

भारतीय न्यायिक

भारत INDIA

रु. 500



FIVE HUNDRED
RUPEES

पाँच सौ रुपये

Rs. 500

सत्यमेव जयते

INDIA NON JUDICIAL

पंजाब PUNJAB

M 633099

ARBITRAL AWARD BY
P.L. AHUJA, SOLE ARBITRATOR
DISTRICT & SESSIONS JUDGE (RETD.)

Arbitration Case No. 308 of 2017
Date of Award: 18.01.2020

In the matter of:

The Lahri Veeran Cooperative Labour and Construction Society
Limited through its cashier Sh. Pawan Kumar, 66/4, Civil Lines,
Near Patwar Khana, Gurdaspur

...Claimant

Versus

1. Chairman cum Managing Director, Punjab State Power Corporation Limited, the Mall, Ludhiana.
2. The Additional Superintending Engineer, Operation Division (Suburban), Punjab State Power Corporation Limited, Pathankot

...Respondents

Argued by: Sh. Rajiv Sharma, Advocate along with Sh. Pawan Kumar,
Cashier, authorized representative of the claimant-Society.

Sh. H.S. Ghuman, Advocate along with Mr. Jaswinder
Singh, Additional Assistant Engineer for the respondents

P. Ahuja

**BEFORE THE ARBITRAL TRIBUNAL CONSISTING OF
SH. P.L. AHUJA, DISTRICT & SESSIONS JUDGE (RETD.) AS
SOLE ARBITRATOR.**

Arbitration proceedings arising out of arbitration case No. 308 of 2017 decided on 18.01.2019 by the Hon'ble The Chief Justice of Punjab and Haryana High-Court.

In the matter of:

1. The Lehri Veeran Labour and Construction Society Ltd.

...Claimant

Versus

1. The Chairman/Managing Director, Punjab State Power Corporation Ltd. Patiala and another.

2. Addl. Superintending Engineer (Operation), Punjab State Power Corporation Limited, Sub Urban, Dhangu Road, Pathankot.

...Respondents

Present: Mr. Pawan Kumar, Cashier
for the claimant-society.

Mr. Raghubir Singh, Cashier, Sub-Division Dinanagar, PSPCL
for the respondents.

Proceedings of the **12th Sitting** of the Arbitral Tribunal held on January 18, 2020 at 1:15 PM at the Arbitration Centre, Sector 17, Chandigarh.

ORDER

I had intimated both the parties telephonically as well as by email

that the Award shall be pronounced at 2:30 PM today.

I had come to the Arbitration Centre, Chandigarh today at 12:00 Noon for conducting another arbitration case between the parties today. That case was adjourned because of the non-availability of the Ld. Counsel for the respondents.

Since, the Cashiers of both the parties are present and they have made a request that they have to go a long way upto Gurdaspur and due to fog, there would be inconvenience if they are late. They have made a request to take up the case earlier. Accordingly, the case has been taken up.

The Cashier of the respondents has given a cheque of Rs. 3,000/-

The Award has been pronounced. A signed copy of the same has been supplied to the representatives of both the parties.

January 18, 2020

Sd/-
(P.L. Ahuja)
Sole Arbitrator

AWARD

1. On an application under Section 11 (b) of the Arbitration and Conciliation Act, 1996, Hon'ble the Chief Justice, Punjab and Haryana High Court vide order dated 18.01.2019 (received on 08.02.2019), appointed the undersigned as an Arbitrator to adjudicate upon disputes and difference between the parties.
2. Both the parties were asked to appear before me on 13.03.2019 at Chandigarh Arbitration Centre, Chandigarh. Claimant was directed to file Claim Petition on or before the date fixed.
3. The claimant filed statement of facts and claims alleging that it is a registered Cooperative Society under the Punjab Cooperative Societies Act and the claim is signed, verified and filed by its cashier Pawan Kumar who has been authorized by the Society on the basis of resolution dated 05.04.2019 passed by the Society in his favour. As per the need and necessity of the work namely "shifting of domestic/commercial meters of 11 KV Majra Feeder, Sub-Division Dina Nagar Pathankot" the estimate bearing No.13199/2011-12 was prepared and passed by the concerned authority of the respondent and the same was approved for the sanctioned amount of Rs.53,17,205/- by the Additional Superintending Engineer (Operation), Sub Urban Division Dina Nagar, Pathankot vide memo No. 6099 dated 20.06.2011. As per the said sanctioned estimate, the cost of the labour was Rs. 8,04,662.00. The details of the description of each and

