

2024:PHHC:061455

127 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.	CR-1721-2019(O&M)
M/s Sangrur Industrial Corporation Ltd.	...Petitioner

Punjab State Power Corporation Ltd.
And another **...Respondents**

2. CR-1884-2019(O&M)

M/s Sangrur Industrial Corporation Ltd. **...Petitioner**

Punjab State Power Corporation Ltd.
And another **...Respondents**

3. **CR-1995-2019(O&M)**

M/s Punjab Transformers & Electronics Ltd. **...Petitioner**

Punjab State Power Corporation Ltd.
And another **...Respondents**

Present: Mr. Rajesh Punj, Advocate and
Ms. Rekha Luhach, Advocate
for the petitioner.

Mr. Naveen S. Bhardwaj, Advocate
for the respondent-PSPCL

ANIL KSHETARPAL, J. (Oral)

1. A bunch of three connected revision petitions has been filed by the plaintiff to assail the correctness of three similar trial Court's orders relegating the parties to the remedy of arbitration.

2. On 28.12.2009, the petitioner was awarded a contract for supply of certain goods. The goods were supplied and the payment was released, even the Bank guarantee submitted by the petitioner was released. Subsequently, the respondent found that it is a case of over payment to the petitioner. Hence, recovery notice was issued. The plaintiff in all the three revision petitions filed separate suits for the grant of decree of declaration that the notice issued by the respondent is illegal. On receipt of notice, the respondent filed an application under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act') for relegating the parties to the remedy of arbitration, which has been allowed by the trial Court.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

4. Learned counsel representing the petitioner while referring to Clause 7.0 (a) of the General Terms and Conditions of the Contract Agreement submits that if the matter is not referred to the Arbitration within 180 days of the date of completion of work or payment of the final bill, whichever is later, all the rights and claims under the contract shall be deemed to have been forfeited and absolutely barred. He submits that the notices to the plaintiffs were issued after a period of 180 days from the date the final payment was made. He relies upon the judgment passed in **"PPS Construction Company Pvt. Limited Vs. Advance Valves Pvt. Ltd."**, 2016(4) ArbiLR 196.

5. *Per contra*, learned counsel representing the respondent submits that the time limit of 180 days is void in view of Section 28(a) of the Indian

Contract Act, 1872 (hereinafter referred to as the ‘1872 Act’). He relies upon the judgment passed in “**Sunil Goyal Vs. Haryana State Agriculture Marketing Board & others**”, 2011(2) Arbitration Law Report 251.

6. This Court has considered the submissions made by the learned counsel representing the parties.

7. Section 28 of the 1872 Act, reads as under:-

“Every agreement by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void to that extent.”

Clause (a) of Section 28 of the 1872 Act is in two parts. The second part provides that if by virtue of contract, the time limit has been prescribed which is the shorter than the period prescribed in the Limitation Act, 1963, the same shall be void to that extent. In **Sunil Goyal’s case (Supra)**, the same issue arose before the Court after noticing the amendment in Section 28 of the 1872 Act, it was held that such clause to that extent shall be void.

8. The judgment passed in **PPS Construction’s case (supra)** is not concerning interpretation of Section 28 of the 1872 Act. Hence, the same is not applicable.

9. Keeping in view the aforesaid discussions, the revision petitions lack substance and hence dismissed.

02.05.2024

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(ANIL KSHETARPAL)
JUDGE

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