respondent No.1, which was received by him under protest but that compensation of land as well as installation of wire had not been paid by the petitioner despite repeated requests though respondent No.1 was assured by the petitioner that payment of compensation for land would be paid very soon but the petitioner failed to make the payment of compensation to the respondent No.1. Further averments in paragraph No.5 of the petition (Annexure P-1) reveal that no compensation was paid to respondent No.1 regarding the installation of wire over his land as well as regarding his crop which was destroyed, besides adjoining land owners had been paid higher compensation than respondent No.1. Further in paragraph No.9, respondent No.1 averred that he was an illiterate person and had no knowledge regarding the legal process and had come to know about the enhanced award to the people of Village Chotti Jhakian, Bunga Sahib in the second week of December, 2017 whereupon he made a request to the petitioner to admit his claim and when two days before the filing of the petition (Annexure P-1), the petitioner refused to make the payment of compensation to respondent No.1 that cause of action arose to the petitioner.

[11] The learned District Judge took into account the plea of the application Annexure P-1 being barred under Article 137 of the Limitation Act by holding that although the applicability of Article 137 of the Limitation Act in the proceedings under Section 16(3) of the Act, 1885 and Section 10 of the Act, 1910 had been set at rest by Hon'ble the Supreme Court in case titled as

was well settled law that issue of limitation was a mixed question of law and facts and as the petitioner had claimed that cause of action accrued to respondent No.1 when last payment of installment of compensation was made but once payment of compensation was being made in installments, it could not be inferred that respondent No.1 could not have expected more compensation and that there was nothing on the record that the petitioner ever informed respondent No.1 that the installment of compensation paid on 22.12.2013 was the last one. The learned District Judge observed that once the payment was being made in installments, it could not be presumed by respondent No.1 that it was the last installment without any notice to him. Therefore, the question of limitation was definitely a mixed question of law and facts as to when respondent No.1 came to know that the petitioner was not going to make any payment to him.

[12] In the aforementioned background, the learned District Judge held that a question such as the one formulated as above could not be adjudicated at the outset, so as to reject the petition. Accordingly, the application under Order 7 Rule 11(d) read with Section 151 CPC was declined by observing that separate issue regarding limitation was going to be framed since the same could not be treated as a preliminary issue in view of the law laid down in case titled as 'Jagdish Poonja versus The South Canara Hotel Complex Private Limited, Bangalore and others', RCR (Civil) 2015 (34) 377.

[13] Admittedly, payment of compensation was made to respondent No.1 in installments. Therefore, once payment was being made in installments, then in the absence of notice to respondent No.1 that the payment being made to him on 22.12.2013 was the last installment, respondent No.1 could not

respondent No.1 came to know that the petitioner was not going to make any other payment to him was rightly held to be a mixed question of law and facts by the learned District Judge, therefore not adjudicable at the threshold without framing an issue in respect thereof and parties leading evidence. Besides as held by Hon'ble the Supreme Court in 2005(13) SCC 687 in case titled as 'Sajjan Sikaria and others versus Shakuntala Devi Mishra and others', it is settled law that while dealing with an application under Order 7 Rule 11 CPC, stand in the written statement cannot be taken into account and it is only the averments in the plaint that are to be considered. The date 22.12.2013 relied upon by the petitioner, so as to contend that the petition (Annexure P-1) was barred by limitation is on the basis of date, as given in the application under Order 7 Rule 11 (d) read with Section 151 CPC and does not find any mention in the plaint. Thus, the plea that the petition for enhancement of compensation was barred by limitation as was raised by the petitioner by filing an application under Order 7 Rule 11 (d) read with Section 151 CPC could not have been made the basis for rejecting the application on the ground of limitation, without proper pleading, framing of issues on limitation and taking of evidence in the light of decision of Hon'ble the Supreme Court in 'Vaish Aggarwal Panchayat versus Inder Kumar and others', 2015(8) JT 248 for limitation is a mixed question of facts and law and on *ex facie* reading of the petition (Annexure P-1), it cannot be held that the suit was barred by limitation. Accordingly, finding no merit in the revision petition, the same is ***dismissed in limine***.

(B.S. WALIA)
JUDGE

March 05, 2019

'Rajneesh'

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No