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every item with the quantity and date as well as amount are reproduced as under:

Sr. No.	Description	Rate	Qty.	Rate	Total
1.	Labour charges for erection of 8/9 Meter PCC Pole	No.	26	325	8450
2.	Labour charges for Bore Earthing up to water level of 20 in 1 Meter Pillar Box by welding of Ms Flath, if required with appropriate quantity of Charcoal & Salt etc. as per detail of bore depth as under:-				
	a. Boring with 3" dia up to 15 Meter depth for earthing	No.	138	1100	150700
	b. Boring with 3" dia up to 30 Meter depth for earthing	No.	0	2750	0
3.	Charges for providing concrete foundation (including charges for supply of civil works material) for Erection of 20 in 1 Meter Pillar Box as per attached drawing	No.	137	1250	171250

P. Ahluwalia

	including fixation of Pillar box on foundation				
4.	Labour Charges for shifting of one No. Energy Meter in all type of Pillar Boxes/Metal Meter Boxes as per detail of service cable from MMB/Pillar box to consumer premises as per detail as under:-				
	a. Up to 15 ft. length	No.	0	98.98	0
	b. Up to 30 ft. length	No.	0	121	0
	c. Up to 50 ft. length	No.	406	147	59682
	d. Up to 75 ft. length	No.	0	222	0
	e. Up to 100 ft. length	No.	532	315	167580
	f. Up to 150 ft. length	No.	100	465	46500
	g. Up to 175 ft. length	No.	0	475	0
	h. Up to 200 ft. length	No.	401	500	200500
	Note: These shifting of meter charges shall include the charges for dismantlement of				

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	existing meter, Meter Cup Board, PVC/XLPE Cable, Main/Submain etc. and fixing of Meter in Pillar Box & Metal Meter box mounting of metal meter box (meter) on pole and lying of incoming and outgoing XLPE/PVC Cables with GSL and Wooden Cleats for connection of meter etc.				
	Total Labour				804662.00

4. The tender of the said work was called by the respondent-Corporation and the claimant participated in the race of the tender process and the rates of the claimant were found to be lowest and the said work was allotted vide work order No. 4 dated 28.06.2011 by the respondent-Corporation to the claimant-Society.
5. As per allegations of the claimant, it participated in the race of the said tender process under the bona fide belief and impression that the work would be executed in time for earning the contractual profit as per law and that the department shall fulfill their part of the contractual obligation

P. Alankar

in time but the department failed to fulfill the same. As per work order (Annexure C-4) the time period of the said work was 60 days from the date of allotment of work, thus, the stipulated period of start of work was 28.06.2011 and its stipulated date of completion was 28.08.2011. It has been contended that as per Clause No. 3.1 of the work order-cum-agreement (Annexure C-4) the same was to be executed as per the PSPCL tender/approved drawing and design and the department was under the contractual obligation to provide the approved drawing and design immediately beside the material which was to be used in that work in time. Every contract agreement contains reciprocal contractual obligations which are to be fulfilled by the parties to the contract and until and unless the primary contractual obligations are not fulfilled till then the agency to whom the work is allotted does not come within the ambit to start and complete the work. In case there is any lapse on the part of department in fulfilling the primary contractual obligations then the agency to whom the work is allotted is entitled to the reasonable compensation. It has been further alleged by the claimant that it was mandatory on the part of department to provide sites where the pillar boxes were to be installed by the agency but the department failed to provide detailed particular layout plan of the same showing the specific sites. The respondents gave oral directions in piece meals regarding the sites to fix the electric pillar boxes/poles by showing the sites according to their own choice and will. Had the department prepared the layout plan

P. B. Singh

showing the specific sites for installing pillar boxes in that situation the work would have been executed smoothly.

