

Before J. V. Gupta, J.

DES RAJ,—Appellant.

versus

FOOD CORPORATION OF INDIA,—Respondent.

Civil Revision No. 1132 of 1984.

July 24, 1984.

Arbitration Act (X of 1940)—Section 20—Limitation Act (XXXVI of 1963)—Article 137—Contract containing an arbitration clause—Disputes arising between the parties—Application under section 20—Limitation for filing such an application—Right to apply—When accrues.

Held, that it is the residuary article 137 of the Limitation Act, 1963 which applies to an application filed under section 20 of the Arbitration Act, 1940. The said article provides for a period of three years for bringing an application for which no period of limitation is provided in the Third Division of the Schedule to the Limitation Act from the time when the right to apply accrues. Where the parties have entered into contracts for each year, the right to apply under Article 137 would accrue from the date when each contract was completed. Thus, the period of limitation would be three years from the date when the contract was completed. If the application under section 20 of the Arbitration Act was filed after more than three years from the completion thereof, it would be clearly barred by time.

(Paras 3 and 7).

Petition under section 39 of the Arbitration Act for revision of the order of the Court of Mrs. Bimla Gautam, Additional District Judge Jullundur, dated 8th December, 1982 affirming that of Shri D. S. Chhina, Additional Senior Sub-Judge, Jullundur, dated 9th November, 1981 dismissing the petition.

Satya Parkash Jain Advocate and Sarita Gupta Advocate, for the Appellant.

G. C. Garg, Advocate and S. K. Singla, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.—

(1) The petitioner, Des Raj, proprietor of Shri Ganesh Rice Dal and General Mills, moved an application under section 20 of the

Arbitration Act, (hereinafter called the Act), on the allegations that he had entered into agreements with the Food Corporation of India (hereinafter referred to as the Corporation), for shelling paddy for the years, 1971-72, 1972-73 and 1973-74. The said application was filed on February 26, 1980. According to the petitioner, the disputes arose between the parties over certain payments. The petitioner maintained that the Corporation had to pay him huge amounts. In spite of his repeated requests the respondent did not settle his dues. In paragraph 4 of the application, it was specifically stated that his claim was finally rejected by the respondent,—*vide* letter dated April 28, 1978. It was also stated that,—*vide* agreements, it was agreed that in case of any dispute arising thereof, the same shall be referred to the arbitration of the Managing Director of the Corporation or any person appointed by him; hence the application for getting the agreement filed in Court and referring the dispute to the named arbitrator. The application was contested *inter alia* on the ground that the same was barred by time. However, on merits, it was admitted that the parties had entered into the agreements for shelling of paddy for the years 1971-72, 1972-73, and 1973-74. However, it was denied that there was any dispute between the parties regarding the non-payment of the amount. It was maintained that it had to recover a sum of Rs. 4,180.49 for the years under reference from the petitioner. The petitioner,—*vide* letter, dated March 23, 1978 and April 7, 1978, agreed that the said amount should be deducted from the earnest money deposited by him for taking the contract for the year 1977-78. The total outstanding amount against the petitioner was, thus, completely recovered. On the pleadings of the parties, the trial Court framed as many as seven issues. All the issues were decided in favour of the petitioner except issue No. 2 which was to the effect whether the petition was barred by time. Thereunder, it was found that the application was barred by time under article 137 of the Limitation Act. In appeal, the only point urged before the lower appellate Court was whether the application was barred by limitation. However, it affirmed the finding of the trial Court thereon and, thus, maintained the order dismissing the application. Dissatisfied with the same, the petitioner has come up in revision to this Court.

(2) The only controversy between the parties is: as to whether the application under section 20 of the Act, filed on February 26, 1980, was within limitation or not.

Des Raj v. Food Corporation of India (J. V. Gupta, J.)

