

2023:PHHC:120984

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CWP-20277-2023 (O&M)
Date of Decision:-14.9.2023

Haryana Shehri Vikas Pradhikaran ... Petitioner

Versus

M/s Brij Gopal Constructions Company Private Limited ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Nitin Kaushal, Advocate with
Mr. Saurabh Chawla, Advocate for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 23.5.2022 (Annexure P-5) passed by the Arbitrator, whereby an application filed by the petitioner in terms of provisions of Section 16 of Arbitration and Conciliation Act, 1996, has been dismissed.
2. A few facts necessary to notice for disposal of this petition are that pursuant to a dispute having arisen between the parties, arbitration was invoked by the respondent - M/s Brij Gopal Constructions Company Private Limited, who had been awarded a contract for execution of some construction work for the petitioner. The arbitration clause i.e. Clause No.25-A(vii) of agreement dated 30.5.2013 (Annexure P-2) also provided for a pre-deposit to be made in case

arbitration is invoked by the contractor. The petitioner had moved an application therein seeking issuance of such direction to respondent for making the pre-deposit but the same was declined by the learned Arbitrator vide impugned order dated 23.5.2022 (Annexure P-5).

3. Learned counsel for the petitioner submitted that the impugned order cannot sustain inasmuch as the same is mainly based on judgment of Hon'ble the Supreme Court rendered in M/s ICOMM Tele Limited Versus Punjab State Water Supply and Sewerage Board and another, 2019(4) SCC 401, which is distinguishable as there is no such condition of forfeiture of pre-deposit as was there in M/s ICOMM Tele Limited's case.
4. This Court has considered the aforesaid submissions.
5. It is noticed that while the impugned order was passed on 23.5.2022, the instant petition has been filed after more than one year and 3 months. The learned counsel representing the petitioner, however, tried to explain the delay on the ground that the learned Arbitrator had expired and new Arbitrator had not been appointed in place thereof which led to delay. This Court is, however, unable to appreciate the aforesaid contention inasmuch as the death of Arbitrator would have nothing to do with filing of the instant petition. The death of Arbitrator could not have prevented the petitioner from assailing the impugned order at an earlier date.
6. No justifiable explanation is forthcoming for the said delay. The relief sought is not such, which could be said to be an irreparable loss. There is no perversity in the impugned order. Having regard to the aforestated position particularly the fact that there are delay and latches in approaching this Court

so as to challenge the impugned order dated 23.5.2022 (Annexure P-5), no ground is made out for interference in the same.

7. As such, the instant petition being sans merit and is hereby dismissed.

14.9.2023
pankaj

(Gurvinder Singh Gill)
Judge

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