6. The claimant has further contended that the respondent-Corporation did not provide the material in time in complete form for the completion of the work due to which the work was prolonged. The material was not provided according to the need and requirement in adequate form though the department knew that only skilled labour was required for this purpose and the claimant had deployed skilled labour by giving wages in advance but on account of not supplying the material in time labour engaged remained sitting idle thereby putting unnecessary financial burden upon the claimant.
7. It has been further stated that the department was required to release the running payments in time for the smooth and earlier completion of work. The first running bill amounting to Rs.200380.00 was submitted by the claimant but the amount was not released.
8. According to Clauses 2.6, 3.14, 3.15, 3.17 and 3.21 work was to be executed as per drawings specifications etc; that in case of delay on the part of the contractor it was required to pay penalty; that in case of unsound, imperfect or unskillful workmanship the agency was required to rectify or remove and re-execute the work; that after the work is completed final bill was to be paid on the certification of at least a senior Executive Engineer that the work was done according to the drawings and specifications and detailed measurements were to be recorded. In

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case of default on the part of agency in commencing the work or if the contractor commits breach of any terms and conditions of the contract, the Board could terminate the contract and forfeit the security deposit.

9. The claimant has contended that since the respondent-Corporation failed to fulfill their part of the contractual obligations in time, it resulted into the prolongment of work causing unnecessary financial burdens upon the claimant like overhead charges, idling of labour, machinery, increase in price index depriving the Society to use the money in another work. The claimant-Society submitted the representations dated 13.07.2011 and 15.07.2011 requesting the respondents to supply the material but the request was not acceded to in time and in complete form. The material was not supplied within the stipulated time and even after the expiry of the stipulated time. The material which was approved lastly and given by the department from the store of PSPCL vide Sr. No.43/5556 dated 04.04.2012 (Annexure C-8) was issued in May, 2012 and the work was completed in all aspects in the end of May, 2012 by the Society.

10. The claimant had been submitting representations from time to time to the respondents besides making oral submissions. Vide official order No.26 dated 30.03.2010 Punjab State Power Corporation revised the CSR rates with 2720% premium to 5300% premium and as the said work was got executed by the department after 27.08.2011, the payment as per revised rates with the premium of 5300% was to be given.

S. Ahluwalia

Representations Annexure C-12, C-14 and C-15 were submitted to the respondent-Corporation.

11. According to the claimant the first running bill of Rs.2,89,322/- (Ex.C-16) was submitted by it and the same was duly checked and passed by the various concerned authorities of the department but the same was not released in time. The said bill was of Rs.3,15,511/- but after making the deduction of income tax, labour cess, besides security @ 5% amounting to Rs.15,776/- the payment of Rs.2,89,323/- was released. It has been contended that the security is the trust money and the same ought to have been released immediately after the completion of work to the agency.
12. Later on the claimant-Society submitted the second running bill (Annexure C-17) of Rs.6,93,554.60 to the concerned Additional Superintending Engineer but the department failed to release the payment. Therefore, the representation (Annexure C-18) dated 14.09.2013 was served upon the department.
13. It has been further stated that as per Codal Rules 7.16 to 7.32 of the DFR it was the part of the contractual obligation of the department to prepare the bill and release the payment but the same was not fulfilled by the department. A Civil Writ Petition No.28416 of 2013 (Annexure C-19) was filed and Hon'ble High Court disposed it on 20.12.2013 directing the department to decide the representation of the agency and to release the payment without any further loss of time. Instead of releasing the payment the department passed order No.36 dated 18.02.2014 (Annexure

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C-20) in wrong and illegal way without giving any opportunity to the claimant and going against the record. The claimant filed an objection petition No.51/53 dated 25.03.2014 (Annexure C-21) and the same has not been disposed of till date. It has been contended that the work was allotted to the claimant on labour rate for a sum of Rs.8,04,662/- in lump sum and it was not legally permissible to make the deduction of VAT. The claimant-Society submitted the representations to the Department on different dates mentioned in para No.18 of the statement of claim.

14. It has been contended that as per directions of the concerned Engineer Incharge of the respondent-Corporation each and every pillar box was installed with the depth of 15 meters after digging two bores and thus it was not legally permissible on the part of the department to make the recovery of earthing of one board from the due payment. It has been averred that the work was executed as decided by the Board by giving the double bore earthing to each and every pillar box and the recovery was not legally permissible and that too in a unilateral manner.
15. The claimant has made a claim no.(i) of Rs.6,93,554.60 in respect of the executed work, claim no.(ii) of difference of the premium as the premium was revised w.e.f. 01.04.2010, claim no.(iii) of Rs.15,776/- under the head of security, claim no.(iv) of compensation to the tune of Rs.7,24,195.80 due to prolongment of work, claim no.(v) of Rs.19,32,100/- in respect of idling of labour and machinery, claim no.(vi)

O. Shankar

of interest for past, pendente lite and future period apart from claim no.(vii) of cost.

