

Neutral Citation No. 2024:PHHC:010498

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

111

ARB-160-2023
Date of Decision:23.01.2024

Rajinder Kumar Contractor

... Petitioner

State of Haryana and others

Vs
... Respondents

(2)

ARB-161-2023

M/s Shree Jagdambaji Tubewells

... Petitioner

State of Haryana and others

Vs
... Respondents

(3)

ARB-162-2023

M/s Shree Jagdambaji Tubewells

... Petitioner

State of Haryana and others

Vs
... Respondents

(4)

ARB-163-2023

M/s Shree Jagdambaji Tubewells

... Petitioner

State of Haryana and others

Vs
... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Lajpat Rai Sharma, Advocate for the petitioner(s)
in all cases.

Mr. Aman Bahri, Addl. A.G. Haryana.

SUVIR SEHGAL, J. (ORAL)

This order will dispose of above four cases as they involve common question of law.

2. For the sake of convenience, factual position is being taken from Arbitration Case No.160 of 2023.

3. By way of application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), petitioner has approached this Court for appointment of an independent person as a sole Arbitrator to adjudicate the dispute between the parties arising out of the Contract Agreement for work of "Providing water supply arrangement in Police Line Narnaul, construction of 1 No. UGT of 25000 gallons, 1 No. Boosting Chamber of Size 10'X12' and all other works contingent thereto" within an approximate cost of Rs.3,56,000/-.

4. Counsel for the petitioner submits that the petitioner was allotted the above noted work by allotment letter dated 09.01.2009, Annexure P-1 and an agreement Annexure P-2 which contained the conditions of the contract, was entered into between the parties. He submits that the work was completed as per the specifications within the stipulated period to the satisfaction of the Engineer-In-Charge. Petitioner made various requests and representations for release of final payment as well as earnest money, which is pending since

10.03.2009. A representation dated 22.10.2021, Annexure P-2, was submitted which was followed by legal notice dated 25.02.2023, Annexure P-4, however, there was no response. By letter dated 23.03.2023, Annexure P-5, petitioner invoked arbitration clause but the respondent did not respond to that as well.

5. Counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in ***M/s Mayavti Trading Pvt. Ltd. Versus Pradyut Deb Burman***, 2019(5) R.C.R. (Civil) 823, to contend that while referring a dispute to an Arbitrator, jurisdiction of Court is confined to examination of existence of arbitration, and it cannot go into the question of limitation as this aspect falls within the purview of the Arbitrator.

6. Although, no response has been filed by the respondents but the State counsel has argued that the claim is barred by time. He has relied upon judgment dated 05.01.2024 passed by this Court in Arbitration case No.2 of 2024 titled as ***Rattan Lal, Contractor, deceased through Rajinder Kumar Vs. State of Haryana and others.***

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

8. After noticing the judgment in ***M/s Mayavti Trading Pvt. Ltd.'s*** case (supra), Hon'ble the Supreme Court in ***Bharat Sanchar Nigam Limited and another Versus Nortel Networks India Private Limited***, (2021) 5 Supreme Court Cases 738 has held as under:-

“While exercising jurisdiction under Section 11 as the judicial forum, the court may exercise the prima facie test to screen and knockdown ex facie meritless, frivolous, and dishonest litigation.

Limited jurisdiction of the courts would ensure expeditious and efficient disposal at the referral stage. At the referral stage, the Court can interfere “only” when it is “manifest” that the claims are ex facie time-barred and dead, or there is no subsisting dispute.”

9. It has been further observed by the Hon’ble Supreme Court that in cases where there is not even a vestige of doubt that the claim is *ex facie* time barred, or that the dispute is not arbitrable, the court may decline to make the reference as that would ensure expeditious and efficient disposal at the referral stage.

10. In ***M/s B & T AG Versus Ministry of Defence, 2023 AIR (Supreme Court) 2731***, Supreme Court has held that there is a fine distinction between the plea that the claims raised are barred by limitation and the plea that the application for appointment of an arbitrator is barred by limitation. It has been held that the period of limitation for commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued.

11. Analysing the factual position in the light of the observations of the Supreme Court, it is evident that the cause of action accrued to the petitioner in the year 2009 and thereafter, he went into a deep slumber and neither followed up the payment nor took any step to get it adjudicated. After almost more than a decade, petitioner started making representations and invoked the arbitration clause in the year 2023. It is apparent that the cause had become hopelessly barred by time. This court, therefore, has no hesitation in

coming to the conclusion that as the claim of the petitioner is stale, and dead, it does not deserve to be referred to an Arbitrator for adjudication.

11. Finding no merit in the prayer made in the petitions, they are hereby dismissed with no order as to costs.

23.01.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

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