

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

ARB-306-2019 (O&M)
Date of Decision:-4.12.2023

Narinder Sharma

... Petitioner

Versus

General Manager (Engineering) & another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Dheeraj Mahajan, Advocate for the petitioner.

Mr. Arihant Goyal, Senior Panel Advocate
for the respondents/UOI.

GURVINDER SINGH GILL, J.

1. The petitioner seeks appointment of an Arbitrator in terms of provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996.
2. As per case of the petitioner, he had been awarded a contract on 15.10.2007 (Annexure P-1) for replacement of damaged/outlived staff quarters (9 units) at level crossing No. 23 at Islamabad in Amritsar in the year 2007. It is the case of the petitioner that on account of several defaults committed by the respondent-department, a dispute arose amongst the parties leading to institution of civil litigation amongst the parties. The petitioner initially

submitted his claims before respondent No. 2 and thereafter, in accordance with Clause 63 and 64 of the “General Conditions of Contract” (Annexure P-2), he raised a demand for invoking arbitration vide his letter dated 28.1.2019 (Annexure P-4), but to no avail.

3. In the reply filed by the respondents, a stand has been taken that as a matter of fact the contract in question was allotted to Dharam Pal Maddar i.e. father of the petitioner Narinder Sharma but he neither furnished bank guarantee for 5% of the amount, as was required to be deposited before start of work nor had brought in any labourers or construction material and as such, a show cause notice dated 20.6.2008 was issued. It has further been submitted that on account of petitioner not having deposited the requisite 5% of the amount and not having commenced work, formal agreement was never executed, and that Civil Court has already returned a finding that there was no agreement amongst the parties.
4. This Court has considered rival submissions addressed before this Court.
5. The Contractor filed a suit dated 19.8.2008 seeking declaration to the effect that the act on part of the respondent-Railways of issuing the show cause notice dated 20.6.2008 compelling him to execute the work is illegal and arbitrary.
6. However, the aforesaid suit filed by the Contractor namely Dharam Pal Maddar was dismissed by Civil Judge (Junior Division) Amritsar on 26.3.2012. It was held therein that since the Contractor had not even deposited 5% amount before signing the Agreement and that under these circumstances, it could not be said that there was any contract amongst the parties.

7. Issue No. 4 had been framed by the trial Court with respect to jurisdiction.

The findings returned therein in paragraph 13 are reproduced herein-under:-

“ Onus to prove these issues was on the defendants, however, counsel for the defendant to prove the said issue argued that as per the Contract Act the jurisdiction of this Court is barred. He also argued that during cross-examination of the plaintiff he himself admitted that when ever any dispute arisen between the parties then the parties have to approach the Railway Department first and thereafter, approach the arbitrator to finalize their dispute but in the present case the plaintiff did not approach the Railway Department. Neither the matter has ever been referred to the Arbitrator. Hence, he prayed that the jurisdiction of this Court is barred. Whereas, when the plaintiff himself during cross-examination admitted that agreement could not signed by the parties and the defendant also admitted this fact that the plaintiff did not approach the Railway Department for compliance of the agreement and neither he has deposited 5% amount before signing the agreement. Hence, the jurisdiction of this Court remained unchallenged. The plaintiff approached the Court for declaratory order passed by the defendant Railway Department to complete the work within specified period as per the order dated 4.10.2007 and further seeks to declaration the same as null and void. In the absence of any contract between the parties as admitted by both the parties. Hence, said issues are decided accordingly against the defendants and in favour of the plaintiff.”

8. Although, the aforesaid judgment dated 26.3.2012 (Annexure R-1), dismissing the suit was challenged by the Contractor by way of filing an appeal before the Additional District Judge but the appeal was also dismissed by Additional District Judge vide judgment dated 17.3.2015 (Annexure R-2).
9. After dismissal of the aforesaid suit and after dismissal of the appeal by the learned Additional District Judge, the Contractor Dharam Pal Maddar filed RSA No. 4656 of 2015 in this Court, which was also dismissed. The relevant extract is reproduced herein-under:-

“.....The question posed before this Court is whether the suit of the plaintiff challenging the impugned letter in calling upon the plaintiff to execute the work by furnishing bank guarantee was maintainable with alternative relief of mandatory injunction for refund of earnest money of `49,000/- and odd amount was maintainable or not and the answer is ‘no’, for, the plaintiff has not been able to prove on record that he had employed labour and collected material at the spot for undertaking the work but owing to non-supply of the drawings could not undertake the work. Had it been so, the remedy for the appellant-plaintiff shall be to claim liquidated damages under Section 73 of the Contract Act. But since there was no contract, it should have been ordinary suit for damages. No explanation has come forth by the plaintiff for not furnishing the bank guarantee to the tune of 5%.”

10. In view of the aforestated position, particularly the fact that the findings to the effect that there was no contract amongst the parties have been affirmed upto the High Court, the contention of the petitioner regarding there being a Contract and there being some provision for arbitration for resolving the disputes cannot be accepted.
11. Consequently, the petition merits dismissal and is hereby dismissed.

4.12.2023

kamal

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No