16. The claim of the claimant has been contested by the respondents by filing a statement of defence. A preliminary objection has been raised by the respondents that the present arbitration claim is barred by law of limitation. It has been stated that the agreement/work order between the parties was executed on 28.06.2011 and as per Clause 3.19 of the said agreement all disputes arising out of the work order are to be referred for arbitration. Further the claimant-Society did not invoke the arbitration clause and instead instituted civil suit before the Civil Judge (Sr. Divn.), Amritsar on 24.12.2015. Later on the claimant-Society moved an application for permission to withdraw the suit with liberty to avail remedy before Arbitrator and that application was allowed. The claimant-Society served a notice on Respondent and without giving an opportunity to the Respondent-corporation to appoint an Arbitrator approached the Hon'ble High Court under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator which was disposed of on 18.01.2019. It has been contended that the cause of action arose in favour of the claimant-Society on 10.05.2012 and the period of limitation for invoking arbitration was three years, therefore, the suit instituted by the claimant-Society before the Civil Judge (Sr. Divn.), Amritsar was also barred by limitation.
- P. Ahluwalia*

17. It has been admitted that the tender submitted by the claimant-Society was found to be lowest and work was allotted to it vide work order dated 28.06.2011. It has been stated that the respondent-Corporation had fulfilled all its contractual obligations as laid down in the work order dated 28.06.2011 and the allegations of the claimant are incorrect and no question of payment of compensation to claimant arises. It has been denied that the respondent-Corporation failed to demarcate the place where work was to be executed. On the other hand, it has been stated that the layout plan is part of the sanctioned estimate and in order to justify delayed execution of work the claimant-Society has taken a false plea of non-preparation of the layout plan. It has also been denied that the requisite material for execution of work was not supplied to the claimant-Society on time by the respondent-Corporation. It has also been stated that the payment was released by the respondent-Corporation within one week of the submission of bill by the claimant-Society. Against second running bill, an amount of Rs.2,25,548/- was paid after deducting the tax. It has been stated that the claimant-Society did not complete the work as allotted to it and was also blacklisted by the Superintending Engineer, PSPCL, Gurdaspur vide memo No.8662 dated 17.04.2013. It has been denied that the claimant-Society is entitled to receive payment at increased labour rates since the rates were revised before execution of the work order. It has been further stated that if the claimant-Society felt aggrieved by the speaking order passed by the respondent-Corporation it

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could have challenged it before appropriate forum. It has been contended that the vouchers annexed with the claim petition as Annexure-A are highly exaggerated with mala fide motive.

18. In its replication, the claimant has denied that the cause of action arose in its favour only on 10.05.2012. On the other hand, it has been asserted that since the final bill has not been passed by the corporation, therefore, it amounts to recurring cause of action. The claimant has controverted the averments in the statement of defence by the respondents and has reiterated the allegations in the statement of claim.

On the pleadings of the parties, the following issues were framed on 02.08.2019:

1. *Whether the claimant-society is a registered cooperative society and the claim has been filed by an authorized person of the society? OPP*
2. *Whether the claimant is entitled to amount of Rs.6,93,555.60 as detailed in para No.18 (i) page No.27 of the statement of claim towards the executed work? OPP*
3. *Whether the claimant is entitled to amount towards the claim of difference of premium as detailed in para No.18 (ii) if so, to what amount? OPP*
4. *Whether the claimant is entitled to an amount of Rs.15,776/- towards the deduction of security? OPP*
5. *Whether the claimant is entitled to Rs.7,24,195.80 as compensation due to prolongment of work? OPP*
6. *Whether the claimant is entitled to Rs.19,32,100/- towards idling and machinery? OPP*
7. *Whether the claimant is entitled to interest for past, pendente lite and future period, if so at what rate? OPP*

Attends

8. *Whether the statement of claim is within the period of limitation? OPP*

9. *Relief.*”

20. I have appraised the entire evidence, written arguments filed by the claimant and heard the arguments addressed by the learned counsel for the parties. I may mention that on the date of arguments i.e. 20.12.2019 after addressing the oral arguments, the learned counsel for the claimant had filed written arguments and the copy of the same was supplied to the learned counsel for the respondents. However, the learned counsel for the respondents had stated that he did not want to file any written arguments and the documents on record and the oral arguments be taken into consideration for pronouncement of the Award.

