

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD**

**TUESDAY, THE THIRTIETH DAY OF JUNE  
TWO THOUSAND AND TWENTY**

**PRESENT**

**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**ARBITRATION APPLICATION NO: 150 OF 2016**

**Between:**

M/s Sree Vishnu Contractions, Represented by Mr. T. Venu Babu (Contractor)  
S/o. Subba Rao, Aged about 43 yews, Situated at RUBY-207, My Home Jewel,  
Madinaguda, Hyderabad - 500049.

**...APPLICANT**

**AND**

1. The Chief Engineer (Air Force), No. 2 DC Area, MES Road, Yashwanthpur Post, Bangalore.
2. Commander Works Engineers (Air Force), Bowenpally (Post), Secunderabad - 500011.
3. The Garrison Engineer, Air Force Academy, Dundigul, Hyderabad - 043.

**...RESPONDENTS**

Application under Section 11 (5) of the Arbitration and Conciliation Act, 1996 and Scheme of Appointment of Arbitrator praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to appoint an Arbitrator to resolve the disputes between the parties which arose under the Agreement CA.No. CWE/AF(S)/AFA/17 dated 18-08-2010 as per the Section 11 (5) of Arbitration and Conciliation Act, 1996 and rules framed there under.

This Application coming on for hearing, upon perusing the petition and affidavit filed in support thereof and upon hearing the arguments of Sri Somanchi Venkateswarlu, Advocate for the Appellant and of Sri N. Rajeshwara Rao, Assistant Solicitor General, for the Respondents.

**The Court made the following ORDER:**

**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**ARBITRATION APPLICATION No.150 of 2016**

**ORDER:**

This Arbitration Application is filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') by the applicant seeking to appoint an Arbitrator for resolution of disputes between the parties as per Agreement CA No.CWE/AF (S)/AFA/17, dated 18.08.2010.

2. The case of the applicant is that the respondents entered into an agreement vide CA No.CWE/AF(S)/AFA/17, dated 18.08.2010, for improvement of sports infrastructure and repair to roof treatment for certain OTM Accn in Tech Area, Hyderabad with the applicant. The applicant completed the work and handed over the same to the respondents. Being satisfied with the work done by the applicant, the respondents again allotted additional sites to the applicant for renovation stating that payments would be made separately. Believing the respondents, the applicant completed the extra work entrusted to it. It is submitted that the applicant made numerous attempts to get the payment released for the additional work done, but on one pretext or other, respondents are postponing the same and on persistent demands, respondents revealed that the said items used for additional renovation are not scheduled items, and as such they are unable to make payments. Thereafter, the applicant issued notice, dated 30.03.2013, to the 1<sup>st</sup> respondent

seeking for appointment of an arbitrator as per conditions 70 and 71 of IAFW -2249 within 30 days. When the applicant tried to contact the respondents to settle the disputes amicably, respondents started ignoring the phone calls. Hence, the applicant filed an application, dated 15.05.2013 before the 3<sup>rd</sup> respondent informing about their indifference and unresponsiveness, to which there has been no reply. Thereafter, the applicant again sent a legal notice, dated 20.12.2013 to the 1<sup>st</sup> respondent intimating the respondents about nominating an arbitrator as per conditions 70 and 71 of IAFW -2249 to resolve the disputes/claims raised therein, for which there has been no reply from the respondents. The applicant further submits that as per the terms of agreement between the parties, the applicant had fulfilled its obligation by completing the entrusted renovation work, for which the respondents ought to make payments as per the agreed terms. Unfortunately the respondents are not making payments. Therefore, the respondents have committed breach of the agreement by not making the payments. Since the respondents are wrongfully denying the payments, to which they owe to the applicant lawfully, the applicant filed O.P.No.575 of 2014 before learned District Judge, Ranga Reddy District, for appointment of commissioner to inspect the work site and make note of the physical features of the work site, since the respondents are trying to make alterations in the work site in order to evade making payments for the above said dispute. The attempts of

the applicant did not evoke any response and the applicant has no other alternative except seeking for appointment of arbitrator with a view to adjudicate the above mentioned dispute and consider the claim of the applicant.

