

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 6634/2019

Date of decision. 09.12.2022

M/s Simplex Infrastructure Limited and another

.....Petitioners.

Vs.

M/s J.P.Singla Engineers and Contractor.

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sanjeev Pabbi, Advocate for the petitioner.

Mrs. M.S.Chauhan, Advocate for the respondent.

Nidhi Gupta,J.

Present revision petition has been filed challenging the order dated 5.9.2019 (Annexure P-5) passed by Civil Judge (Junior Division) Chandigarh whereby petitioners' application under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') has been dismissed.

Brief facts of the case are that the respondent/plaintiff is a proprietorship firm and deals in the construction of roads and buildings. Vide Agreement/work order dated 14.4.2014, the petitioners/defendants allocated road work to the respondent/plaintiff. As per work order the respondent

started road work and completed the same as per specifications of the petitioners/defendants. It is case of the respondent that after completion of the road work, it communicated its bill dated 22.8.2016 for the period from 1.8.2013 to 22.8.2016 to the petitioners. Thereafter, after completion of minor patch work the final bill dated 13.5.2017 was also submitted to the petitioners. However, since payment was not disbursed to the respondent despite numerous reminders, the respondent was left with no alternative but to file the present Civil Suit bearing C/S No.2207 of 2018, for recovery of Rs.27,16,659/- as principal amount and Rs.3,79,748/- as interest @ 15% per annum w.e.f. 13.5.2017.

During the pendency of the above said suit the petitioner/defendant filed application under Section 8 of the 1996 Act before the Civil Judge (Jr.Div.) praying therein that the above said civil suit filed by the respondent/plaintiff was not maintainable in view of Clause 12 of the Agreement/work order wherein it was clearly stipulated that in case of any dispute between the parties the matter is to be referred to arbitration. It is against dismissal of this application by the learned Civil Judge (Jr.Div.) vide order dated 5.9.2019 that the petitioners have approached this Court by way of present revision petition.

It is submitted by the learned counsel for the petitioners that as per Clause 12 of the Arbitration Agreement (Annexure P-1) the respondent was required to refer the dispute regarding non-payment of bills to arbitration. It is submitted that the total dues were Rs.1,33,00,000/- out of which only about Rs.27,16,000/- is outstanding. It is stated that as there is an arbitration clause in the Agreement between the parties, therefore, the civil suit filed by the respondent is not maintainable. It is submitted that once the execution of

the Agreement between the parties containing arbitration clause is admitted, then in case of dispute between the parties, the matter was required to be resolved through arbitration. Learned counsel further submits that respondent is raising dispute on merit whereas language of Section 8 is pre-emptory.

Per contra, learned counsel for the respondent/plaintiff submits that it is not in dispute that the respondent had completed the job as per specifications of the petitioners. At no stage was there any objection raised by the petitioners regarding nature of work done by the respondent. Accordingly, after completion of work, the respondent had submitted its bill dated 22.8.2016; and after completion of minor repair/patch work on the roads and the final bill was also submitted on 13.5.2017. It is further submitted that as per Clause 11 of the Agreement/work order dated 14.4.2014, the defect liability period therein was specified to be one year from the date of completion of work which in the present case expired on 22.9.2017. It is further submitted that the final bill was raised on 13.5.2017 which as per the agreement was due for payment to the extent of 60% within 15 days and the balance to be released within next ten days. Thus, the final payment was due on 28.5.2017 (60%) and 7.6.2017 (final payment). It is further submitted that as the petitioners did not make the payment within the stipulated period, the respondent sent several reminders/emails and communications to the petitioners for release of payment for the work done. However, till the end the Project Manager of the petitioner-company continued to assure the respondent that payment will be released. But despite numerous reminders/emails the petitioners neither replied to the emails of the respondent nor paid the bill amount. It is stated that now they do not even answer the phone calls made by the respondent and as such the respondent was left with no alternative but to file the aforesaid civil suit.

I have heard learned counsel for the parties and perused the record.

There is no doubt that the liability is not disputed by the petitioners. A perusal of the arbitration Clause 12 in the Agreement/ work order dated 14.4.2014 shows that the same is related to '*dispute arising out of or in connection with this work order/contract/purchase order which shall be first amicably settled by mutual dialogue. If the parties fail to settle the difference or dispute arising out of or in connection with this work order/contract/purchase order (including interpretation of the terms thereof), the same shall be referred to arbitration.*' In the present case, in my view the dispute does not arise out of or in connection with the work order/contract/purchase order. It is plain and simply a case of non-payment of dues. As such, it cannot be said to be a dispute arising out of the work contract. Even otherwise, the operation of the agreement ceases once the respondent has completed the work project. Accordingly, this is a simple case of non-payment of final amount due and therefore, the arbitration clause cannot be held to be applicable to this case.

In this regard reliance may be placed upon judgment of the Hon'ble Supreme Court in **The UOI vs. The Birla Cotton Spinning & Weaving Mills** Lawfinder Doc. Id # 61151 and judgment of Hon'ble Delhi High Court passed in **Monporte Impex Pvt. Ltd. V Harveen Bali and others**, Law Finder Doc id # 214537. Head note A of which reads as under:-

"A. Arbitration and Conciliation Act, 1996, Section 8-Stay of proceeding- Reference of dispute to arbitrator of non-payment of price of goods-Failure of applicant to spell out the detail of claims arisen between the parties- In such a case non-payment of price cannot be said to be a dispute under or arising out of a contract. UOI v Birla

***Cotton Spinning and Weaving Ltd. [Reported in (1996 AIR (SC) 688)]
Followed.”***

Further, as regards argument of Id. Counsel for the petitioner regarding said Section 8 of the 1996 Act, same is reproduced hereinbelow.

“8. Power to refer parties to arbitration where there is an arbitration agreement. - [(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.]

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.]

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made”.

A perusal thereof shows that arbitration clause comes into operation ‘*in a matter which is the subject of an Arbitration Agreement*’. However, in the present case the dispute is not a subject of the Arbitration Agreement as it does not relate to execution of the work or its completion, or even of the contract or projects related thereto. As noticed above the present dispute relates to/ is a case of non-payment of dues simpliciter. The present

dispute between the parties cannot be said to be a dispute ‘under’, ‘in connection with’, or even ‘with regard to’ the contract. Therefore, it cannot be held to be a case for reference to arbitration, and in the face of admitted liability respondent has legally filed the present suit for recovery. Perusal of record also reveals that respondent has sent numerous reminders and emails to the petitioners for payment but no reply was received by the respondent on the part of the petitioners. Accordingly, even the condition for amicable settlement was not adhered to by the petitioner. As such, in view of the aforesaid facts and discussion, I find no error in the order dated 5.9.2019 impugned herein, and the revision petition is dismissed.

09.12.2022
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No