21. Since the respondents have taken a preliminary objection regarding the arbitration petition being barred by limitation, therefore, I deem it appropriate to decide the issue relating to the bar of limitation first.

22. Issue No.8

The learned Counsel for the claimant has urged that the statement of facts and claims is well within the period of limitation. He has contended that the plea regarding limitation was also taken by the respondent before the Hon'ble High Court in the petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 and the same was turned down by the Hon'ble High Court while appointing this tribunal as Arbitrator. The learned counsel for the claimant has relied upon the judgment reported in 2011

P. Alankar

(2) PLR 410 and has argued that once the reference is made by the Court then Arbitrator is to decide the claim on merits and the claim cannot be dismissed as time barred.

23. I have carefully considered the above arguments of the learned counsel for the claimant but I regret my inability to accept the same. A perusal of the order dated 18.01.2019 passed by Hon'ble the Chief Justice of the High Court of Punjab and Haryana nowhere shows that the Hon'ble High Court turned down the plea of the respondents relating to the claims of the Claimant being barred by limitation. Hon'ble the Chief Justice observed that the parties had entered into a contract and Clause 3.19 whereof contains an arbitration agreement and the learned counsel for the parties agreed for the appointment of an Arbitrator. Accordingly, the application was disposed of by appointing me as an Arbitrator to adjudicate upon disputes and difference between the parties.

24. As far as the ruling titled Punjab State Electricity Board vs. M/s Sutlej Construction Ltd. 2011 (1) PLR Punjab and Haryana 410 is concerned, it shows that the same relates to Section 20 of the old Arbitration Act, 1940.

That Arbitration Act stands amended and Section 11 (6A) of the Arbitration and Conciliation Act reads as under:

[(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.]

25. The language of Section 11(6A) of the Arbitration and Conciliation Act, 1996 is pre-emptory in nature. Therefore, in cases where there is an arbitration clause in the agreement it is obligatory for the Supreme Court or High Court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the disputes to an Arbitrator. In other words, Arbitrator is competent to decide all the pleas taken by the parties including his own jurisdiction and the plea of limitation, if any besides other issues. I am of the opinion that though I have been appointed as an Arbitrator by Hon'ble the Chief Justice of the High Court, yet I can go into the question- "whether the claim of the claimant has been filed within the period of limitation or not"?
26. It has been urged by the learned counsel for the claimant that after passing of the speaking order (Annexure C-20) by the respondent-corporation on 18.02.2014 the claimant moved objections (Annexure C-21) on 25.03.2014 and those objections have not been decided till date. He has submitted that the cause of action is recurring and the present statement of claim is not barred by limitation. The learned counsel for the claimant has admitted that the period of limitation as per Article 137 of the Limitation Act is 3 years. He has contended that initially the claimant had filed a civil suit for recovery against the respondents and during the pendency of that civil suit, an application for withdrawal of the suit with permission to file arbitration proceedings was filed before the learned

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Civil Judge (Sr. Divn.), Amritsar and that was accepted vide order dated 10.11.2017 as admitted by RW-1 Sh. Kuldeep Singh, Additional Superintending Engineer of the respondents. He has further argued that after the Civil Court had granted permission for availing that remedy on the same cause of action, thereafter a notice was served upon the respondents on 27.11.2017 copy of which is Ex.C-35. After a few days, the Claimant moved a petition under Section 11(6) of the Arbitration and Conciliation Act 1996 which was allowed by Hon'ble High Court and this Tribunal was appointed as Arbitrator. He has submitted that once the Civil Court has granted the relief for availing the remedy before the Arbitrator and the same was allowed by the Hon'ble High Court by appointing the undersigned as an Arbitrator, the present claims are well within the period of limitation.

