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

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Date of Decision: 22.08.2024

MRB-SEC(JV)

... Petitioner

Vs

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Nikhil Handu, Advocate for the petitioner.

Mr. Anil Bansal, DAG, Punjab

SUVIR SEHGAL, J. (ORAL)

1. By way of the present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), petitioner has approached this Court for appointment of an Arbitrator to adjudicate the dispute between the parties.

2. Counsel for the petitioner submits that the petitioner was allotted work of construction of Judicial Court Complex at Ferozepur vide letter dated 20.12.2010, Annexure P-3. He submits that some dispute arose between the parties and by letter dated 13.05.2014, respondents terminated the agreement. Counsel submits that petitioner raised a bill for the work executed and partial payment was released on 16.02.2017 and by letter dated 05.08.2019, Annexure P-5, petitioner approached the Executive Engineer for the settlement of the claims as provided under Clause 25 of the agreement. Counsel submits that Executive Engineer rejected the claims by his response



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dated 30.09.2019, Annexure P-6. Petitioner then addressed letters dated 05.10.2019, Annexures P-7 and P-8 to the Chief Engineer as well as Superintending Engineer, who was named as an Arbitrator in the agreement, invoking the arbitration clause, however, petitioner again faced rejection by communication dated 15.11.2019, Annexure P-9.

3. Upon notice by this Court, the petition has been contested by the respondents by filing a reply, wherein it has been submitted that the petitioner failed to complete the work, which was foreclosed in May, 2014. It has been submitted that the petitioner gave an undertaking that he will not raise any claim against the respondents. An objection has been taken that the petitioner has not approached this Court within the prescribed period of limitation nor has he raised the claim within the time period as specified in the arbitration clause. By referring to sub-Clause (viii) of Clause 25, State counsel submits that the petitioner has to make a pre-deposit of 10% of the amount claimed.

4. I have heard counsel for the parties and considered their respective submissions.

5. A specific averment has been made by the petitioner that partial payment was made to him on 16.02.2017. There is no denial to this averment. Petitioner thereafter, exhausted the pre-reference mechanism as provided under the arbitration clause before serving notice under Section 21 of the Act. The objection raised by the respondents that the petitioner has not adhered to the time limit



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specified in the arbitration clause does not hold any water. Any condition in the arbitration clause which restricts the time period is hit by Section 28 of the Contract Act, 1872, as has been held by the Supreme Court in ***Grasim Industries Limited Versus State of Kerala, (2018)14 SCC 265***. In any case, it will always be open for the respondents to raise the objection of limitation before the Arbitrator. Whether the undertaking given by the petitioner was voluntary or under duress would have to be determined by the Arbitrator. Prayer made in the petition, deserves to be accepted.

7. Accordingly, petition is allowed.

8. Mr. Justice (Retd.) Viney Mittal, former Judge of Punjab and Haryana High Court, House No. 115, Sector 16-A, Chandigarh, Mobile No. 9988100579 is requested to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

9. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by the Arbitrator at his convenience.

10. Needless to mention, parties will be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.

11. It is clarified that this reference has been made subject to compliance of all the requirements of the agreement, by the petitioner including pre-deposit, as permissible, in accordance with the settled



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legal position.

12. A request letter along with a copy of this order be sent to
Mr. Justice Viney Mittal (Retd.).

22.08.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No