

(2008) 09 JH CK 0037**Jharkhand High Court****Case No:** None

Hanuman Saw Mill

APPELLANT

Vs

SAIL, Bokaro Steel Plant and
Others

RESPONDENT

Date of Decision: Sept. 15, 2008**Acts Referred:**

- Arbitration and Conciliation Act, 1996 - Section 11, 43

Citation: (2009) 1 JCR 427**Hon'ble Judges:** Gyan Sudha Mishra, C.J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Gyan Sudha Mishra, C.J.

This application has been filed u/s 11(6) of the Arbitration & Conciliation Act, 1996 for appointment of an Arbitrator with regard to a dispute which relates to the year 1996..

2. The facts insofar as it is relevant for the purpose of this application is to the effect that the applicant had received work orders from the respondent for supply of 2nd class Hard wood scantlings for which purchase orders were also issued by the respondent vide purchase order No. 79056 dated 25.4.1996 and purchase order No. 79152 dated 4.5.1996. It is an admitted position that the petitioner supplied the materials but inspite of the supply he never raised a demand before the respondent for payment by submitting any bill although he might have been claiming the payment orally. He however, submitted the bill finally after 10 years of the supply in the year 2006 and thereafter the amount towards supply was paid to the petitioner.

3. The petitioner has already received the entire payment as per the purchase orders, but it has been submitted that the matter should be referred to the Arbitrator for determination as to the amount of interest which should be held

payable to the petitioner on account of delayed payment and for this purpose he has filed this application for referring the matter to the Arbitrator after appointing him.

4. However, it is difficult to ignore that the dispute for which an Arbitrator may be appointed rests on the premise of a bonafide dispute that may be referred to the Arbitrator and for this purpose, existence of a dispute is essential to be examined before the matter is referred to the Arbitrator as a dispute cannot be referred mechanically to an Arbitrator without existence of any bonafide dispute.

5. The facts and circumstances of the present case indicate that the petitioner has already received the entire amount in terms of the purchase orders in regard to the materials supplied by him. It is not the case of the petitioner that he has not received the payment in terms of the work orders, but what has been submitted is that the payment had been made after a long delay and, therefore, the matter should be referred to the Arbitrator for adjudication as to whether any amount is liable to be paid to him in view of the delay caused by the respondent.

6. While considering the aforesaid submission, it could be noticed that the petitioner himself had not raised any dispute in regard to the delay in making the payment perhaps for the reason that his claim in that event might have been barred in terms of the provisions contained u/s 43 of the Act, which envisages that the Limitation Act, 1963 will apply to the Arbitration & Conciliation Act, 1996 also. Fortunately for the petitioner, no such objection was taken by the respondent and now the entire amount had been paid to him. Thus when the petitioner himself raised the dispute in regard to his claim of payment after a period of 10 years of the supply, his claim towards interest cannot be held to be sustainable since the appointment of an Arbitrator after three years of the cause of action

7. The counsel for the petitioner, no doubt, submitted that his cause of action arose in the year 2006, when he submitted his bill claiming payment. But, that obviously is an argument to circumvent the provisions of limitation as the cause of action cannot be held to have arisen after 10 years of the supply as the supply had been made way back in the year 1996. What prevented the petitioner from submitting the bill for ten long years has not been explained and, therefore, the appointment of an Arbitrator for adjudication of the dispute merely to claim interest is time barred as per Section 43 of the Act.

8. Consequently, the present Arbitration Application stands rejected.