(3) It is the common case of the parties that it was the residuary article 137 of the Limitation Act, which applied to such applications. The said article provides a period of three years for bringing an application for which no period of limitation is provided in the Third Division of the Schedule to the Limitation Act from the time when the right to apply accrues. Thus, the question to be determined in this case is : as to when the right to apply accrued to the petitioner for making the application under section 20 of the Act. According to the averments made in the application filed by the petitioner, it was only in paragraph 4 thereof wherein it was stated that his claim was finally rejected,—*vide* letter dated April 28, 1978. According to the learned counsel for the petitioner, it was from that date that the application was filed within three years. According to the learned counsel, once it was found that the dispute existed when the application was filed, then, it was obligatory on the Court to refer the dispute to the named arbitrator and that there after it was for the arbitrator to decide whether the claim was within time or not. It was also contended that it was for the Corporation to show that the petitioner's claim was settled and that no dispute existed. Since the matter was under active consideration of the Corporation, the right to apply did not accrue to the petitioner till it was finally rejected. Reference in this behalf was made to *Rupam Pictures v. Brijmohan*, (1) and *Mt. Bolo v. Mt. Koklan*, (2). On the other hand, the learned counsel for the respondent contended that the period for the completion of each contract was one year. After the completion of the contract, the three years' period to bring an application, as provided under article 137 of the Limitation Act would begin from the time of the completion thereof. The last contract was for the year 1973-74. The application under section 20 of the Act having been made by the petitioner in the year 1980 was clearly barred by time. The learned counsel further contended that the petitioner failed to produce the letter dated April 28, 1978, mentioned in paragraph 4 of the application and, therefore, it has been rightly held by both the Courts below that no claim was pending with the Corporation for consideration and as such the application filed under section 20 of the Act, on February 26, 1980, was barred by time. In support of the contention the learned counsel relied upon *Bhagwat Dayal v. Pritam Dayal*, (3). *Union of India v. M/s Vijay Construction Co.*, (4) and

(1) AIR. 1977 Bombay 425.

(2) AIR 1930 Privy Council 270.

(3) AIR 1980 Delhi 25.

(4) 1981 Delhi 193.

Gurdev Ram v. Food Corporation of India, (5).

(4) I have heard the learned counsel for the parties and have also gone through the relevant evidence on the record.

(5) There is no averment in the application as to when the petitioner filed his claim with respect to the contracts relating to the years 1971—74, nor there is any evidence to show that any such claim was made and rejected by the Corporation; rather letters, dated March 23, 1978, Exhibit R. 8, and dated April 7, 1974, Exhibit R. 9, written by the petitioner to the Corporation show that some amount was due to it from him which was deducted out of his security deposited for the year 1977-78. In any case unless there was any evidence to show that any such claim was filed by the petitioner with the Corporation with respect to the contracts for the years 1971—74 within the period of limitation, then the rejection thereof subsequently was of no consequence. Of course, the question as to when the right to apply accrued is a question of fact or in any case is a mixed question of law and fact. Both the Courts below have concurrently found that the petitioner though alleged in the application that his claim was finally rejected on April 28, 1978, which fact was denied by the Corporation in its written statement, yet he did not produce the said letter or any other evidence to that effect. In the absence of any such evidence, it could not be successfully argued on behalf of the petitioner that the findings of the Courts below in this behalf are wrong or illegal.

(6) Somewhat similar matter came up for consideration in *Bhagwat Dayal's case* (supra), wherein it was observed in paragraph 8 of the judgment, *inter alia* as follows :

“The question then is when the right to move a petition under section 20 of the Arbitration Act arose. In other words, when the right to apply accrued, or when the cause of action arose for such a petition. The right to apply accrued on the day when the applicant for the first time became entitled to claim relief.”

Similarly, in *Vijay Construction Co.'s case* (supra), it was observed that the question of the time of the commencement of the arbitration and the question of limitation for filing an application under section

(5) 1983 Pb. L.R. 410.

Parma Nand v. The State of Haryana (D. S. Tewatia, J.)

20 of the Act, are, two distinct matters and deal with different eventualities. The right to apply under section 20 accrues to a party to the contract containing arbitration clause on the date when the contract was rescinded by the other party thereto and the limitation of three years has to be counted from that date and not from the date of the notice when the party to the arbitration agreement serves a notice on the other party thereto requiring the appointment of an arbitrator. In *Gurdev Ram's case* (supra), it was held that the right to apply for arbitration accrued when the Corporation failed to pay the amount alleged to be due to the applicant.

(7) In the present case, the right to apply under article 137 of the Limitation Act would accrue to the petitioner from the date when each contract was completed for which the stipulated period was one year only. Thus, for the contract for the year 1973-74, the period would be three years from the date when the contract was completed. Since the application under section 20 of the Act, was filed after more than three years from the completion thereof, it was clearly barred by time. Once it is so held that the application under section 20 of the Act was barred by time, then it becomes immaterial whether any dispute in regard to any claim, existed between the parties or not.

(8) In this view of the matter, this revision petition fails and is dismissed with costs.

N.K.S.

Before D. S. Tewatia and S. S. Sodhi, JJ.

PARMA NAND,—*Petitioner.*

versus

THE STATE OF HARYANA,—*Respondent.*

Criminal Revision No. 1634 of 1982

April 24, 1984.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 2(ia) (m), 2(xii-a) and 16(1) (a) (i)—Prevention of Food Adulteration Rules, 1955—Rule 5 Paragraph A. 05.09 of Appendix