27. I have given my anxious consideration to the above submissions of the learned counsel for the claimant. It is the admitted case of the parties that the work namely shifting of domestic/commercial meters of 11 KV Majra Feeder under the operation Sub-Division, Dina Nagar, Pathankot was allotted to the claimant-Society vide work order No.4 dated 28.06.2011 Ex.C-4. It is also admitted that the material as per the need and necessity of the said work was to be supplied by the department and the claimant was to be paid in respect of the executed work in the shape of cost of labour. The period of contract for the said work was 3 months from the allotment of work as per the general conditions No.3 and in condition

R. Ahluwalia

No.13 it was mentioned that work should be completed within 60 days from the issue of work order. According to the claimant, the material for execution of the work was not supplied as and when required and RW-1 Mr. Kuldeep Singh, Additional Superintending Engineer admitted in his cross-examination after perusing the contents of the documents Ex.C-8 to C-11 that the material was supplied to the agency upto 04.04.2012. As per case of the claimant, the material was issued lastly in May, 2012. As per para No.13 of the claim statement, the work was completed in all aspect in the end of May, 2012. The claimant was made the payment of first running bill (Annexure C-16) to the tune of Rs.3,15,511/-. The claimant submitted the second running bill to the tune of Rs.6,93,554.60 on 10.05.2012. The copy of representation (Annexure C-24) addressed to the Chief Engineer of the respondent Corporation shows that the work was completed as per material received in May, 2012 and thereafter the labour was removed on 31.5.2012 and put on some other work .It is further stated that the running bill of May, 2012 was prepared after measurements by the concerned SDO and concerned J.E. and the same was submitted to Additional Superintending Engineer but no payment was made. I am of the view that it can be inferred from the above submissions that the cause of action arose in favour of the claimant-Society on 10.05.2012. Since as per Section 43 of the Arbitration and Conciliation Act, 1996 read with Article 137 of the Limitation Act, 1963

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the period of limitation prescribed for invoking arbitration was 3 years, therefore, the claimant could invoke arbitration after May, 2012.

28. The sequence of events shows that the claimant filed a Civil Writ Petition No.28416 of 2013, copy of which is Ex.C-19 (complete petition has not been submitted only two pages and the order passed thereon by the Hon'ble High Court have been filed). The copy of order dated 20.12.2013 of the Hon'ble High Court reveals that the claimant filed a writ in the nature of mandamus for a direction to the respondents to release the running bills amounting to Rs.16,26,150/-/. The claimant had approached Additional Superintending Engineer operation Sub-Division, PSPCL Pathankot by way of representation dated 05.12.2013 (copy of the same has not been produced). As per request of the learned counsel for the claimant Additional Superintending Engineer of respondent-Corporation was directed by Hon'ble High Court to consider and decide the representation of the petitioner within a reasonable time. The order was passed by the Hon'ble High Court without expressing any opinion on the merits of the case including the issue of limitation. Thereafter, Additional Superintending Engineer decided the representation vide order dated 18.02.2014 (Annexure C-20) whereby he found that the claimant-Society had not yet completed contract work allotted to them and moreover claim of the claimant-Society was wrong one and it was not entitled to receive amount of Rs.16,26,150/- along with interest @ 18% p.a. as claimed. It is worth noting that the claimant instead of claiming

J. Ahluwalia

any remedy against that order filed an objection (Annexure C-21) before the Additional Superintending Engineer, Pathankot. The learned counsel for the claimant has not been able to cite any law or rule in accordance with which the objection petition was maintainable before the same very officer. Though the learned counsel for the claimant has argued that the objection petition has not yet been decided, therefore, the cause of action is subsisting, yet this contention is devoid of any force. The filing of objection petition or the representation could not extend the period of limitation. In *Union of India and others vs. MK Sarkar (2010) 2 SCC 53* it was held that the issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed with a Court's direction. Neither a Court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation or erase the delay and laches.

29. It is pertinent to note that the claimant quantified the relief and filed a civil suit for recovery of Rs.5,45,406/- along with interest @ 18% p.a. as well as suit for mandatory injunction directing the respondents to pay the claim of idling of labour with interest and cost on 24.12.2015 though the cause of action had arisen in its favour in May, 2012. Thus, the civil suit itself was barred by limitation. The copy of plaint of that civil suit has not been produced by the claimant before this Tribunal. However, the documents attached with the copy of order dated 18.01.2019 Ex.R-1



