

RVWO/11/2021
With
AP/318 of 2020
IA NO: GA/1/2021
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

LAXMIPAT SURANA
VERSUS
FUTURE ENTERPRISES LTD. AND ANR.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 8th July, 2021.

(Via Video Conference)

Appearance:
Mr. Arindam Guha, Adv.
Mr. Debnath Ghosh, Adv.
Mr. Subhasish Sengupta, Adv.

Mr. Sakya Sen, Adv.
Mr. S.K. Gupta, Adv.
Mr. A. Paul, Adv.

The Court: The review petition along with the interlocutory application made therein are taken up for consideration.

The review applicant seeks review of a judgment and order dated April 7, 2021.

By such judgment and order an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 was allowed. An Arbitrator was appointed. The issue of limitation raised was kept open. Learned advocate

appearing for the review applicant submits that the Court is required to decide the issue of limitation for filing of the petition under Section 11 of the Act of 1996. He points out that, the initial reference was made on October 6, 2006 and that the application for appointment of the Arbitrator was made some time in 2020. Therefore, ex facie, the claim of the petitioner in the application under Section 11 of the Act of 1996 was barred by the laws of limitation.

Learned advocate appearing for the review applicant submits that the petitioner applying under Section 11 of the Act of 1996 does not have the right to sue in view of a general power of attorney which is at page 296 of the review application.

The petitioner under Section 11 of the Act of 1996 is represented.

So far as the point of limitation is concerned, the same was raised in the petition under Section 11 of the Act of 1996. The issue of limitation was dealt with by the judgment and order dated April 7, 2021 of which the review is brought. Limitation is a mixed question of law and fact. In the facts of the present case, it cannot be said with certainty that the claim of the petitioner under Section 11 of the Act of 1996 was barred by limitation as on the date of making of such application. Consequently, such issue was left open to be decided by the learned Arbitrator.

So far as the claim of the petitioner under Section 11 of the Act of 1996 being divested with the right to sue is concerned, the same is also an issue which involves mixed question of facts and law. It would be inappropriate to decide such issue in a review application of a judgement and order passed in an application under Section 11 of the Act of 1996. Therefore, in the facts and

circumstances of the case, the payer for review fails. RVWO 11 of 2021 along with IA GA 1 of 2021 are disposed of accordingly without any order as to costs.

(DEBANGSU BASAK, J.)

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