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110-3 cases

ARB-267-2019 (O & M)
Date of decision:21.10.2024

...PETITIONER

...RESPONDENT

ARB-269-2019 (O & M)

...PETITIONER

...RESPONDENT

ARB-270-2019 (O & M)

...PETITIONER

...RESPONDENTS

Mr. S.P. Chahar, Advocate
for the respondent(s) in all cases.



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SUVIR SEHGAL, J.

1. This order shall dispose of the above-noted three petitions as they involve common questions of law and facts.

2. For the sake of convenience, factual position is being taken from ARB-267-2019.

3. This petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”) has been filed by the petitioner before this Court on 18.07.2019 for appointment of an Arbitrator.

4. Counsel for the petitioner submits that the petitioner, who is engaged in the business of colonizing, purchasing, developing and selling land, entered into an agreement to sell dated 20.02.2013, Annexure P-1, with the respondent for purchase of 43 kanals 01 marla land situated in revenue estate of village Kasar, Tehsil Bahadurgarh, District Jhajjar. An amount of Rs.1.11 crore was paid to the respondent as earnest money and respondent was to get the land partitioned. Counsel submits that vide letter dated 04.06.2013, Annexure P-2, petitioner called upon the respondent to comply with the terms of the agreement and it was followed by a legal notice dated 14.10.2013, Annexure P-3, demanding that the land be not alienated to any third party. Counsel submits that by a subsequent legal notice dated 27.01.2016, Annexure P-4, petitioner invoked Arbitration Clause No.28 of the agreement, Annexure P-1 and nominated an Arbitrator. Apprehending

that the petitioner may dispose of the land, a petition dated 10.02.2016,



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Annexure P-5, was filed before the District Court at Jhajjar for restraining the respondents from alienating the land under the agreement, Annexure P-1, and from changing its nature by raising any construction. Counsel submits that this petition was disposed of on 02.03.2016, Annexure P-7, on the statement of the counsel for the respondents, who stated that the property in question shall not be disposed of till its partition. Counsel has asserted that as various meetings between the parties failed to yield any result, the prayer made in the petition be acceded to.

5. Upon notice by this Court, petition has been contested by the respondents by filing a written statement, wherein it has been submitted that the petition is barred by limitation and that there is no dispute between the parties. Counsel for the respondent has placed reliance upon the judgment of the Supreme Court in **B and T AG Vs. Ministry of Defence (2024) 5 SCC 358** in support of his submission.

6. I have heard counsel for the parties and considered their respective submissions besides examining the documents placed on the record.

7. The issue involved in the present case is as to whether the present petition is barred by limitation. The law has been summarized by the Supreme Court in **Arif Azim Company Ltd. Versus Aptech Limited (2024) 5 SCC 313**. It has been held that although limitation is an admissibility issue, yet it is the duty of the Courts to *prima facie* examine and reject non-arbitrable or dead claims so as to protect the other party from being drawn



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into a time consuming and costly arbitration process. While considering the issue of limitation in relation to a petition under Section 11(6) of the Arbitration Act, Supreme Court has held that the Courts should satisfy themselves on two aspects by employing a two pronged test, firstly whether the petition under Section 11(6), *ibid*, is barred by limitation and secondly, whether the claims sought to be arbitrated are *ex facie* dead claims and are thus barred by limitation on the date of commencement of the arbitral proceedings. The Court came to the conclusion that if either of these issues are answered against the party seeking referral of disputes to arbitration, court may refuse to appoint an arbitral tribunal. Holding that a plain reading of Section 11(6) of the Arbitration Act indicates that no time limit has been prescribed for filing an application under the said section, but Section 43 of the Arbitration Act provides that the Limitation Act, 1963, would apply to arbitrations as it applies to proceedings in the Court and by virtue of Article 137 of the Limitation Act, 1963, which is the residual provision, the limitation for filing a petition under Section 11(6) will be three years from the date when the right to apply accrues. The relevant observations of the Supreme Court are reproduced hereunder:-

“51. Having traversed the statutory framework and case law, we are of the clear view that there is no doubt as to the applicability of the Limitation Act, 1963 to arbitration proceedings in general and that of Article 137 of the Limitation Act, 1963 to a petition under Section 11(6) of the Act, 1996 in particular. Having held thus, the next question that falls for our determination is



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whether the present petition seeking appointment of an arbitrator is barred by limitation.

52. *The determination of the aforesaid question is an exercise involving both law and facts. As is evident from Article 137 of the Limitation Act, 1963, the limitation period for making an application under Section 11(6) of the Act, 1996 is three years from the date when the right to apply accrues. Thus, to determine whether the present petition is barred by limitation, it is necessary to ascertain when the right to file the present petition under Section 11(6) of the Act, 1996 accrued in favour of the petitioner.*

(a) When does the right to apply under Section 11(6) accrue?

53. *It has been held in a catena of decisions of this Court that the limitation period for making an application seeking appointment of arbitrator must not be conflated or confused with the limitation period for raising the substantive claims which are sought to be referred to an Arbitral Tribunal. The limitation period for filing an application seeking appointment of arbitrator commences only after a valid notice invoking arbitration has been issued by one of the parties to the other party and there has been either a failure or refusal on part of the other party to make an appointment as per the appointment procedure agreed upon between the parties.”*

8. In **Vidya Drolia and others vs. Durga Trading Corporation**

(2021) 2 SCC 1, Supreme Court has held that while exercising power under

Section 11, *ibid*, as the judicial forum, the Court may exercise the *prima*



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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. Applying the aforesaid judgments to the facts of the present case, so far as the applicability of Article 137 of the Limitation Act, 1963, to the present petition is concerned, it is clear that the demand for arbitration was made by the petitioner vide legal notice dated 27.01.2016, Annexure P-4. The clock begins to tick after the expiry of period of 30 days from the date of the service of the notice, Annexure P-4. In other words, the limitation would start in the end of the month of February or March, 2016.

10. On the expiry of period of 30 days, when no Arbitrator was appointed, the cause of action for appointment of an Arbitrator accrued to the petitioner. Once the time started running, it would not come to a halt even if meetings were held between the parties to resolve the dispute. Negotiations may continue for years together after the cause of action had arisen, but it will not postpone the cause of action for the purpose of limitation as has been held by the Supreme Court in *M/s B and T AG (supra)*. The present petition having been instituted by the petitioner on 18.07.2019 is clearly delayed and hopelessly barred by limitation as it has been filed beyond a period of three years from the day the cause of action



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arose. The petition therefore, cannot be entertained and is dismissed being time barred.

11. Liberty is, however, granted to the petitioner to take recourse to any other remedy available to it under the law.

12. Pending applications, if any, shall also stand disposed of.

21.10.2024
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No