

Arbitration Case No. 26 of 2009 Vs. M/S Reliance Engineering Associations Pvt. Ltd.

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Court : Punjab and Haryana

Decided On : Feb-18-2013

Appellant : Arbitration Case No. 26 of 2009

Respondent : M/S Reliance Engineering Associations Pvt. Ltd.

Judgement :

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH Date of Decision:

18. th February

1. Arbitration Case No.26 of 2009 M/s Sahil Brothers ...Petitioner Versus M/s Reliance Engineering Associations Pvt. Ltd. ..Respondent 2. Arbitration Case No.27 of 2009 M/s Sahil Brothers ...Petitioner Versus M/s Reliance Engineering Associations Pvt. Ltd. ..Respondent 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. S.K.Singla, Advocate, for the petitioner. None for the respondent. **** A.K.SIKRI,

CHIEF JUSTICE Parties in both the petitions are common. The respondent had awarded two contracts to the petitioner-firm herein for which work orders/agreements dated 14.05.2001 and 05.01.2002, respectively, were signed. The first contract dated 14.05.2001 was for trenching and duct laying on Amritsar-Zira route. The second agreement was for laying the optical fiber cable on Sangrur-Sunam route.

2. The disputes have arisen in respect of both the agreements, inasmuch as per the petitioner he has to recover certain amounts under both the contracts which are not paid by the respondents. Since both the contracts -2- Arbitration Case No.26 of 2009 contain identical arbitration clause, these petitions are filed for appointment of Arbitrator in common set of circumstances. For sake of convenience, the facts from Arbitration Case No.26 of 2009 are taken note of.

3. As pointed out above, both the parties in this case entered into an agreement dated 14.05.2001 for trenching and duct laying on Amritsar- Zira route. The petitioner started work on this project on 14.05.2001 and completed the same on 15.11.2001. The petitioner submits that payment of ` 2,52,100/- has been illegally withheld by the respondent even when the entire work is completed to the satisfaction of the respondent and entered in the measurement book. For making the payment of the aforesaid amount, the petitioner sent notice dated 29.07.2003 which was followed on 01.07.2004 calling upon the respondent to appoint the Arbitrator in terms of Clause 18 of the General Conditions of Contract which reads as under:- 18. Arbitration: If any disputes or differences arise between the Owner and the Contractor in relation to or out of this Contract, the same shall be referred to the arbitration of two arbitrators, one each to be appointed by the Owner and the Contractor. The provisions of the Indian Arbitration Act, 1940 shall apply for such arbitration. The decision so given shall be final and binding upon the parties hereto.

4. It is alleged that the respondent has not taken any action thereupon and therefore, the present petition is filed. In the second notice, the averments are identical except that the amount which according to the petitioner is withheld by the respondent is ` 1,36,125/-.

5. The respondent contested both the petitions by filing replies. Various objections to the maintainability of the petition are taken which are as under:- -3- Arbitration Case No.26 of 2009 i) There are no disputes between the parties which are to be adjudicated upon. Joint inspection was carried out by the petitioner as well as the official of the respondent-company wherein all rates and measurements were accepted. On the basis of this joint inspection, final bills were cleared and the petitioner had taken full and final payment of the work done by him and executed the receipt without protest. ii) The petition is not maintainable for want of proper arbitration clause. iii) The petition is barred by limitation. iv) The respondent company i.e. Reliance Engineering Associates Pvt. Ltd. has been merged with M/s Reliance Port and Terminal Pvt. Ltd. and therefore, the petition is not maintainable for mis- joinder and non-joinder of necessary parties.

6. On-merits, it is submitted by the respondent that deductions of ` 2,52,100/- have been made in terms of Clause 3.2 of Section IV of General Conditions of Contract (Annexure-C) whereby the rates of item No.1 are inclusive of work done for item No.18 also and no separate charges were payable for the work done under item No.18. Further the adjournment/deduction made by the respondent company has been explained to the petitioner vide reply dated 27.08.2003 to the legal notice dated 29.07.2003.

7. The cases were fixed for arguments on 01.02.2013. No body appeared on behalf of the respondent. Learned counsel for the petitioner was heard and order reserved. -4- Arbitration Case No.26 o

8. It is not necessary to go into all these objections raised on account of non-maintainability of the petition. The plea of the respondents that respondent company i.e. Reliance Engineering Associates Pvt. Ltd. has been merged with M/s Reliance Port and Terminal Pvt. Ltd. is sufficient to dislodge this petition. When the present respondent-company has been merged with M/s Reliance Port and Terminal Pvt. Ltd. the respondent- company is no more in existence. In these circumstances, it was necessary for the petitioner to file the petition against M/s Reliance Port and Terminal Pvt. Ltd., the successor-in-interest of the respondent company. Even after taking objection in the reply, the petitioner failed to cure the

defect and implead the said company with which the respondent is merged. The time to file the rejoinder was taken by the petitioner which has not been filed. After merger when the respondent-company is not in existence, the present petitions against the non-existing company are naturally not maintainable. Accordingly, both these petition are dismissed on this ground. (A.K.SIKRI) CHIEF JUSTICE 18 h February, 2013 'ravinder'

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