

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No.229 of 2016
Date of Decision: 19.05.2017

Kuthiala Construction Co.

.....Petitioner

versus

Punjab University Staff (Home) Provisions Cooperative House Building

.....Respondent

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE

Present : Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate, for the petitioner.

Mr. O.P.Kamboj, Advocate, for the respondent.

S.J.VAZIFDAR, CHIEF JUSTICE (ORAL)

This is an application under section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of the sole arbitrator to adjudicate upon the disputes and differences between the parties.

2. The parties had entered into a contract which admittedly contains an arbitration agreement. The petitioner made an application under section 11 of the Act before the learned Civil Judge (Senior Division), Chandigarh for the appointment of an arbitrator. The learned Judge appointed an arbitrator by an order dated 18.12.2003. Identical contracts were also entered into between the respondents and two other parties. Those parties also made an application under section 11 of the Act to the learned Civil Judge (Senior Division). The learned Judge appointed an arbitrator in each of those matters as well. The arbitrator appointed in the present case was also appointed in one another case also. The awards were made by the learned arbitrators in other cases which were challenged under section 34 of the Act. The challenge was upheld on the ground that the arbitrators lacked

inherent jurisdiction on account of the fact that the learned Civil Judge (Senior Division) himself lacked inherent jurisdiction to appoint an arbitrator under section 11 of the Act as by then High Court had issued a notification dated 17.09.2003 conferring power to appoint the arbitrator to the Chief Justice or his designate. Thus, the awards were, therefore, set-aside by an order and judgment dated 25.07.2016 by the learned Single Judge of this Court.

3. The judgment of this Court dated 25.07.2016 was brought to the notice of the learned arbitrator who was appointed as an arbitrator in respect of the disputes between the parties to this petition. In view of the order and judgment, the learned arbitrator by an order dated 17.09.2016 terminated his mandate and withdrew himself from the arbitration proceedings.

4. It is apparent, therefore, that this is not a case where the mandate of the arbitrator was terminated on account of the circumstances mentioned in section 15 of the Act. Section 15 of the Act reads as under:-

“15. Termination of mandate and substitution of arbitrator.

(1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate

- (a) Where he withdraws from office for any reason; or
- (b) By or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under subsection (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.”

5. Section 15 does not contemplate a case where the appointment was void on account of the Court lacking inherent jurisdiction to make the appointment under section 11 of the Act. It contemplates a case where the arbitrator is duly appointed and such arbitrator withdraws from office for any

reason. The contention, therefore, that proper procedure is for the petitioner to make an application before the learned Civil Judge (Senior Division) for the appointment of an arbitrator, is not well founded. The only recourse for the petitioner is to make an application under section 11(6) of the Act to this Court.

6. Prima-facie at least the question of limitation does not arise for the petitioner is entitled to rely upon the invocation of the arbitration clause. Admittedly the petitioner had invoked the arbitration clause on the earlier occasion pursuant to which they had made an application under section 11 to the learned Civil Judge (Senior Division). In any event in the facts and circumstances of the case the issue of limitation ought to be raised before the same is decided by the learned arbitral tribunal.

7. In the circumstances, the petition is disposed of by appointing Mr. Justice Pritam Pal, a former Judge of this Court, as the sole arbitrator to adjudicate upon the disputes and differences between the parties. The venue of the arbitration shall be the Chandigarh Arbitration Centre. The fee shall be as per the Chandigarh Arbitration Centre (Administrative costs and Arbitrators' Fees) Rules, 2014.

19.05.2017
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(S.J. VAZIFDAR)
CHIEF JUSTICE

Whether speaking/reasoned	Yes/No✓
Whether reportable	Yes/No✓