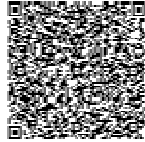


IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:115491-DB



(113) LPA No.1864 of 2024(O&M) alongwith
LPA Nos.1846 & 1860 of 2024 (O&M)

General Manager Telecom(D), Bharat Sanchar Nigam Limited, Bathinda

.....Appellant(s)

Versus

M/s H.V. Construction Company, Bathinda and anotherRespondent(s)

Decided on : 04.09.2024

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Sanjeev Kaushik, Advocate &
Ms. Manreet Kaur, Advocate for the appellant.

G.S. Sandhawalia, J.(Oral)

Delay Applications

Application for condonation of delay ranging from 67 days to 101 days in filing the appeals have been filed.

Applications are allowed, in view of the averments made in the applications, duly supported by affidavit. Delay ranging from 67 days to 101 days in filing the appeals stands condoned.

CMs stand disposed of.

LPA Nos.1864, 1846 & 1860 of 2024 (O&M)

1. The present judgment shall dispose of three appeals i.e LPA Nos.1864, 1846 & 1860 of 2024, which arise out of the judgment of the

learned Single Judge, whereby three writ petitions filed by the appellant were dismissed separately, on the ground that the writ petitioner must take recourse to the alternative remedies which are prescribed as per the statute.

2. The learned Single Judge has relied upon the judgment of the Apex Court passed in **M/s Radha Krishan Industries Vs. State of Himachal Pradesh & others, (2021) 6 SCC 771**, to come to the said conclusion. It was, accordingly, held that Micro and Small Enterprises Facilitation Council, Bathinda had directed to make payments, on account of the fact that the contractor had executed the works like laying of underground cables and others associated works. The claim petition had been filed under Section 18 of the Micro, Small & Medium Enterprises Development Act, 2006 (for short '2006 Act') for the non-reimbursement of the present invoices and in such circumstances, the necessary Award had been passed. The said Award had not been challenged in accordance with law, which would be necessary, since Section 18 (2) of the 2006 Act provides that provisions of Arbitration & Conciliation Act, 1996 would be applicable. The writ jurisdiction apparently was invoked, at a belated stage, though the Award had been passed on 19.10.2023. It is pertinent to notice that the first writ petition was only filed on 09.04.2024.

3. Counsel for the appellant has tried to convince us that the writ Court would have jurisdiction, if the proceedings were conducted without the jurisdiction and placed reliance upon the judgment of the Apex Court passed in **M/s Kone Elevator India Pvt. Ltd. Vs. State of Tamil Nadu and others, (2014) 7 SCC 1**.

4. We have perused the paper book. Apparently, as noticed above the claim petition had been filed for claiming the outstanding payment and interest on delayed payments for rendering services to the appellant herein for

trenching & pipe laying of cable, pulling of cable, splicing and termination, preparation of joint chambers etc. It has further been averred that an agreement dated 05.12.2018 was entered into between the parties. The amounts had been arbitrarily held up by the appellant, in spite of various requests made and, therefore, once the services had been rendered, the amount due was liable to be paid under Section 16 of the 2006 Act and recovery could be done. Various defences were taken including the fact that the work had not been completed within the time, apart from the fact that it was time barred.

5. The Council for the Micro and Small Enterprises Facilitation, Bathinda had decided the petition by noting that the only question is of interest on delayed payments, as the principal amounts already stands paid. Resultantly, it was held that in view of Section 16 of the 2006 Act, the benefit of interest had to be given on the delayed payments and, therefore, the Award had been passed on 19.10.2023. It was in such circumstances, the Award had been passed, which is stated to be contested by filing the present writ petitions. Thus, the judgment relied upon by the counsel in **M/s Kone Elevator India Pvt. Ltd.** does not apply in the facts and circumstances, since it is a case where the Constitutional Bench was dealing with the issue whether manufacture, supply and installation of lifts was to be treated as 'sale' or 'works contract'.

6. The learned Single Judge in our considered opinion was correct by relegating the writ petitioner to the remedy under the Act which as noticed would be in view of the Section 34 of the Arbitration & Conciliation Act, 1996. Having failed to resort to the said remedy, filing of the writ petitions was uncalled for. Reliance can be placed upon the judgment of the Apex Court in **United Bank of India Vs. Satyawati Tondon and others, (2010) 8 SCC 110**, wherein it was held that if there is an alternate and efficacious

remedy available under the statute, the writ jurisdiction would not liable to be invoked.

7. Resultantly, there is no merit in the present appeals and same are hereby dismissed in *limine*.

(G.S. SANDHAWALIA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

04.09.2024
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No