

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO.149 OF 2021

Vascon Engineers Ltd. ...Petitioner
V/S
Subhash Tippanna Nelge & Anr. ...Respondents

Mr. Prasad B. Kulkarni for Petitioner.
Mr. Shrivivas S. Patwardhan i/by Soumitra Gokhale for Respondent
Nos.1 and 2.

CORAM : R. I. CHAGLA, J.

DATED : 13th JUNE, 2022.

P.C.

1. Heard learned counsel for the parties.
2. By this Arbitration Petition filed on 18th February 2021, the Petitioner has sought appointment of an Arbitrator under clause 24 of Memorandum of Understanding dated 23rd July 2005, to decide disputes and differences between the Petitioner and the Respondent arising under the said Memorandum of Understanding. It is an admitted position that the Arbitration clause in the Memorandum of Understanding dated 23rd July 2005 was first invoked on 26th November 2013. It is stated by the Petitioner that there was no response to the advocate's notice invoking the

Arbitration. A Section 9 Petition had been filed by the Petitioner being Miscellaneous Petition No.598 of 2014. Thereafter a second advocate's notice for invocation was issued on 12th June 2020 to the Respondents.

3. It is the contention of the learned counsel for the Petitioner that the period of limitation runs from the denial by the Respondents of the claim of the Petitioner. He has accordingly submitted that the present Arbitration Petition has been filed within time and that the claim is not a time barred claim.

4. The Arbitration Petition is vehemently opposed by the learned counsel for the Respondent. He submits that the period of limitation for filing the Arbitration Petition would run from the first notice of invocation of Arbitration which was on 26th November 2013. He has submitted that the Respondents had not agreed to the Arbitrator being appointed and thus, it was for the Petitioner to file a Petition seeking appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. Having failed to do so within time, they cannot rely upon the subsequent proceedings including the Section 9 Petition filed by the Petitioner before the District Judge, Pune, which does not save limitation insofar as

coming to this Court. He has relied upon Article 137 of the second schedule of limitation act which prescribes a period of limitation of three years for filing Application when the right to apply accrues which in the present case would be three years from the first notice invoking arbitration. The Application under Section 11 of the Arbitration and Conciliation Act, 1996 is clearly barred by the law of limitation.

5. Having considered the submissions, it does appear from the documents on record that the notice for invocation of an Arbitration was issued way back once 26th November 2013. The Arbitration Agreement which was invoked is contained in clause 24 of Memorandum of Understanding dated 23rd July 2005. There was no response to the first advocate's notice dated 26th November 2013, invoking Arbitration and hence it was for the Petitioner/Applicant to come to this Court under Section 11 of the Arbitration and Conciliation Act, 1996. It is provided under Article 137 of the Limitation Act that for any application for which no period of limitation is provided elsewhere in this division, a period of limitation of 3 years from the date when the right to apply accrues is prescribed. In the present case, the right to apply accrues from the

issuance of the first Advocate's notice invoking Arbitration which was on 26th November 2013. The Petitioner has not approached this Court by making Application under Section 11 of the Arbitration and Conciliation Act, 1996 within a period of three years from the first notice invoking Arbitration. Having failed to do so, such Application is barred by limitation. The Petitioner cannot fall back on proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 initiated by the Applicant/Petitioner in 2014 and/or the second notice invoking Arbitration issued on 12th June 2020. It is not necessary for the Respondents to deny the claim of the Petitioner for the period of limitation to commence. The mere non-response on the part of the Respondent is sufficient for the Petitioner to file the Application before this Court under Section 11 of the Arbitration and Conciliation Act, 1996 within the period of three years from the issuance of the notice.

6. Accordingly, the present Arbitration Petition is clearly time barred under Section 11 of the Arbitration and Conciliation Act, 1996 and is dismissed. There shall be no order as to cost.

(R. I. CHAGLA, J.)