

Tripti Saha Vs. Union of India

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Court : Kolkata

Decided On : Jan-31-2017

Judge : I. P. Mukerji

Appellant : Tripti Saha

Respondent : Union of India

Judgement :

AP No.492 of 2006 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE TRIPTI SAHA Versus UNION OF INDIA BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date : 31st January, 2017.

Appearance: Mr.P.Chakraborty, Advocatefor the petitioner.

The Court: This is an application to set aside the award dated 25th September 2006 made and published by the learned Arbitrator.

Even at the second call, none appears for the Railways to contest this application.

I find from the order dated 12th May 2011 that even at the time of admission of this application, none had appeared for them.

The claim of the petitioner in the arbitration was on account of price of goods allegedly sold by them to the Railways between October 1987 and October 1989.

The chart which is Annexure A at page 21 of the petition reveals that twentyfour consignment of goods were delivered to the Railways further to their letters of order between 1st December 1987 and 3rd October 1989, the price claimed for which was Rs.9,63,009/-.

The petitioner did not raise any bills in respect of this supply.

But challans are on record by the petitioner to show that these goods were apparently received by the Railways.

Furthermore, the petitioner says that she could not raise the bills until a formal supply order was made by the railways.

The letters of order were provisional orderRs.The learned Arbitrator while rejecting the claim of the petitioner observed the following : The claim no.1 of the claimant was in substance for price of goods sold and delivered.

Therefore, in terms of Article 14 of the Limitation Act, the prescribed period of Limitation would be three years from the date of the delivery of the goods.

By merely indulging in fruitless correspondence the claimant cannot plead that this period prescribed by Article 14 of the Limitation Act, 1963 was extended.

There was no ground for holding that because of such unilateral conduct of the claimant in writing letters to the respondents and some other Government Officials either the period of limitation was suspended or extended beyond three years from the date of delivery of the goods.

Therefore, the claimants claim No.1 must be held to be barred by limitation.

The claim No.1 having failed, there could be no question of granting the claimant either interest pendente lite or interest from the date of the Award.

The Claim Nos.2 and 3 also fail.

In the facts and circumstances of the case, I do not however award costs against the claimants.

Each party will bear its own cost. Now, the case of the petitioner is that she could not have raised any demand for payment unless the railways issued a formal purchase order.

No purchase order was ever issued by the railways although on the basis of the Letters of Orders the above substantial quantity of goods were received by them from the railways.

Therefore, her claim could not be barred by limitation.

In fact, the petitioner by her letter dated 2nd July, 1990 at page 134 of the petition asked the railways to issue a formal purchase order so that she could submit her the bills for payment.

The railways have stated the following in paragraph 6 of their counter statement at page 254 of the petition.

With reference to the statement made in paragraph 5 of the claimants statement of claim, the respondent states that the claimant supplied the materials, if so against the letter of order which is not at all a concluded and binding contract until and unless purchase order is issued and which is a contractual obligation for entering into contract.

Letter or order is merely the acceptance of offer of the claimant and is issued to the claimant for depositing the Security Money and in the said letter of order, it was clearly mentioned that formal order shall be issued only after the deposition of security deposit.

Claimant has not submitted any document on support of deposition of security deposit.

Claimant themselves have mentioned in the statement of claim, that no formal Purchase Orders have been issued and they have supplied the materials against letter of order.

As only formal Purchase Order is to be treated as the contractual obligation and in this case no formal Purchase Order was issued to the claimant.

Letter of Order issued to the firm is only an indicative of the progress of procedure for the contract itself.

In view of this, the offer of material against the letter of order cannot be accepted by the respondent and respondent is not contractually liable and no payment can be made to claimant for this.

According to letter of order, materials are to be inspected by the consignee i.e.DCo. /Howrah.

But the claimant has not submitted any inspection certificate of the materials.

Claimant has claimed to deliver the material but could not submit any document in support of it.

The challans submitted by the claimant do not have any office stamp of receiving official of respondent.

As no contract was concluded with the claimant, hence question of payment does not arise.

But there are rejection advice on record [at page 129 of the petition].which shows that consignments were indeed received by the railways.

Therefore, the dispute between the parties was this.

[a].whether there was a valid contract for sale of the goods ?.; [b].whether supply was made according to this contract for sale ?.; [c].whether the claim of the petitioner was barred by limitation ?.

Now, if the petitioner is able to prove his case that goods were to be supplied on the basis of the Letters of Order.the goods were actually supplied and that bills were to be raised only upon issuance of a formal purchase order, then the calculation of a period of three years from the date of delivery of the goods under Article 14 of Schedule I of the Limitation Act, 1963 would have to exclude the period between the delivery of goods and the raising of bills because that would be counted as the credit period.

Very humbly and with the deepest respect to the learned Arbitrator I observe that all these questions have not been gone into by him in making and publishing the award.

For those reasons, I very humbly request the learned Arbitrator to reconsider the award on remand and to pronounce his lordships decision within three months of communication of this order.

This application is allowed to the above extent.

(I.

G/pkd.P.MUKERJI, J.)

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