

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

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**CWP-11422-2019
Date of decision: 10.05.2023**

M/S PURI CONSTRUCTION PVT. LTD.

.....Petitioner

VERSUS

THE PERMANENT LOK ADALAT AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. B.S.Mittal, Advocate
for the petitioner.

Ms. Samridhi Sareen, Legal Aid Counsel
for respondent No.2.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed for seeking quashing of the award dated 08.03.2019 (Annexure P-6) passed by the Permanent Lok Adalat (Public Utility Services), Faridabad in case No. 2906 dated 16.10.2017.

2. Learned counsel appearing on behalf of the petitioner submits that the respondent-applicant had filed an application under Section 22 (C) of the Legal Services Authorities Act, 1987 before the Permanent Lok Adalat (Public Utility Services), Faridabad stating that he had booked a flat with an area of 1720 sq. feet in the project advertised by the petitioner in the

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year 2007 for Sector 82 to 85 in Faridabad with the name “The Paranayam”. A sum of Rs. 5,41,800/- had been deposited by the respondent vide receipt No. 22 dated 10.12.2007. The basic sale price of the flat was Rs. 36,12,000/-. Till 21.08.2008, a sum of Rs. 16,33,068/- had been deposited by the respondent-applicant. It was alleged that as there was a slow construction at the site, hence, an application dated 25.02.2009 was submitted by the applicant to the petitioner for seeking refund of his money. No builder buyer agreement was executed between the parties. Various reminders were sent and that finally the request was accepted. Four post dated cheques of Rs. 3,23,928/- each totaling to Rs. 12,95,712/- were issued. The respondent alleged that he was forced to sign blank full and final payment receipt prior to issuing the aforesaid cheques and an oral promise was made to him that the balance amount of Rs. 3,37,359/- shall also be paid in due course. However, they backed out of the promise to pay the balance amount, hence, a letter was sent by him on 06.11.2009 and he had also been continuously visiting the office of the petitioner-builder for seeking the balance amount. Finally a legal notice was served by him on 14.01.2016 but to no avail. The application under Section 22 (C) was thus filed before the Permanent Lok Adalat (Public Utility Services), Faridabad for seeking refund of the balance amount of Rs. 3,37, 359/- alongwith interest @ 24% per annum and other reliefs.

3. The petitioner entered its appearance before the Permanent Lok Adalat (Public Utility Services), Faridabad and submitted response challenging the maintainability of the application before the Forum. It was also pointed out that there was no default on the part of the petitioner-developer and that it had already offered possession of the flat to more than

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700 families that were residing there. It was further averred that the petitioner himself made a request for refund on the ground that he was retired government servant and had suffered huge losses and he was thus not in a position to pay the remaining installments. The refundable amount was assessed between the parties and full and final payment of Rs. 12,95,712/- was released in favour of the respondent after permissible deductions. There was no occasion or reason for the respondent to be signing any blank papers especially when the respondent-applicant himself was an educated person and a former government employee in the Engineering Wing. No assurance or acknowledgment has been placed on record to show that the balance amount was ever admitted or acknowledged by the petitioner to be paid to the respondent later. He further submits that despite having executed a letter of full and final settlement and being fully satisfied with the receipt of the aforesaid amount, the application in question was filed by him after a gap of nearly 08 years of the receipt of the amount without giving any reasons as to how the claim itself would be within limitation.

4. Efforts for amicable resolution of the dispute were initiated by the Permanent Lok Adalat (Public Utility Services), Faridabad and that having failed to arrive at a mutual settlement, the matter was taken up for adjudication under Section 22 (C)(8) of the Legal Service Authorities Act, 1987.

5. Upon consideration of the rival submissions of the parties, the application in question was allowed by the Permanent Lok Adalat (Public Utility Services), Faridabad and the petitioner was directed to refund the remaining amount of Rs. 3,37,359/- alongwith interest @ 9% from the date when it became due. Additionally, a sum of Rs. 50,000/- was also directed to

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be paid as compensation alongwith Rs. 25,000/- towards litigation expenses. Aggrieved thereof, the present petition has been filed.

6. Notice of the present petition had been issued. Despite being duly served, the respondent No.1 chose not to appear. It is noticed that the service had been duly effected as per the order dated 09.08.2022. The matter was adjourned to 25.01.2023 to await presence of respondent No.2. Even on the next date of hearing, the matter was adjourned so as to enable and appearance on behalf of the said respondent. Additionally, a Legal Aid Counsel was also appointed to represent the interest of respondent No.2 and/or to assist the Court in arriving at a final settlement. The matter was thus adjourned to for today. The Legal Aid Counsel assisted this Court for representing the case of respondent No.2, who also appeared in person.

