
(2011) 10 P&H CK 0125

High Court Of Punjab And Haryana At Chandigarh

Case No: Arbitration Case No. 135 of 2010

Balaji Associates

APPELLANT

Vs

HSI IDC Kundli and Another

RESPONDENT

Date of Decision: Oct. 13, 2011

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 11(6)
- Contract Act, 1872 - Section 28

Hon'ble Judges: Hemant Gupata, J

Bench: Single Bench

Judgement

Hemant Gupta, J.

The Petitioner has invoked jurisdiction of this Court for appointment of an arbitrator u/s 11(6) of the Arbitration & Conciliation Act, 1996 (for short the Act).

2. The parties entered into an agreement on 18.6.2003 whereby the Respondent granted the contract of laying water supply lines and all the works contingent thereto in Phase IV, Industrial Estate, Kundli. As per the Petitioner, the Respondent has not supplied CI/DI pipes as per the terms of the contract which lead to delay in completion of the contract. Such delay has caused loss to the Petitioner to the tune of Rs. 10.00 lacs. The Learned Counsel for the Respondent has denied the assertions of the Petitioner.

3. After hearing Learned Counsel for the parties, I am of the opinion that the dispute, whether the claim is within the period of limitation or whether there was violation of one or the other conditions of the agreement by which of the party, are the disputed questions of fact. Such disputed questions of fact are required to be adjudicated and affirmed by the process of arbitration, the procedure agreed upon by the parties.

4. Counsel for the Respondent has argued that the dispute has been raised by the Petitioner beyond six months, as per Clause 25A of the agreement, therefore, the

application to seek appointment of an arbitrator is barred by limitation. The said argument is not tenable in view of the amendment in Section 28 of the Indian Contract Act, 1872, as amended vide Act No. 1 of 1997. This Court had the occasion to consider the effect of the amendment in Arbitration Case No. 37 of 2009 (The Hisar Model Town Azad Co-operative Labour and Construction Society Limited v. The State of Haryana and Ors., decided on 18.5.2011, wherein it was held that such restrictions in the agreement are not enforceable. In view of this fact, the dispute raised by the Petitioner cannot be said to be barred by limitation in view of Clause 25A of the agreement.

5. Counsel for the Respondent further argued that the Petitioner has not deposited the costs in terms of sub-clause 7 of Clause 25A of the agreement. Learned Counsel for the Petitioner has undertaken to deposit the said costs within one month from today.

6. In view of the said fact, present petition is disposed of with liberty to the Petitioner to deposit the costs in terms of sub-clause 7 of Clause 25A of the agreement. On such costs being deposited, Shri S.B. Ahuja, resident of House No. 1160, Sector 12, HUDA, Panchkula, a former District Judge, shall act as an arbitrator who shall be entitled to fee of Rs. 50,000/-, initially to be shared by the parties.

7. The petition stands disposed of.