

Vishram Varu & Co. Vs. Union of India, represented by the General Manager, South Eastern Railway, Kolkata

Civil Appeal No. 2964 of 2022 arising from S.L.P. (Civil) No. 6386/2022

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Full judgment text

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[Civil Appeal No. 2964 of 2022 arising from S.L.P. (Civil) No. 6386/2022]

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned order dated 19.03.2021 passed by the Calcutta High Court in Arbitration Petition No. 748/2019, by which the High Court has dismissed the said application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act'), preferred by the appellant herein, the original applicant has preferred the present appeal.

2. That the appellant herein was issued work order in the year 1982. That the work was executed in the year 1986. According to the appellant herein, he executed excess quantity of work beyond the schedule quantity of work to be done. Therefore, he was entitled to the additional amount for the excess quantity of work done. It is the case on behalf of the appellant that a lot of correspondence was made by the appellant, however, the amount due and payable with respect to the excess quantity of work done was not paid.

The appellant through letter dated 31.05.2018 requested the General Manager of South Eastern Railway to release the amount due or refer the dispute to the arbitrator under clauses 63 & 64 of General Conditions of Contract (GCC) under the 1996 Act, however, no action was taken on the said letter. Thereafter vide letter/communication dated 22.10.2018, again the same request was made to the General Manager, South Eastern Railway either to pay the amount which was overdue or refer the dispute to the arbitrator, which was repeated vide communications dated 11.01.2019 and 11.03.2019.

According to the appellant, thereafter the appellant sent the Statement of Claim which was payable to him as per the work order dated 7.4.1982 issued by the railway authorities, which was executed up to 11.05.1986 and the work order dated 15.01.1984, which was executed up to 26.08.1985. According to him, as per the statement of claim, the total amount due and payable was Rs. 1,19,46,297/-.

2.1 Thereafter, the appellant sent a legal notice through his advocate on 31.07.2019 invoking the arbitration clause and seeking appointment of an arbitrator by the office of the General Manager. However, the arbitrator was not appointed as per clauses 63 & 64 of GCC. The appellant hereafter filed the present Arbitration Petition before the High Court under Section 11(6) of the 1996 Act and prayed to appoint the arbitrator to resolve the dispute between the parties. By the impugned order, the High Court has dismissed the said application on the ground that the arbitration petition in 2019 is hopelessly barred by limitation.

2.2 Feeling aggrieved and dissatisfied with the impugned order passed by the High Court dismissing the arbitration petition under Section 11(6) of the 1996 Act on the ground that it is barred by limitation, the original applicant has preferred the present appeal.

3. Shri Pijush K. Roy, learned counsel appearing on behalf of the appellant has vehemently submitted that the High Court has materially erred in dismissing the arbitration petition under Section 11(6) of the 1996 Act on the ground of limitation.

3.1 It is submitted that from the date of issuing the legal notice invoking the arbitration clause and after waiting for 30 days and thereafter when the application under Section 11(6) of the 1996 Act was made, the same cannot be said to be barred by limitation.

3.2 It is submitted that the cause of action to file the application under Section 11(6) of the 1996 Act can be said to have arisen after completion of 30 days of service of legal notice invoking the arbitration clause and the request to appoint the arbitrator was made. It is therefore submitted that from the date of issuance of legal notice invoking the arbitration clause and after expiry of period of 30 days, the limitation would start from the date of completion of 30 days from the date of serving the legal notice invoking the arbitration

clause.

Heavy reliance is placed on the decision of this Court in the case of Bharat Sanchar Nigam Limited v. Nortel Networks India Private Limited, (2021) 5 SCC 738 (paragraphs 14 & 15). Relying upon the aforesaid decision, it is submitted that as observed and held by this Court, none of the Articles in the Schedule to the Limitation Act, 1963 provides a time period for filing an application under Section 11(6) of the 1996 Act and therefore it would be covered by the residual provision Article 137 of the Limitation Act which provides the period of limitation of three years from the date when the right to apply accrues.

3.3 It is submitted that in the present case, right to apply under Section 11(6) of the 1996 Act can be said to have accrued when the legal notice invoking arbitration clause and the request to appoint the arbitrator by the General Manager was made and the period of limitation would commence after 30 days of serving the legal notice invoking the arbitration clause and making a request to appoint arbitrator.

3.4 Making the above submissions, it is prayed to set aside the impugned order passed by the High Court.

4. We have heard Shri Pijush K. Roy, learned counsel appearing for the appellant at length. At the outset, it is required to be noted that in the present case, work order was issued on 7.4.1982 and the work/excess work was completed in the year 1986. Even as per the statement of claim, the amount due and payable was under work order dated 7.4.1982, which was executed up to 11.05.1986 and work order dated 15.01.1984 which was executed up to 26.8.1985.

Therefore, right to claim the amount, due and payable, if any, can be said to have accrued in the year 1985/1986. Thereafter, the correspondences under the RTI Act had taken from the year 2012 onwards. Thereafter, for the first time, the appellant served a legal notice upon the General Manager, South Eastern Railway on 22.10.2018 requesting either to release the amount which was overdue or to refer the dispute to the arbitrator under clauses 63 & 64 of GCC under the 1996 Act. The aforesaid legal notice is thereafter followed by three to four letters/communications and thereafter the appellant herein filed the present application under Section 11(6) of the 1996 Act before the High Court in the year 2019.

Merely because for the claim/alleged dues of 1985/1986, the legal notice calling upon the respondent to pay the amount due and payable or to refer the dispute to the arbitrator is made after a period of approximately thirty-two years, the appellant cannot be permitted to say that the cause of action to file the application under Section 11(6) of the 1996 Act had accrued in the year 2018/2019. In the present case, the legal notice has been served and the arbitration clause is invoked and request to appoint the arbitrator was made after a period of approximately thirty-two years from the date of completion of work.

Therefore, the appellant, who served the legal notice invoking the arbitration clause and requesting for appointment of an arbitrator after a period of approximately thirty-two years, cannot contend that still his application under Section 11(6) of the 1996 Act be considered as the limitation would start from the date of serving the legal notice and after completion of 30 days from the date of service of the legal notice and invoking arbitration clause.

5. Now, so far as the reliance placed upon the decision of this Court in the case of Bharat Sanchar Nigam Limited (supra) is concerned, the said decision shall not be applicable to the facts of the case on hand. In the aforesaid decision, the Court was not dealing with such a situation where the legal notice was issued and served and the arbitration clause was invoked after a period of thirty-two years. In the aforesaid decision, this Court has not stated and/or observed and/or held that despite the fact that the legal notice invoking the arbitration clause and/or request for referring the dispute to the arbitrator is made after 20/30 years, still the application under Section 11(6) of the 1996 Act can be entertained.

6. Therefore, in the facts and circumstances of the case, narrated hereinabove, the High Court has not committed any error in dismissing the application under Section 11(6) of the 1996 Act on the ground that it is hopelessly barred by limitation and is a stale claim. We are in complete agreement with the view taken by the High Court.

7. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. There shall be no order as to costs.

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