3. Respondents filed counter stating that the applicant had signed the final bill without specific claims and also signed "No further claim" certificate at the time of submission of Final Bill and accordingly final bill amount was received by the applicant without any protest. As per condition 65 of IAFW-2249 (General Conditions of Contracts), forming part of the contract agreement, no further claims shall be made by the applicant after submission of final bill and shall be deemed to have been waived and extinguished and ultimately sought for dismissal of the application.

4. Heard the learned counsel for the applicant and Sri N.Rajeshwar Rao, learned Assistant Solicitor General for the respondents.

5. Learned counsel for the applicant would submit that though respondents admitted in the counter that the applicant had carried extra work, the respondents intentionally did not release the payment for the additional work done and postponing the same on one pretext or other. Only on the assurance given by the respondents that they will pay the extra cost for extra work, the applicant had undertaken the extra work. That the respondents have not disputed about existence

of arbitration clause. That the scope of enquiry under Section 11 (6) of the Act is very limited and merits and demerits of the claims cannot be considered in this application. In support of his contention, he placed reliance on a Judgment of the Apex Court in **National Insurance Company Limited v. M/s. Boghara Polyfab Private Limited**<sup>1</sup>

6. On the other hand, Sri N.Rajeshwar Rao, learned counsel for the respondents would submit that the applicant submitted final bill without specific claim/protest and "No further claim certificate" was signed by the applicant at the time of submission of final bill, therefore, accord and satisfaction has been fulfilled as per Section 63 of the Indian Contract Act. He further submitted that as per condition No.65 of IAFW 2249 forming part of the contract agreement, no further claim shall be made by the applicant (contractor) after submission of final bill. He further submitted that there is no arbitral dispute in referring the arbitration clause. In support of his contention, he placed reliance on a Judgment of the Apex Court in **M/s P.K Ramalah & Co v. Chairman and Managing Director, NTPC**<sup>2</sup>.

7. In view of rival contentions of both the parties, the points that arise for consideration in this application are:

- 1) Whether there is accord and final satisfaction as pleaded by the respondents through the Final Bill, as pleaded by the respondents in terms of Condition No.65 of IAFW 2249 (GCC), can be valid ground to dismiss the application?

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<sup>1</sup> 2009 (1) SCC 267

<sup>2</sup> (1994 Supp) 31 Supreme Court Cases 126

- 2) Whether the applicant prima facie established coercion and undue influence in signing the Final Bill?

8. **POINTS 1 & 2:**

Admittedly, the applicant entered into contract agreement vide CA No.CWE/AF(S)/AFA/17, dated 18.08.2010, for improvement of sports infrastructure and repair to roof treatment for certain OTM Accn in Tech Area, Hyderabad, and that the said work had been completed by the applicant as per the terms and conditions of the Contract Agreement and Final Bill presented by the applicant was paid by the respondents and 'no further claim' certificate was also signed by the applicant. During the course of execution of said work, on the request made by the respondents, the applicant states that he had attended extra work, but same is disputed by the respondents and says all amounts are paid and only after a period of two years subsequently, the applicant addressed letter dated 30.03.2013 for appointment of an arbitrator within 30 days. For the sake of convenience, the said letter is extracted hereunder:

"To:

30.03.2013

The Chief Engineer (Air Force)  
Military Engineer Services  
No.2, DC Area, MES Road  
Yeshwanthpur Post  
Bangalore-560 022

Dear Sir,

Sub: Appointment of Arbitrator-Reg.

Ref: Improvements to Sports Infrastructure and repairs  
To Roof Treatment to certain OTM Accn in CWE/AF (S)/  
AFA/ 17 of 2010-2011.