show that the claimant moved an application under Order 23 Rule 1 of the CPC before the learned Additional Civil Judge (Sr. Divn.) Amritsar for allowing it to withdraw the civil suit and to allow the remedy before the Arbitrator on the same cause of action. The learned Civil Judge, Amritsar vide his order dated 10.11.2017 accepted the application and the suit was dismissed as withdrawn under Order 23 Rule 1 CPC with permission to file fresh suit/proceedings on the same cause of action before the Arbitrator. Significantly, in the application for withdrawal of the civil suit the claimant pleaded that it came to know from the documents supplied by the defendant-corporation that there was an Arbitration Clause No.3.19 for reference of disputes to Arbitrator in the condition of work regulation 1997. The application was moved on 17.10.2017 though the civil suit was filed as far back as on 24.12.2015. The plea of the claimant that it came to know about the clause of arbitration in October, 2017 cannot be believed. At any rate, the petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 was filed before the Hon'ble High Court on 04.12.2017. As per Rule 2 of Order 23 of CPC in any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted. Consequently, I am of the view the since the cause of action arose to the claimant in May, 2012 the prayer for invoking arbitration on 04.12.2017 is patently barred by time. I am not impressed with this contention of the

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learned counsel for the claimant that since the Civil Court had granted the relief for availing the remedy and the Hon'ble High Court had appointed me as Arbitrator, therefore, the claims are well within the period of limitation.

30. The learned counsel for the claimant has further contended that unless and until final bill is prepared and passed by the department till then period of limitation does not start. In support of this contention, he has placed reliance on '*G.C. Nagaraju vs. the Executive Engineer PWD Mysore Division*' 2001 CCC 444 (Karnataka), '*Major Inder Singh Rekhi vs. Delhi Development Authority*' 1988 AIR (SC) 1007 and '*Union of India vs. Ajabul Biswas* AIR 2008 (NOC) 589 (Calcutta).
31. After going through the material on record, I feel that the above arguments of the learned Counsel of the claimant are devoid of any force. I have already observed that the claimant has taken a plea in its statement of claim as well as representation that the work was completed in all respect in the end of May, 2012 by the Society. Even the labour was withdrawn and was put on other work. The second running bill was prepared by the claimant-Society on 10.05.2012 and that was also submitted to the respondent. According to the respondents the second (final) bill was passed for an amount of Rs.2,54,271.22. It is also noteworthy that the amount was quantified and the claimant itself filed a suit for recovery for an amount of Rs.5,45,406/- along with interest @


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18% p.a. as well as suit for mandatory injunction directing the defendants to pay the claim of idling of labour with interest and cost on 24.12.2015. All these circumstances go to show that since the claimant was not made the payment of the requisite amount, therefore, it calculated the amount because it knew the cost of its work. Now it does not lie in its mouth to allege that since the final bill was not prepared by the respondents, therefore, the period of limitation has not started.

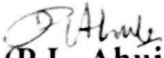
32. Adverting to the rulings cited by the learned counsel for the claimant, the ruling *G.C. Nagaraju vs. Executive Engineer PWD Mysore Division (supra)* shows that it was after considering the facts of that case that Hon'ble Karnataka High Court came to a finding that cause of action for suit arose after service of legal notice. The ruling *Inder Singh Rekhi vs. Delhi Development Authority (supra)* is also not applicable. In that case after considering the facts of that case it was found that limitation had to be computed from the date, the claim made for the payment was denied. In the instant case, the payment as desired by the respondents was not paid despite submission of the second running bill and filing of representations. Even the representation filed before the Additional Superintending Engineer was dismissed vide his speaking order dated 18.02.2014 (Annexure C-20). It clearly goes to show that the payment to the claimant was denied. Therefore, invoking arbitration clause in December, 2017 clearly shows that the claims of the claimant are barred by time.
- P. Alankar

33. So far as the ruling *Union of India vs. Ajabul Biswas (supra)* is concerned, it contains only "head notes" of the ruling and the detailed judgment is not printed. It is simply mentioned in the head note of the ruling that the final bill remained pending till dispute was referred to arbitration and the plea of limitation in raising claim was not tenable. Hence, none of the rulings is applicable to the facts of the present case.
34. In view of the above discussion, it is held that the claimant has failed to prove that the statement of claims is within the period of limitation. This issue is decided against the claimant.
35. Since in view of my findings on issue No. 8, the statement of claims is beyond the period of limitation, it is not necessary to decide the remaining issues. Consequently, statement of claims of the claimant is dismissed. In the circumstances of the case, the parties are left to bear their own costs.

Pronounced in Chandigarh
Date: 18.01.2020


(P.L. Ahuja)
Sole Arbitrator
District & Sessions Judge (Retd.)

All pages signed.


(P.L. Ahuja)
Sole Arbitrator