

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

**FAO-1562-2020 (O&M)
Date of decision: 03.03.2020**

**Anup Singh since deceased through his widow Smt.Salochana
.....Appellant**

versus

**The Executive Engineer, Haryana State Agriculture Marketing Board,
Hisar and another**

.....Respondents

CORAM: Hon'ble Mr. Justice Deepak Sibal

Present: Mr.Shamsher Singh Patter, Advocate for the appellant

Deepak Sibal, J. (Oral)

The present appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, the Act) to challenge therein the order dated 03.02.2020 passed by the Additional District Judge, Hisar dismissing an application filed by the appellant under Section 34 of the Act.

The brief facts leading to the filing of the present appeal are that through office memo No.3042 dated 11.12.2006 respondent no.1 allotted to the appellant the work with regard to construction of Sports Stadium in village Sisai Kalirawann, District Hisar. In this regard an agreement dated 12.06.2007 was also executed between the parties as per clause 25A of which disputes between the parties were to be settled through the mode of arbitration. On the ground that the appellant did not complete the allotted work within the agreed time frame, on 27.03.2008 the aforesaid agreement was terminated by respondent no.1 and allotted to some other Contractor. In the process respondent no.1 suffered losses which were claimed from the appellant. The appellant denied such claims. In terms of the aforesaid clause 25A of the agreement the disputes between the parties

with regard to claims made by respondent no.1 were referred to an Arbitrator before whom the appellant sought their rejection on the ground of limitation as also on merits. Through award dated 20.07.2015 the Arbitrator rejected the appellant's contentions and held respondent no.1 entitled to claim from the appellant an amount of Rs.11,82,747/-. It was further directed that in case the awarded amount was not paid by the appellant within 90 days the appellant shall be liable to pay interest on the same.

The appellant filed an application under Section 34 of the Act seeking to set aside the aforesaid award both on the ground that the claims of respondent no.1 were time barred as also that they could not have been allowed on merits. The Additional District Judge, Hisar dismissed the application occasioning the filing of the present appeal.

Mr.Shamsher Singh Patter, learned counsel appearing for the appellant submitted that respondent no.1's claims were liable to be rejected on the ground that they were time barred. According to him as per clause 25A of the agreement only the claims made within 180 days of the final bill were to be entertained but in the case in hand the contract was terminated on 23.07.2008; the appellant was asked by respondent no.1 to do the final measurement by 07.04.2008 and that the claims had been lodged on 15.07.2010 i.e. after 180 days of the date when the appellant had been asked to do the final measurement.

Clause 25A of the agreement reads as under:-

“If any question, difference or object whatsoever shall arise in any way connected with or arising out of this instruments at the meaning or operation of any part thereof or the right, duties, liabilities of other party then save in so far as the decision of any such matter therein before provided for and has been so decided. Every such matter including whatever according or whether its

decision has been otherwise provided for and or whether it has been fully divided the contract should be terminated and as regards the rights and obligations of the parties as the result of such termination shall be referred for arbitration to the capable officer to be appointed by the Chief Administrator Board within 180 days viz 6 months from the date of making final payment to the contractor as when the contractor is not willing to receive the payment from the date of registered notice is sent to him that his final bill is ready for payment and his decision shall be final and binding and where the matter involves a claim for the payment or recovery or deduction of money, only the amount of any awarded in such arbitration shall be recoverable in respect of the matter so referred.

If the matter is not referred to arbitration, within the stipulated period, all the rights and claims under the contract shall be deemed to have forfeited and absolutely barred.”

A perusal of the award as also the impugned order reveals that the final bill in the records of the parties was prepared on 11.06.2010 and that respondent no.1 filed its claims on 15.07.2010 i.e. well within the agreed period of 180 days of preparation of the final bill. This fact has also not been disputed by learned counsel for the appellant. That being so, the claims made by respondent no.1 were not time barred and rightly entertained.

No other argument was raised.

In the light of the above, the impugned order as also the award warrant no interference.

Dismissed.

03.03.2020
gk

(Deepak Sibal)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes/No
Yes/No