Please treat this letter as a notice under condition 70 & 71 of IAFW-2249.  
Kindly appoint an Arbitrator within 30 days.

Thanking you.

Yours faithfully,  
For Sree Vishnu Constructions  
Sd/-  
VENU BABU  
Proprietor

Copy to  
Commander Works Engineer (Air Force)  
Bowenpally Post  
Secunderabad - 500 011.\*

A perusal of the aforesaid letter addressed by the applicant to the 1<sup>st</sup> respondent goes to show that the applicant simply referred to the improvements to sports infrastructure and repairs to Roof Treatment to certain OTM Accn in Tech Area at AFA Hyderabad and straight away requested to appoint an arbitrator within 30 days. There is no mention about the works done by the applicant i.e., improvements to sports infrastructure and repairs outside the scope of contract agreement with the respondents. Without mentioning anything with regard to the alleged payments towards extra work by the respondents, the applicant straight away issued notice invoking arbitration clauses 70 & 71 of IAFW 2249. That apart, it was the specific allegation of the learned counsel for the applicant that the amount under Final Bill was paid under coercion and undue influence, without mentioning the additions/alterations, as agreed by the respondents. But, the said coercion and undue influence as alleged by the applicant against respondents was neither pleaded in any of the correspondence by the

applicant nor was specifically adverted to in the notice invoking arbitration. Even while invoking arbitration clauses 70 & 71 under IAFW 2249 by notice dated 30.03.2013, he did not mention about the alleged coercion and undue influence by the respondents while making payments under Final Bill. That apart, in the subsequent correspondence by the applicant in letter dated 15.05.2013, there is no whisper about the alleged coercion and undue influence. The applicant raised such plea only in the affidavit filed in support of this application. It is also pertinent to note here that there is no correspondence by the applicant with the respondents with regard to alleged coercion and undue influence. Except making bald statement in the affidavit, no factual foundation is laid by the applicant either in the pleadings or in the correspondence with the respondents.

9. That apart, though it is stated that the applicant filed OP No.575 of 2014 on the file of District Judge, R.R.District, L.B.Nagar, for appointment of commissioner to inspect the work site and make note of the physical features to the work site, there is nothing on record to show the progress in that case.

10. It is pertinent to note that the applicant failed to offer any plausible explanation for not raising the issue of coercion and undue influence immediately after payment under Final Bill. As already observed supra, the applicant, after receiving the payments under Final Bill, had signed 'no further claim' certificate. Since the full and final payment is made in the Final



Bill and the applicant signed 'no further claim' certificate, as the arbitration application is liable to be dismissed on that ground alone, since the applicant signed the same without any protest/objection. A party, who comes to the court, must come with clean hands. When fraud, undue influence and coercion is pleaded, at least some factual foundation must be laid in the pleadings, which is lacking. In the present application, by way of passing reference made allegations of undue influence and coercion, as such, this application is liable to be dismissed on that ground alone. When once there is full and final satisfaction, there exists no arbitral dispute, as rightly contended by the learned counsel for the respondents.

11. Since invocation of arbitration is prior to Amendment Act, 2015, the provisions of said Act, 2015 are not applicable to such arbitral proceedings which have commenced in terms of the provisions of Section 21 of the Principal Act, unless otherwise agreed by the parties. (see **Union of India vs. Parmar Construction Company (2019) 15 SCC 682**). The aforesaid principle was followed in the case of **Union of India v. Pradeep Vinod Construction Company reported in 2020 (2) SCC 464**. While considering an application an application under Section 11(6) of the Act, the Hon'ble Supreme Court held that if the party is unable to establish a claim of undue influence or fraud, or appears to be lacking in credibility, it is not open to the Court to refer the dispute to arbitration. (see **ONGC Mangalore Petrochemicals v. ANS Constructions Limited**