7. Learned counsel appearing on behalf of the petitioner raises the following arguments:

i) That the property in question was booked by the respondent-applicant and that he failed to pay the entire consideration. The application for seeking the refund was submitted by him not on the ground of any deficiency or defect/short coming of the petitioner but on account of the losses sustained by him and his inability to make the balance payment. The application dated 25.02.2009 written by respondent is exhibit C-1 & the same collaborates the stand. The allegation of delay in completion of the project is thus an after thought.

ii) Further he contends that a full and final settlement had been executed between the parties on 12.10.2009 and the said

documents had been placed on record as Mark 'A'. The respondent-applicant does not dispute issuance of 04 cheques for a sum of Rs. 3,23,928/- each. The said cheques were also credited to the account of the respondent-applicant in the month of October, 2009 itself. Accordingly, he cannot plead that he was not aware of the settlement. He further contends that the respondent-applicant has himself averred in the application submitted before the Permanent Lok Adalat (Public Utility Services), Faridabad that he was compelled to sign blank full and final settlement agreement prior to issuing the aforesaid cheques. Hence, the signature on the said full and final settlement are not disputed or denied. Dispute is being raised qua the circumstances under which the signatures had been obtained after merely 8 years.

iii) It is also averred that despite having received the aforesaid amount in his credit, the respondent-applicant never preferred any claim for the balance before any Court. A Legal Notice dated 14.01.2016 was sent by the respondent-applicant for the first time seeking a claim for the balance amount. The said demand having been raised after a lapse of more than 07 years further discredited the version of the petitioner that he was forced to sign the full and final settlement. If there was any subsisting grievance, nothing stopped the respondent-applicant for raising a challenge or to approach a competent forum for demanding the balance amount after having received the amount in his account. The complaint in question was thereafter

filed on 16.10.2017 i.e. after a gap of nearly 08 years. The claim was thus barred by limitation and no explanation/reason has been put-forth by the Permanent Lok Adalat (Public Utility Services), Faridabad as to how the application in question could have been entertained for a claim which was barred under the provisions of the Limitation Act, 1963. The only explanation tendered by the respondent-applicant was that he had been approaching the concerned authorities for seeking refund of the money, however, the same was not released. Such assurance and/or submission of representation by a claimant ipso fact cannot extend the period of limitation unless there is an acknowledgement of the liability during the subsisting limitation itself.

8. He further contends that it has been noticed in the Legal Notice sent by the applicant-respondent that he had earlier preferred an application before the District Consumer Dispute Redressal Forum, Faridabad for claiming refund of the aforesaid amount and that the said complaint was filed in the year 2016 and was returned on account of pecuniary jurisdiction on 19.09.2017. It is contended that the Legal Services Authorities Act, 1987 allows an applicant to submit a complaint to the Permanent Lok Adalat (Public Utility Services), Faridabad before approaching any other forum for settlement of such dispute. The respondent-applicant having approached the Consumer Forum for said dispute, was required to pursue his remedies before the competent forum under the Consumer Protection Act. The respondent failed to exhibit the said proceedings on record. Since the jurisdiction of the Permanent Lok Adalat (Public Utility Services),

Faridabad can be invoked only in case the applicant has not approached any other Forum, hence, there was another impediment that stood in the way of the respondent-applicant before the application could be entertained by the Permanent Lok Adalat (Public Utility Services), Faridabad. He contends that none of the aforesaid illegality have been noticed by the Permanent Lok Adalat (Public Utility Services), Faridabad which render the award liable to be set aside. The burden lay on the applicant to bring all his documents and having failed to do so, an inference has to be drawn against him.

9. Per contra, Legal Aid Counsel assisting this Court on behalf of respondent No. 2, however, contends that the applicant had been approaching the respondents and an assurance had also been given by them that the balance amount shall also be returned in due course. She contends that the said aspect has been duly noticed by the Permanent Lok Adalat (Public Utility Services), Faridabad in its award. Attention is drawn to Para No.6 of the award where in it has been so mentioned that an affidavit of Dheeraj Kumar, authorized representative of the respondent dated 25.02.2009 and as Ex.C1 shows that the respondents had undertaken to refund the paid amount. She thus submits that the petitioner having undertaken to refund the entire amount himself cannot thereafter be permitted to shirk away from their liability. She further contends that it is not a matter of dispute that the amount of Rs. 3,37,359/- was unpaid and that there is no valid justification as to how this the differential amount could have been withheld or retained by the petitioner-developer. She vehemently argues that the applicant did not have a sufficient bargaining power and had been forced to sign the full and final settlement agreement without any free will. Reference is also made to the document to contend that a perusal of the

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same clearly shows that the signatures have seemingly been obtained on blank papers and without the petitioner being a consenting party thereto. She, however, could not dispute the fact that the claim for the said amount has been established on record to be raised for the first time only in 2016 by sending of a notice.

