

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

Arbitration Case No. 138 of 2013  
Date of Decision: 22.11.2013

M/s Gulshan Rai Jain

..Petitioner

Versus

Housing Board Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Ashwinie Kumar Bansal, Advocate, for the petitioner.  
Mr. Ashwani Talwar, Advocate, for the respondents.

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**SANJAY KISHAN KAUL C.J.** (Oral)

The petitioner was awarded tender for work of construction of 129 Nos. G.F. + 129 Nos. FF & SF flats including internal P.H. and E.I. services in Housing Board Colony, Sector 52, Gurgaon, on 26.11.2009, which was followed by a written contract. It is the case of the petitioner that the work was completed on 28.02.2012 but there are outstanding dues of the petitioner.

2. The agreement contains clause 33 as the Arbitration Clause and in view of the disputes, the petitioner invoked the Arbitration Clause vide letter dated 16.05.2013. In terms of sub clause 7 of Clause 33 requiring security deposit of 7.5% to the total value of the claimed amount, the petitioner sent a bank draft of ₹ 14,44,500/- alongwith the said letter as the claim raised was of ₹ 1,92,60,000/-.

3. The aforesaid request was, however, rejected vide letter dated 04.07.2013 on the ground that the claim was time barred. It was stated that the final bill had been paid on 16.08.2012 and in view of arbitration clause 33(9)(e) the claims had to be filed within a period of six months from that date i.e. on or before 15.02.2013 but they were filed on 16.05.2013. It is informed that post the issuance of this letter, the amount deposited by the petitioner was also refunded.

4. Learned counsel for the petitioner submits that the time period for making the claim cannot be reduced to suit a clause in view of the judgment in **Pandit Construction Company Vs. Delhi Development Authority 2007(98) DRJ 96.**

5. The aforesaid legal position cannot be disputed by learned counsel for the respondents, who, however, submits that the petitioner should deposit 7.5% of the claimed amount once again as per clause 33(7) whereupon the designated authority will appoint the Arbitrator.

6. In my view the competent authority has lost the opportunity to appoint the Arbitrator, as it wrongly rejected the request of the petitioner to appoint the Arbitrator by issuing a communication dated 04.07.2013 and refunded the amount which was deposited by the petitioner under the cover of the letter dated 16.05.2013.

7. Learned counsel for the petitioner infact states that the respondents, after having encashed the bank draft submitted by the petitioner, issued a bank draft towards refund of the amount which is still lying un-encashed. There appears to be some difference of perception qua this issue but it would suffice to say that the petitioner

should arrange to ensure that the said amount is deposited with the respondents or if it is a bank draft issued by the respondents then the same is returned back to the respondents. The arbitration would naturally commence thereafter.

8. In view of the aforesaid, I appoint Justice L.N.Mittal, a retired Judge of this Court, # 235, Sector 16, Chandigarh as sole Arbitrator to enter upon the reference and adjudicate upon the disputes between the parties.

Petition accordingly stands allowed.

The fee of the Arbitrator be governed by the High Court Rules.

A copy of this order be sent to the Arbitrator without process fee.

**22.11.2013**

'ravinder'

(SANJAY KISHAN KAUL)  
CHIEF JUSTICE