

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

Arbitration Case No. 8 of 2013  
Date of Decision: 15.11.2013

M/s Satish Aggarwal

..Petitioner

Versus

Union of India and others

..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. S.K.Mahajan, Advocate, for the petitioner.  
Mr. Nitin Kumar, Advocate, for the respondents.

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

The petitioner has filed the present petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the said Act') seeking appointment of an independent Arbitrator to adjudicate upon the disputes inter-se the parties out of the contract agreement dated 31.05.2008 relating to the balance work of construction of heavy repair shed and running repair shed in addition to the existing shed, at Jalandhar City.

2. The petition is resisted by the respondents on the ground that the disputes *inter-se* the parties stand fully resolved and there is full accord and satisfaction of the claims of the petitioner. In this behalf, the attention of this Court is invited to the endorsement made on the final bill to this effect as duly signed on behalf of the petitioner but

this endorsement made is on a printed form. However, what is more important is that a supplementary agreement was executed on 09.09.2011 *inter-se* the parties seeking to resolve the disputes. The said agreement reads as under:-

“Now it is hereby agreed by and between the parties in the consideration of sums already paid by the party hereto of the first part to the party hereto of the second part against all outstanding dues and claims for, all works done under the aforesaid Principal Agreement including/excluding the security deposit the party hereto of the second part have no further dues of claims against the party hereto the first part under the said Principal Agreement. It is further agreed by and between the parties that the party hereto of the second part has accepted the said sums mentioned above in full and final satisfaction of all its dues and claims under the said Principal Agreement.

It is further agreed by and between the parties that the party hereto of the second part has accepted the said sums mentioned above in full and final satisfaction of all its dues and claims under the said Principal Agreement.

It is further agreed and understood by and between the parties that in consideration of the payment already made, under the agreement, the said Principal Agreement shall stand finally discharged and rescinded all the terms and conditions including the arbitration clauses.

It is further agreed and understood by and between the parties that in consideration of the payment already made, under the agreement, the said Principal Agreement shall cease to have any effect and/or shall be deemed to be non-existent for all purposes.”

3. A reading of the aforesaid supplementary agreement thus shows that on the payment of the amount agreed, no further claims could be made and the earlier agreement would cease to have effect.

4. The aforesaid document has, however, not been annexed with the petition but has been disclosed only in the written statement filed by the respondents. There is no mention of this supplementary agreement in the petition and to that extent there is concealment of material fact.

5. Learned counsel for the petitioner faced with this supplementary agreement seeks to make out a case of economic duress which compelled the petitioner to sign the supplementary agreement. In view of the above submissions, a query was posed by this Court as to when did the petitioner dispute the supplementary agreement or claim it was under economic duress and pressure.

6. Learned counsel for the petitioner has drawn the attention of this Court to a letter dated 19.10.2011 (Annexure P-10). The said document is, however, only for release of the payment and refers to the earlier correspondence dated 01.09.2011. The letter dated 01.09.2011 thus seeks to express the view of the petitioner that he would not like to sign the supplementary agreement but the fact remains that after this letter, on 09.09.2011 they did sign the supplementary agreement. The payment of the final bill in terms of the settlement was released on 02.11.2011 and the security and earnest money are said to have been released on 22.11.2011. Thus, at least by the latter date, all the payments had been made.

7. Learned counsel for the petitioner is unable to point out any document whatsoever where the issue of supplementary agreement being executed under economic duress or pressure has been raised.

Infact, it is not even raised in so many words apparently in the present petition which was filed on 31.03.2012. It appears that the petition was lying with the Registry under various objections and it was registered only in the year 2013 and was listed for the first time before the Court on 25.01.2013. Thus, during this long period of time, from the last payment being made on 22.11.2011, there is not even whisper of any plea raised of economic duress or pressure.

8. Learned counsel for the respondent is thus right in his contention that in view of the aforesaid facts and circumstances, the petitioner cannot seek to rake up the issue of surviving disputes to be referred to the arbitration. In this context, he relies upon the judgment of the Supreme Court in **Union of India and others Vs. Hari Singh 2011(1) R.C.R. (Civil) 134**, where it is held that a supplementary agreement obtained a full and final discharge after paying the entire amount which was due and payable to the contractor, the contractor thereafter would not be justified in invoking the arbitration because there was no Arbitral dispute for reference to the arbitration.

9. In **Union of India and others Vs. M/s Master Construction Co. 2011(4) Law Herald (SC) 2982**, it was held that a bald plea of fraud, coercion, duress or undue influence is not enough and the party who sets up such plea must prima-facie establish the same by placing material before the Court to substantiate this plea qua the 'No Claim Certificate' in respect of final payment having been obtained by fraud, coercion or duress.

10. The aforesaid judgment, in my view, applies on all fours in view of absence of any material on record placed by the petitioner to substantiate the plea of economic duress and pressure which is only an oral plea. The petitioner did not even care to file a copy of the supplementary agreement by which the accord and satisfaction took place. There is a considerable hiatus of time between the supplementary agreement and the payment made in pursuance thereof and the invocation of arbitration leave aside the time period spent thereafter in bringing the matter before the Court on account of various office objections.

11. The judgment referred to by learned counsel for the petitioner of the learned Single Judge of this Court in M/s H.R.Construction Company Vs. Union of India and others 2012(2) Law Herald (P&H) 1329, would not come to the aid of the petitioner for the reason that there have to be disputed questions required to be decided by an Arbitrator like whether the petitioner was made to sign on the measurement book or the agreement under threat or coercion?. In the present case, if it was the matter only of printed 'No Due Certificate' signed on a proforma, followed by the issue being raised immediately, one may have appreciated such a plea. That is not the position as there is a supplementary agreement executed followed by the payments made, the last payment being made on 22.11.2011 and yet no action was taken to cast a doubt on the supplementary agreement.

12. I am thus of the view that there is full accord and satisfaction in pursuance of the supplementary agreement dated 09.09.2011 which has not been challenged or assailed by the petitioner and an endeavour made through this petition to rake up the issue of additional payments is clearly an after thought.

The petition is accordingly dismissed leaving the parties to bear their own costs.

**15.11.2013**

'ravinder'

(SANJAY KISHAN KAUL)  
CHIEF JUSTICE