

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO No. 3609 of 2015 (O&M)
Date of Decision: 08.05.2019**

State of Haryana

..... Appellant

VERSUS

M/s Devinder Kumar & Company and another

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rohit Arya, AAG, Haryana,
for the appellant.

Mr. Rajesh Goyal, Advocate,
for respondent No.1.

JAISHREE THAKUR, J.

1. This is an appeal that has been filed seeking to challenge the order dated 04.07.2014 whereby the application under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the arbitral award dated 29.05.2012 stands dismissed.

2. In brief, facts of the case are that work of improvement and widening/ strengthening of road and CC Block of Ballabgarh-Samepur-Samathla road in District Faridabad from Kilometer 0.00 to 14.20 was allocated to respondent No.1 vide letter dated 07.12.2005 for a sum of ₹ 2,88,98,258/-. Respondent No.1 started the allotted work, however, failed to

complete it within specified time and abandoned the same. By various communications, respondent No.1 was requested to complete the work. Consequently, as per clause 2 of the contract, a penalty of ₹ 28,89,826/- was levied upon it vide memo dated 22.08.2006. Despite the penalty, it had failed to complete the work. Resultantly, the work was reallocated to one M/s Vishal Ahluwalia Construction Company vide office memo No. 5759-63 dated 15.11.2007 at the risk and cost of respondent No.1. Respondent No.1 was asked to deposit the recoverable amount but failed to comply. A dispute arose between the parties. Hence, as per Clause 25-A of the contract agreement, Superintending Engineer, Bhiwani Circle, PWD (B&R), Bhiwani was appointed as an Arbitrator by the Engineer-in-Chief, PWD (B&R), Chandigarh vide letter dated 29.12.2010. The Arbitrator vide his award dated 29.05.2012 rejected the claim of the appellant-claimant Executive Engineer Provl. Divn. PWD (B&R), Faridabad while observing that the appellant has applied for appointment of arbitrator after the expiry of period prescribed in Clause 25-A of the contract agreement. Aggrieved against the same, the appellant filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the Award dated 29.05.2012 before the Addl. District Judge, Faridabad, who too dismissed the objections vide order dated 04.07.2014 while upholding the findings of the arbitrator. Feeling aggrieved, the instant appeal has been preferred.

3. The sole controversy that surrounds in this appeal is "Whether Arbitrator had been invoked within the period of limitation?' For this reference has to be made to Clause 25-A of the Contract Agreement which is reproduced as under :-

"Neither party shall be entitled to bring a claim for arbitration

if the appointment of such arbitrator has not been applied within 6 months.”

- a) of the date of completing of work as certified by the Executive Engineer-in-Charge; or*
- b) of the date of abandonment of the work; or*
- c) of its non-commencement within 6 months from the date of abandonment or written order to commence the work as applicable;*
- d) of the completion of the work through any alternative agency off means after withdrawal of the work from the contractor in para and /or its decision or.*
- e) Of receiving an intimation from the Executive Engineer-in-Charge of the work that final payment due to or recovery from the contractor had been determined which he may acknowledge and/ or receive.*

Whichever of (a) to (e) above is the latest.”

4. A reading of the said clause reflects that no party shall be entitled to bring claim for arbitration if the appointment of such arbitrator has not been applied for within 6 months : (a) of a date of completing of work as certified by the Executive Engineer-in-Charge, (b) and the date of abandonment of the work; (c) of its non-completion within 6 months from the date of abandonment or written order to commence the work as applicable; (d) of the completion of the work through any alternative agency of means after withdrawal of the work from the contractor; (e) of receiving an intimation of the Executive Engineer-in-Charge of the work that final payment due to or recovery from the contractor had been determined which he may acknowledge and/ or receive; with a proviso that whichever of (a) to (e) above is the latest.

5. It is not in dispute that work was abandoned by the respondent-Contractor herein prior to 19.12.2005 as the first memo for completing the work was issued on 19.12.2005. Subsequently work was got completed from M/s Vishal Ahluwalia Construction Company, Faridabad at the risk and cost of the respondent. The work was completed by M/s Vishal Ahluwalia Construction Company, Faridabad on 31.12.2008 and payment made on 19.01.2009. The appellant applied for appointment of arbitrator to the Chief-Engineer vide his letter dated 26.03.2010. The Arbitrator came to hold that the appointment of Arbitrator was time barred in the light of Clause 25-A of the Contract.

6. Learned counsel for the appellant would contend that there has been a misreading of the said Section 25-A, since relevant sub clause (e) of Clause 25-A has not been appreciated in its entirety. It is argued that as per clause 25-A(e) an arbitrator can be appointed within six months on receipt of intimation from the Executive Engineer-in-Charge of the work that recovery from the Contractor had been determined and in the instant case the recovery was determined when an office memo dated 26.10.2009 was issued to respondent No.1 to deposit the payable amount and on his failure to deposit the same, a request was made for appointment of an Arbitrator on 26.03.2010 within a period as specified under Section 25-A(e).

7. As per the record, the relevant date which has been made available, the appellant-claimant requested to the Engineer-in-Chief, Haryana, PWD (B&R), Chandigarh vide his memo No. 490 dated 26.03.2010 requesting for appointment of Arbitrator in the case under dispute. This was followed by another letter addressed by S.E. Gurugram vide his letter No. 1186

dated 01.04.2010 and subsequently another reminder was sent on 27.07.2010. It is subsequent thereto, that an arbitrator was appointed by the Engineer-in-Chief, Haryana, PWD B&R, Branch, Chandigarh vide office order No. 218 dated 29.12.2010. If the argument of learned counsel for the appellant is taken into account that Section 25-A(e) would be applicable, then the Arbitrator had to be appointed within a period of six months from the date of intimation from the Executive-Incharge that the recovery from the Contractor had been determined i.e. on or before 11.11.2010 whereas the appointment was on 29.12.2010.

8. Therefore, finding no infirmity in the findings recorded by both the Arbitrator and the Court that the Arbitrator had been appointed beyond a period of limitation, this Court finds no ground to interfere in the well reasoned orders passed.

Dismissed.

08.05.2019

Satyawan

Whether speaking/reasoned

Whether reportable

**(JAISHREE THAKUR)
JUDGE**

Yes

No