**2018 (3) SCC 373).** A bald plea of undue influence is not sufficient, the applicant has to establish a prima facie case in order to be entitled to be referred to arbitration. Without establishing the prima facie case, fraud and undue influence by placing material on record, applicant is not entitled for referring the matter to the arbitration. **(see New India Assurance Company Limited v. Genus Power Infrastructure Limited (2015) 2 SCC 424).** When once one of the parties adopts a path of full understanding and executes a document in furtherance of the same, it is not open to him to take recourse of arbitration thereafter. **(see Wapcos Limited v. Salma Dam Joint Venture reported in 2020 (3) SCC 169[2019 SCC Online 1464].**

12. In **National Insurance Co., Limited v. Boghara Polyfab Private Limited** (supra), the Hon'ble Supreme Court has enunciated three categories of issues that may arise where the intervention of the Court is sought for appointment of an arbitral Tribunal in an application under Section 11 of the Act. Para 17 of the said decision reads as follows:-

*"17. Where the intervention of the Court is sought for appointment of an Arbitral Tribunal under Section 11, the duty of the Chief Justice or his designate is defined in **SBP & Co.** This Court identified and segregated the preliminary issues that may arise for consideration in an application under Section 11 of the Act into three categories, that is (i) issues which the Chief Justice or his Designate is bound to decide; (ii) issues which he can also decide, that is issues which he may choose to decide; and (iii) issues which should be left to the Arbitral Tribunal to decide.*

*17.1 The issues (first category) which Chief Justice/his designate will have to decide are:*

*(a) Whether the party making the application has approached the appropriate High Court.*

*(b) Whether there is an arbitration agreement and whether the party who has applied under Section 11 of the Act, is a party to such an agreement.*

17.2 The issues (second category) which the Chief Justice/his designate may choose to decide (or leave them to the decision of the arbitral tribunal) are:

*(a) Whether the claim is a dead (long barred) claim or a live claim.*

*(b) Whether the parties have concluded the contract/ transaction by recording satisfaction of their mutual rights and obligation or by receiving the final payment without objection.*

17.3 The issues (third category) which the Chief Justice/his designate should leave exclusively to the arbitral tribunal are:

*(i) Whether a claim made falls within the arbitration clause (as for example, a matter which is reserved for final decision of a departmental authority and excepted or excluded from arbitration).*

*(ii) Merits or any claim involved in the arbitration..."*


Even according to the principle laid down in the aforesaid judgment, which is relied on by the learned counsel for the petitioner, in the second category, it is clarified that those issues can either be decided by the Chief Justice or his designate may choose to decide or leave them to the decision of the arbitral tribunal with regard to whether the claim is a dead (long barred) claim or a live claim and whether the parties have concluded the contract/ transaction by recording satisfaction of their mutual rights and obligation or by receiving the final payment without objection. In this case, the respondents have taken plea with regard to full and final settlement by way Final Bill and the applicant pleaded undue influence and coercion, but failed to *prima facie* establish the same, as such, this Court took up that issue and found that there is full and final satisfaction.

13. In the decision relied upon by the learned counsel for the respondents in **M/s P.K Ramaiah & Co's case (supra)**, the Hon'ble Apex Court held that if accord and satisfaction is established, no arbitral dispute exists for referring to arbitration.

14. In view of above facts and circumstances, there is no merit in the Arbitration Application. Accordingly, the same is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

SD/- M.SANTHI VARDHANI  
JOINT REGISTRAR

//TRUE COPY//

  
SECTION OFFICER

To,

1. One CC to Sri Somanchi Venkateswarlu, Advocate [OPUC]
2. One CC to Sri N. Rajeshwar Rao, Assistant Solicitor General, High Court for the State of Telangana, at Hyderabad. [OPUC]
3. Two CD Copies.

MP



HIGH COURT

DATED:30/06/2020



ORDER

ARB.APPL.No.150 of 2016

DISMISSING THE ARBITRATION APPLICATION.

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HCPA  
D-18/8/2020.