10. Even though a strenuous effort had been made by the Legal Aid Counsel to contend that the submission of representation by the applicant-respondent to the petitioner repeatedly would amount to a renewal of cause of action, however, she could not refer to any provision under the Limitation Act, 1963 to substantiate her argument and to supplement that submission of representation by a person aggrieved would extend the limitation for institution of proceedings.

11. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

12. The undisputed facts that emerge from a perusal of the documents as well as the award are that the application for refund of the amount had been submitted by the respondent-applicant on 25.02.2009. The said application, however, does not mention of any deficiency or defect on the part of the petitioner. The refund was sought solely on the ground of the respondent-applicant having sustained losses in business and for not being in a position to pay the balance amount. It is also not disputed that four cheques for a sum of Rs. 3,23,928/- each had been handed over to the respondent-applicant for a total sum of Rs. 12,95,712/- There is no document on record of the basis whereof it may be assumed or inferred that there was any acknowledgment or assurance given by the petitioner for return/refund of the balance amount, however, assuming that such a letter dated 25.02.2009 had

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been sent by the respondent which is not on record the same would thus extend the limitation only upto 24.01.2012 for a person aggrieved to prefer any petition/claim for the refund of the balance amount.

13. It is also not disputed that the claim for the balance amount has been raised for the first time vide legal notice dated 14.01.2016 i.e. after a expiry of limitation by nearly 04 years (even when limitation is computed from the letter dated 25.02.2009 (Ex.C-1). No satisfactory explanation has been given by the petitioner as to what prevented him from approaching the competent Court for the aforesaid amount within the limitation period especially when the respondent-applicant was a former government employee and was thus fully aware of his rights. It cannot be perceived that he was not in a capacity to pursue his remedies or was not aware of the law governing the limitation. Further, the contention of the petitioner that he was made to sign the full and final settlement agreement under duress cannot be accepted at this juncture since the refunded amount was duly received by him in October, 2009 itself. After the said amount had been credited to the account of the respondent-applicant, the duress/pressure ceased to exist. He was thus well within his rights to agitate against the non-release of the balance amount. Further, the petitioner cannot be presumed to be unaware of consequences of signing the said documents especially when he has acknowledged and admitted having signed the said full and final settlement agreement. Acknowledgment of liability by the defendant is sine quo non for examining the maintainability of a claim within limitation. Absence of any acknowledgement would not extend the liability and submission of representations alone by a person aggrieved cannot extend the limitation for institution of a claim. The law of limitation prescribe a period of three years

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for raising a demand for the amount wrongly withheld. This Court has no option but to hold that the respondent failed to approach the Court within limitation.

14. Even though the person may have arrived, however, the law of limitation takes away the remedies available to a person aggrieved. Permanent Lok Adalat (Public Utility Services), Faridabad failed to take note of the operation and effect of the law of limitation and also failed to record any finding qua the claim being within a period of limitation. The said failure goes to the root of the case and would vitiate an award for a claim which is time barred.

15. Additionally as well, perusal of the legal notice sent by the respondent shows that he had also approached the Consumer Court for the same refund. It is claimed that the case was returned for want of pecuniary jurisdiction. It is claimed that the complaint was filed in the year 2016 & returned in 2017. The orders are not attached. When jurisdiction of Permanent Lok Adalat could be invoked only before approaching any other Court, burden lay on the respondent to dispel the shortcomings of his case. An inference thus needs to be drawn against the respondent for withholding those documents. The Permanent Lok Adalat (Public Utility Services), Faridabad is even though guided by the Principles of Natural Justice; objectivity; equity; fairness & other principles of justice, however, exercise of such jurisdiction or discretion cannot be in violation of law. Permanent Lok Adalat (Public Utility Services), Faridabad is required to also consider the maintainability of the claim as also the laws of limitation more so when such objection had been duly raised in the reply filed by the petitioner. The claimant would be required to dispel objections against maintainability and

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to establish that remedy has been availed within limitation. The respondent-claimant has also failed on both the above facts, in the present case.

16. For the foregoing reasons, I am of the view that the Permanent Lok Adalat (Public Utility Services), Faridabad has committed an error in law and willing to appreciate the maintainability of the claim and as to whether the same was within a period of limitation or not. The aforesaid illegality goes to the root of the matter and would vitiate the final award. Accordingly, the present writ petition is allowed. The award dated 08.03.2019 passed by the Permanent Lok Adalat (Public Utility Services), Faridabad is set aside.

(VINOD S. BHARDWAJ)
JUDGE

MAY 10, 2023
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No