

(1994) 03 RAJ CK 0050

Rajasthan High Court (Jaipur Bench)

Case No: Civil First Appeal No. 149 of 1981

Virji

APPELLANT

Vs

Union of India (UOI)
and Another

RESPONDENT

Date of Decision: March 2, 1994

Acts Referred:

- Arbitration Act, 1940 - Section 20, 8
- Civil Procedure Code, 1908 (CPC) - Section 80

Citation: (1995) 1 RLW 456 : (1994) 2 WLC 135 : (1994) 1 WLN 246

Hon'ble Judges: N.C. Kochhar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

N.C. Kochhar, J.

The only question involved in this appeal is as to whether the petition moved by the petitioner appellant u/s 8/20 of the Arbitration Act, had been filed within the period of limitation.

2. The brief facts are as under: The appellant had entered into a contract with the Union of India, through the General Manager, Western Railway (Church-Gate), Bombay (the respondent No. I), for carrying out the construction work for the period from 1st October, 1961 to 30th September, 1962, on the terms and conditions agreed to between the parties. The respondent Noll placed 44 work-orders on the appellant for carrying out different works. The appellant completed 27 out of the said 44 works, but the remaining 17 works could not be completed by him. The appellant submitted his final bill in or around the year 1963. The contract between the parties was governed by an arbitration clause as contained in the general conditions of the contract and according to which, in the case of rejection of the claim, or in the case of no decision about the claim being received by the appellant

within a reasonable period of making it, he could claim arbitration within 90 days of the date of the order of rejection or within 90 days of the responsible period, during which, the decision ought to have been taken by the respondents. The amount not having been paid, the appellant served the notice dated 1st March, 1963 (Ex.1) on the General Manager, Western Railway, (Church-Gate), Bombay, giving the details of the works done and mentioning the disputes about the remaining works uncompleted and making claim of the loss suffered by him and asking that a sum of Rs. 18,163.29 be paid by the respondents to the appellant. No reply was received by the appellant, who thereafter served the notice dated 4th May, 1976 (Ex.3) on the General Manager, Western Railway (Church-Gate), Bombay, making reference to the letter (Ex.1) dated 1st March, 1963 and asking that an arbitrator be appointed for deciding the disputes. The said letter was received by the respondent on 6th May, 1976 vide the AD-Receipt (Ex.4). Since the respondents did not accede to the request for appointment of an arbitrator, the appellant filed the petition, out of which, this appeal has arisen on 11th April, 1979, with a prayer that some independent person be appointed as an arbitrator to decide the disputes between the appellant and the respondents. The petition filed by the appellant, was contested by the respondents on the ground, inter alia, that it was barred by time. The learned trial court after framing the necessary issues and recording the evidence produced by the parties, besides hearing their learned Counsel, has dismissed the petition on the ground that it is barred by time. Hence, this appeal.

3. I have heard the learned Counsel for the parties and have also perused the record of the case.

4. It is not disputed before me that the claim in regard to the final bill was submitted by the appellant prior to 1st March, 1963, when the notice (Ex.1) was sent by the appellant to the respondent No. 1. It is also not disputed that no claim for arbitration was made by the appellant prior to his sending the notice dated 4th May, 1976 (Ex.3), which was received by the respondent No. 1 on 6th May, 1976. In other words, the appellant took no steps for claiming arbitration for a period of more than 13 years of his submitting the bill and of his serving the notice under Section-80 of the CPC ("the Code") (Ex.1). No period of limitation has been prescribed in the Schedule, attached to the Limitation Act, 1963, for filing an application u/s 20 of the Arbitration Act, for appointment of an arbitrator and, as such, Article-137 would be applicable and for the purposes of deciding the controversy, raised in this appeal, the said article is reproduced below:

A bare reading of the above-said provision shows that the time starts running against the applicant when he gets the right to make the application, and if within three years therefrom, the application is not made, the same would be barred by time. In the present case, it is admitted that the final bill was submitted by the appellant prior to 1st March, 1963, when the notice u/s 80 of the Code, was sent by the appellant. According to the agreement between the parties, the appellant could

claim arbitration within 90 days of the date of rejection of the claim or within 90 days of the expiry of the reasonable period from the date of submission of the claim. Admittedly, no reply, rejecting the claim was received by the appellant, but, the only question to be seen is as to whether the period of 10 years and 2 months can be said to be a reasonable period for waiting before the claim for arbitration could have been made. In my view, by no stretch of imagination, it can be said that the appellant has moved the respondent No. 1 for appointment of an arbitrator within 90 days of the reasonable period, after submitting the final bill. In this view of the matter, the application/petition was filed long after the period prescribed under Article-137 of the Schedule, attached to the Limitation Act, had expired. Consequently, the petition deserved dismissal on the ground of limitation itself, Although, the learned trial court had dismissed the petition on the ground of limitation by taking a different view in regard to the claim having been submitted, but, that hardly matters in view of the fact that the petition was barred by time, as noted above. No interference is, therefore, called for. 5. The appeal is without any merit and is dismissed. No. costs.