

Major (Retd.) Inder Singh Rekhi vs Delhi Development Authority on 24 March, 1988

Equivalent citations: 1988 AIR 1007, 1988 SCR (3) 351, AIR 1988 SUPREME COURT 1007, 1988 (2) SCC 338, (1988) 2 JT 6 (SC), (1991) 1 LJR 923, (1988) 34 DLT 362, 1988 2 JT 6

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:

MAJOR (RETD.) INDER SINGH REKHI

Vs.

RESPONDENT:

DELHI DEVELOPMENT AUTHORITY

DATE OF JUDGMENT 24/03/1988

BENCH:

MUKHARJI, SABYASACHI (J)

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MUKHARJI, SABYASACHI (J)

RANGNATHAN, S.

CITATION:

1988 AIR 1007 1988 SCR (3) 351

1988 SCC (2) 338 JT 1988 (2) 6

1988 SCALE (1) 612

CITATOR INFO :

R 1988 SC1172 (8)

R 1992 SC1918 (8)

ACT:

Arbitration Act, 1940 : Sections 8 and 20-Dispute-Existence of-Essential for appointment of arbitrator-What constitutes a dispute-Whether a dispute has arisen or not-Depends on facts and circumstances of a case.

Limitation Act, 1963: Article 137-Petition/application filed in a civil court-Applicability to-Application under s. 20 of the Arbitration Act-Period of limitation-What is-Accrual of cause of action-When arises.

HEADNOTE:

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The appellant undertook construction of certain houses for the respondent-Development Authority and completed the same on 2nd April, 1980.

The appellant sent several letters to the respondent requesting for finalisation of the bills; the first one on 28th February, 1983 and the last on 4th September, 1985. Ultimately, the appellant served notice, through his counsel requesting the respondent to release the security amount and refer the dispute to arbitration. On respondent's failure to do so, the appellant filed an application in the Court, under section 20 of the Arbitration Act, 1940 seeking a direction for filing the arbitration agreement in the court and referring the dispute to arbitration. A Single Judge of the High Court dismissed the application as barred by time. This decision was upheld by the Division Bench.

Allowing the appeal,

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HELD: 1.1 Article 137 of the Limitation Act, 1963 would apply to any petition or application filed in a civil court. [353E-F]

Kerala State Electricity Board, Trivandrum v. T.P.K.K. Amsom and Bensom, Kerala, [1977] 1 S.C.R. 996 relied on.

1.2 In order to be entitled to an order of reference under s. 20, it

352

is necessary that there should be an arbitration agreement and secondly, difference must arise to which this agreement applied. The existence of a dispute is, therefore, essential for appointment of an Arbitrator under s. 8 or a reference under s. 20 of the Act. [353H, 354A]

1.3 Dispute entails a positive element and assertion in denying, not merely inaction to accede to a claim or a request. Whether in a particular case, a dispute has arisen or not has to be found out from the facts and circumstances of the case. [354F]

1.4 A right to get payment would normally arise on completion of the work and a party cannot postpone accrual of cause of action by writing reminders or sending reminders. But where a bill had not been finally prepared, the claim made by the claimant is the accrual of the cause of action. [354C-D]

In the instant case there was an arbitration agreement. There has been an assertion of claim by the appellant and silence as well as refusal in respect of the same by the respondent. Therefore, a dispute has arisen regarding non-payment of the alleged dues of the appellant. Since final bills had not been prepared, and there was assertion of claim on 28th February, 1983 and there was non-payment, the cause of action arose on that date. [354A-B, D]

The application under s. 20 of the Act having been filed in the Court in January, 1986, i.e. within the period of three years from the date of cause of action, it was

Major (Retd.) Inder Singh Rekhi vs Delhi Development Authority on 24 March, 1988
within time and the High Court was in error in dismissing it
on the ground of limitation. [354G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1178 of 1988.

From the Judgment and Order dated 5.11.1986 of the Delhi High Court in F.A.O. (OS) No. 231 of 1986.

Hardev Singh and Miss Madhu Moolchandani for the Appellant.

S.B. Saharya, V.B. Saharya and Ratna Nair for the Respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. Special Leave granted.

The Delhi Development Authority vide its letter dated 5th October, 1976 accepted the tender of the appellant for construction of 240 Janta Houses at the estimated cost of Rs.24,49,262. The work was to commence on 15th October, 1976 and was required to be completed by 14th July, 1977. By a subsequent extension of time the work was finally completed on 2nd April, 1980 and the houses so constructed have been allotted to several people. Between February 1983 to December 1985 the appellant sent several letters to the respondent requesting them to finalise the bills. It appears, however, that the first of such letters was written on 28th February, 1983. Thereafter the appellant wrote several letters and finally on 4th September, 1985 to the respondent to finalise the bills and ultimately served the notice through his counsel requesting it to release the security of Rs.1 lakh and refer the dispute to arbitration. The respondent failed to do so. In January, 1986 the appellant filed an application under section 20 of the Arbitration Act, 1940 (hereinafter called 'the Act') seeking a direction from the Court that the respondent be directed to file the arbitration agreement in the Court and the dispute be referred to the arbitration. The learned Single Judge of the High Court of Delhi dismissed the application as barred by time. There was an appeal to the Division Bench of the High Court of Delhi. The Division Bench upheld the decision of the learned Single Judge. Hence this appeal to this Court.

The question is, whether the High Court was right in upholding that the application under section 20 of the Act was barred by limitation. In view of the decision of this Court in Kerala State Electricity Board, Trivandrum v. T.P.K.K. Amsom and Bensom, Kerala, [1977] 1 S.C.R. 996, it is now well-settled that Article 137 of the Limitation Act, 1963 would apply to any petition or application filed in a Civil Court. Sub-section (1) of section 20 of the Act provides as follows:

"Application to file in Court arbitration agreement: Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under

Chapter II, may apply to a court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court."

Therefore, in order to be entitled to order of reference under section 20, it is necessary that there should be an arbitration agreement and secondly, difference must arise to which this agreement applied. In this case, there is no dispute that there was an arbitration agreement. There has been an assertion of claim by the appellant and silence as well as refusal in respect of the same by respondent. Therefore, a dispute has arisen regarding non-payment of the alleged dues of the appellant. The question is for the present case when did such dispute arise. The High Court proceeded on the basis that the work was completed in 1980 and, therefore, the appellant became entitled to the payment from that date and the cause of action under article 137 arose from that date. But in order to be entitled to ask for a reference under section 20 of the Act there must not only be an entitlement to money but there must be a difference or dispute must arise. It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on 28th February, 1983 and there was non-payment, the cause of action arose from that date, that is to say, 28th of February, 1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under section 8 or a reference under section 20 of the Act. See Law of Arbitration by R.S. Bachawat, 1st Edition, page 354. There should be dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion in denying, not merely inaction to accede to a claim or a request. Whether in a particular case a dispute has arisen or not has to be found out from the facts and circumstances of the case.

The application under section 20 of the Act was filed in Court in January, 1986, that is to say, within the period of three years; therefore the application was within time. The High Court was in error in dismissing the application on the ground of limitation. The judgment and order of the High Court are, therefore, set aside. The High Court is directed to make an order under section 20 of the Act and give consequential directions in respect of the same. The costs of this appeal would be costs in the arbitration proceeding. The appeal is thus allowed and disposed of as aforesaid.

N.P.V.

Appeal allowed.