

Date of Decision: 22.02.2013 Vs. M/S Engineer Construction Company and Another

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Court : Punjab and Haryana

Decided On : Feb-21-2013

Appellant : Date of Decision: 22.02.2013

Respondent : M/S Engineer Construction Company and Another

Judgement :

IN THE HIGH COURT FOR PUNJAB & HARYANA AT CHANDIGARH Arbitration
Case No.116 of 2012 Date of Decision:

22. 02.2013 M/s Bawa Estates and Colonizers and another ..Petitioners Versus
M/s Engineer Construction Company and another ..Respondents CORAM:
HON'BLE MR. JUSTICE A.K.SIKRI, CHIEF JUSTICE.

1. Whether Reporters of local papers may be allowed to see the judgment ?.

2. Whether to be referred to the Reporters or No.?.

3. Whether the judgment should be reported in the Digest?. Present :
Mr.P.K.Khindria, Advocate, for the petitioner. Mr. Mukand Gupta, Advocate, for the
respondents. **** A.K.SIKRI, CHIEF JUSTICE CM No.4335-CII of 2013 Notice.

2. Learned counsel for the respondents accepts notice and states that there is no
need to file reply to the application. However, after hearing learned counsel for the

parties and for the reasons stated in the application, I am of the view that the applicant-petitioner has shown sufficient cause for non-appearance on 08.02.2013. Accordingly, order dated 08.02.2013 dismissing the petition for non-prosecution is hereby recalled and petition is restored to its original number. C.M. stands disposed of. Arbitration Case No.116 of 2012 [2].

3. In this petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act), the petitioner firm is seeking appointment of an Arbitrator in terms of arbitration clause contained in the Work Order dated 06.05.2011. Vide the aforesaid order dated 06.05.2011, the petitioner firm had placed the Work Order upon the respondent-company for construction of 72 flats in Shivjot Town, Kharar, Punjab. According to the petitioner firm, the time was the essence of the work which was to start within 4 days on 06.05.2011 and flats were to be handed over to the petitioner firm duly completed by 30.04.2012. The petitioner alleges that the respondent-company did not complete the work and instead abandoned the same in February, 2012 and left the site giving in writing to the petitioner that the petitioner could get the remaining work completed through some other agency. The petitioner firm termed it as a breach of contract on the part of the respondent company because of which according to the petitioner a sum of Rs. 79,22,670/- is found due and recoverable from the respondent company apart from other claims raised by the petitioner vide notice dated 16.07.2012 in the sum of Rs. 5 Crores. The petitioner firm suggested the name of Shri Deepak Thapar, Advocate as an Arbitrator and requested the respondent company to concur with the same. However, vide reply dated 25.07.2012, the respondent company denied the claims of the petitioner firm. At the same time, the respondent company agreed that there are disputes. However, appointment of Shri Deepak Thapar, Advocate as an Arbitrator was not acceptable to the respondent company who suggested its own names. Since the names suggested by the Arbitration Case No.116 of 2012 [3]. respondents are not acceptable to the petitioner and vice-versa the present petition is filed by the petitioner firm seeking an order of this Court for appointment of an Arbitrator, the arbitration clause contained in the work order dated 06.05.2011 reads as under:- In case of any dispute, the same will be resolved by a common Arbitrator agreeable to both the parties.

4. No reply is filed. Learned counsel for the respondent company accepted the fact that there are disputes which are to be resolved by arbitration. However, as per the respondents, they have also their counter claims against the petitioner firm. Therefore, learned counsel for both the parties agreed that this Court may appoint an Arbitrator to adjudicate the claims and counter claims of the parties.

5. In these circumstances, the petition is allowed. I appoint Honble Mr. Justice H.S.Bedi, a former Judge of the Supreme Court as the sole Arbitrator to decide the claims and counter claims of the parties. He shall charge the fee according to Rules. 22.02.2013 [A.K.SIKRI]. ravinder CHIEF JUSTICE

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