



**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CJ Court

Case: AA 23/2017

Shamusdin Bhat Alias S. Bhat ...Petitioner(s)/Appellant(s)

Through: Mr. R. P. Sharma, Advocate.

v/s

The Managing Director and another Respondent(s)

Through: Mr. Achal Sharma, Advocate

CORAM : HON'BLE THE CHIEF JUSTICE

ORDER
02.02.2024

The instant petition has been filed by the petitioner under Section 11 of the Jammu and Kashmir Arbitration and Conciliation Act, 1997, (*hereinafter referred to as the "Act of 1997"*) for appointment of an arbitrator to resolve the dispute, which according to the petitioner has arisen between him and respondent No. 1 on account of contract executed between them vide Work Order No. 8208/40 dated 01.03.2005 for protection work of Main Dam Seva Hydro Electric Project Stage-11, amounting to Rs. 24,36,000/- and 2nd Work Order for slope Protection, amounting to Rs. 16,36,620/-, thus, totaling to Rs. 40,72,620/-.

1. According to the learned counsel for the petitioner, the petitioner has satisfactorily completed the work assigned to him and also executed the additional work on the asking of the respondents. However, when the time came for payment of the bills, the respondents did not make the full payment and only some part of the payment has been made.

2. Learned counsel for the petitioner submits that there is an Arbitration Clause 14 of the conditions of the tender/work order, which provides



mode for resolution of disputes and differences between the parties through arbitration and the said clause reads as under:-

“In the event of any dispute arising out of this subcontract, the parties hereto agree that the matter shall be referred to the sole arbitration of an officer of the company nominated by the Managing Director of the company (other than concerned with this sub-contract). The award of the Arbitrator so nominated shall be final, conclusive and binding on all parties to this sub-contract.

3. It has been submitted that the dispute has been arisen between the parties for non-payment of the due amount for the work executed by the petitioner. It is also submitted that the petitioner submitted a Communication to the respondent-authorities on 14.06.2017 for appointment of an arbitrator in terms of Arbitration Clause 14 of the conditions of the tender/work order, however, instead of appointing an arbitrator, the respondent-authorities while denying any liability also asked the petitioner to furnish certain documents for examining the claim of the petitioner, as mentioned in the reply dated 29.07.2017. Since, there had been no positive response from the respondents, the petitioner has been compelled to approach this Court seeking appointment of an independent arbitrator under Section 11 of the Act of 1997.

4. Though no affidavit has been filed by the respondents, yet learned counsel for the respondents submits that the question for appointment of an arbitrator in this case does not arise, inasmuch as, it is a time barred claim, as also mentioned in the reply dated 29.07.2017. In contradiction to the same, learned counsel for the petitioner submits that if the respondents claim that this is a time barred claim, then there is no reason why they should have asked the petitioner to furnish certain documents, as mentioned in reply dated 29.07.2017, which indicates that they are still willing to examine the claim of the petitioner, otherwise they might not have asked the petitioner to furnish certain documents.

5. Heard learned counsel for the parties and perused the record.



6. As far as existence of the arbitration clause in the contract is concerned, the same is not in dispute. However, the issue before this Court is that whether this petition is hopelessly time barred or not. Though, it appears to be time barred, yet the respondents have also asked the petitioner to furnish certain documents to examine his claim. Since the respondents have taken a stand that the claim of the petitioner is time barred, therefore, they have shown some inclination to examine the claim of the petitioner.

7. Learned counsel for the petitioner submits that the petitioner had approached this Court belatedly in view of the various assurances made by the respondents from time to time and, as such, there had been some delay to approach this Court.

8. I am of the view that these are the matters, which are based on facts and the same need to be established before the Forum and this Court is not willing to un-suit this present petition merely on the plea of time barred taken by the respondents. Though it will be more prudent to leave it to the forum to decide this issue whether the claim of the petitioner is time barred or not in view of the response of the respondents in their reply dated 29.07.2017, yet this Court is also of the view that if a claim is hopelessly time barred, the appointment of an arbitrator would saddle the respondents of financial burden and the same should be avoided.

9. Under these circumstances, this Court proceeds to appoint an arbitrator in terms of the aforesaid clause of the conditions of the tender/work order on the following conditions:-

- (i) **The arbitrator so appointed shall first decide the preliminary issue as to whether the claim of the petitioner is time barred or not, for which the petitioner would be liable to incur the expenses required for appointment of the arbitrator;**
- (ii) **If in the event the arbitrator decides that the claim of the petitioner is not time barred, in that, even the respondents**



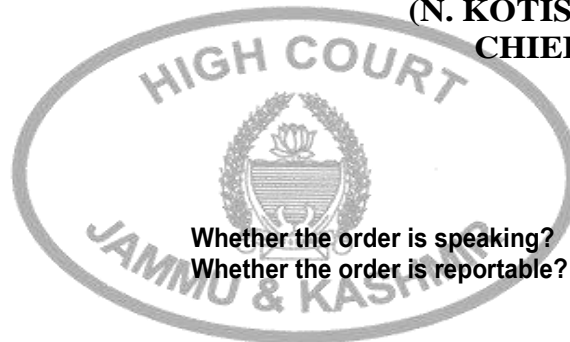
shall be liable to share the cost/expenses of the arbitrator from the initial stage;

10. Accordingly, keeping in mind the arbitration clause, I appoint Hon'ble Mr. Justice Mohan Lal (Former Judge of this High Court) as an Arbitrator, who shall proceed in the matter in accordance with the provisions of the Act of 1997, after affording an opportunity of hearing to both the parties, who are at liberty to raise all the preliminary objections before the Arbitrator. The Arbitrator shall, thereafter, make an award within the time provided in the Act of 1997 itself.

11. The instant matter is *disposed of* in the manner indicated above.

**(N. KOTISWAR SINGH)
CHIEF JUSTICE**

Jammu
02.02.2024
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Yes/No
Yes/No

