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High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 3381 of 1995

M/s Krishi Tractors, Malout	APPELLANT
Vs	
M/s Punjab Tractor Ltd.	RESPONDENT

Date of Decision: Dec. 19, 2001

Acts Referred:

- Arbitration Act, 1940 - Section 20

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Ranjan Lakhanpal, for the Appellant; M.L Sarin and Mr. Hemant Sarin, for the Respondent

Final Decision: Dismissed

Judgement

R.L. Anand, J.
This is a Civil Revision and has been directed against the order dated 3.6.1995, passed by the Court of Sub Judge Ist Class. Kharar, who, dismissed the petition of the present Petitioner u/s 20 of the Indian Arbitration Act, 1940.

2. The case set up by the Petitioner before the trial court was that M/S Krishi Tractors, Malout, through its partner Mr. Ravindra Sharma was the dealer of M/S Punjab Tractors Ltd. This dealership continued right up to 1986. The Petitioner called upon the Respondent to refer the matter to the arbitration in pursuance of the arbitration clause which was settled between the parties with regard to the transactions of dealership. Respondent M/S Punjab Tractor Ltd. did not refer the matter to the arbitration in spite of the fact that dispute arose between the parties was covered by the arbitration clause. Hence the petition u/s 20 of the Indian Arbitration Act was instituted in the trial Court on 16.4.1993 and it was registered as application No. 3.

3. Notice of the petition was given to the Respondent who filed the reply and denied the contents of the petition u/s 20 of the Arbitration Act mainly on the ground that no valid arbitration agreement subsisted and moreover, the application which has been filed u/s 20 of the Indian Arbitration Act is hopelessly barred by limitation.

4. From the above pleadings of the parties, the trial Court framed the following issues:

1. Whether there is an agreement between the parties for referring to the matter in dispute inter se between them to arbitration?OPA.

2. If issue No. 1 is proved, whether the dispute is liable to be referred to arbitration? OPA

3. Whether the application is within time? OPA

4. Relief.

5. The parties were called upon to lead evidence and on the conclusion of the proceedings vide impugned order dated 3.6.1995 the learned trial Court came to the conclusion that the petition filed u/s 20 is hopelessly barred by limitation. Resultantly, the petition was dismissed. Aggrieved by the order of the trial Court the present revision was filed in the year 1995.

6. It may be mentioned here that the present petition was earlier dismissed for want of prosecution but vide order dated 18.12.2000, it was restored.

7. Today, I am disposing of the main Civil Revision on merit after hearing Shri Atul Lakanpal learned Counsel appearing on behalf of the Petitioner and Shri M.L. Sarin, Sr. Advocate, appearing on behalf of the Respondent and with their assistance have gone through the record of the case.

8. Learned Counsel appearing on behalf of the Petitioner submitted that the trial Court was not justified in dismissing the petition u/s 20 of the Indian Arbitration Act on the ground of limitation only as the finding has been given by the trial Court that there is a valid agreement between the parties. In the alternative it was submitted by Shri Lakhanpal that the Court has the ample power to condone the delay and, therefore, this revision should be allowed and the matter should be referred to the arbitrator in terms of the arbitration clause.

9. On the contrary, the learned Senior counsel Shri Sarin submitted that as per the provisions of Article 137 of the Limitation Act, 1963, a statutory limitation of three years has been provided and this type of application could only be filed within three years from the date when the right accrued to the party. The application u/s 20 of the Arbitration Act has been filed on 16.4.1993. The agency of the Petitioner was terminated in the year 1986 when the Petitioner voluntarily, wrote a letter to the Respondent that he was not interested to continue with the agency. So much Shri Ravinder Sharma gave a notice to

the Respondent on 9.8.1989 and this notice was duly refuted and replied by the Respondent-authority on 23.8.1989 and in these circumstances, cause of action, if any, arose to the Petitioner on 23.8.1989 and when the Respondent categorically denied the claim of the Petitioner, in these circumstances, the petition u/s 20 of the Arbitration Act could be filed within three years i.e. up on 23.8.1992 but the present application has been filed in the year 1993 without any explanation and justification.

10. I have considered the rival contentions of the parties and with their assistance have gone through the findings of the trial court on issues No. 2 and 2-A.

11. It is proved fact that the Petitioner served the notice on 9.8.1989 calling upon the Respondent to refer the matter to the Arbitration. According to the partner of the Petitioner some amount was due by way of commission to the Petitioner and this part of the claim of the Petitioner was duly refuted by the Respondent on the ground that there was voluntarily abandonment of the dealership by the Petitioner. Thus, it can safely be concluded that the cause of action for the first time arose to the Petitioner on 23.8.1989 when the letter was replied. In these circumstances, as per the provision of Article 137 of the Indian Limitation Act, the limitation was three years. The right to file the present petition u/s 20 of the Indian Arbitration Act accrued to the Petitioner somewhere in August 1989. Since the present application has been filed after three years, therefore, I endorse the reasons given by the trial Court in dismissing the petition u/s 20 of the Indian Arbitration Act and seeing no merit in this revision dismiss the same with no order as to costs.