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Applications filed under Section 11(5) and 11(6) of the Arbitration Act must be decided at the earliest by the High Courts.

M/s Shree Vishnu Constructions vs. The Engineer in Chief, Military Engineering Service & Ors.

Citation Special Leave Petition (C) NO. 5306 of 2022

Date 19 May 2022

Court Supreme Court of India

Coram Hon'ble Mr. Justice M.R. Shah

Hon'ble Mr. Justice B.V. Nagarathna

1. BRIEF FACTS:

- 1.1 On 06.10.2010, M/s Shree Vishnu Constructions (**"Applicant"**) entered into a Contract Agreement (**"contract"**) with Engineer in Chief, Military Engineering Services and others (**"Respondents"**) for construction of two blocks of Admin-cum-Technical accommodation with double storey in RCC framed structure with PCC solid block masonry along with connected services.
- 1.2 During this period, certain modifications were requested by the Respondents, and accordingly Applicant carried out the required modifications as per the instructions.
- 1.3 The dispute arose when the Applicant requested for the release of payment and even after making persistent requests, the Respondents kept postponing the same as according to them the items used for modifications were not scheduled items.
- 1.4 When the dispute was not been able to settle amicably, the Applicant on 30.03.2013 issued a notice to the Respondents for appointment of the Arbitrator within 30 days as per the conditions 70 and 71 of IAFW-2249 under the contract but the Respondents did not give any reply to the notice.
- 1.5 Due to this unresolved issue, an Arbitration Application (**"Application"**) was filed by the Applicant under Section 11(5) of the Arbitration and Conciliation Act, 1996 (**"Act"**) before the High Court for the State of Telangana (**"High Court"**) seeking to appoint an Arbitrator for resolution of dispute between the parties.
- 1.6 On 30.06.2020, the Application filed under Section 11(5) of the Act was dismissed by the High Court on the basis that in the case no Arbitral Dispute exists as satisfaction and accord was established.
- 1.7 Aggrieved by the impugned final judgment and order passed by the High Court, for appointment of an Arbitrator, a Special Leave Petition was filed by the Applicant before the Hon'ble Supreme Court of India (**"Supreme Court"**).

2. ISSUE RAISED:

- 2.1 Whether the High Court had committed an error in disposing off the Application filed under Section 11(5) of the Act?

3. DECISION OF THE COURT:

- 3.1 The Hon'ble Supreme Court observed that the Applications under Section 11(5) and Section 11(6) of the Act for appointment of an Arbitrator are pending before the respective High Courts since more than one year and in some cases it's even for more than four to five years.
- 3.2 The Hon'ble Supreme Court was of the view that for a variety of reasons Civil Courts take number of years for deciding and disposing of the suits. Therefore, the Act was enacted so that commercial disputes would get resolved at the earliest and in this way Arbitration Proceedings would be accepted as an effective Alternative Dispute Resolution Mechanism.
- 3.3 The Hon'ble Supreme Court observed stated that *if the Arbitrators are not appointed at the earliest and the applications under Sections 11(5) and 11(6) of the Arbitration Act are kept pending for a number of years, it will defeat the object and purpose of the enactment of the Arbitration Act and it may lose the significance of an effective Alternative Dispute Resolution Mechanism.*
- 3.4 The Hon'ble Supreme Court observed that Commercial Court Act, 2015 mandates that commercial disputes are to be decided and disposed of within one year. Also, the Act mandates the Arbitrators to declare the award within the period of one year. Thus, if the

applications under Section 11(5) and Section 11(6) are pending for number of years then also it would defeat the object of the Act.

- 3.5 The Hon'ble Supreme Court held and directed all the Chief Justices of respective High Courts to ensure that all applications under Section 11(5) and Section 11(6) and other applications, either for substitution and/or change of the Arbitrator which are pending for more than one year from the date of filing must be decided within six months from the date of order.

4. PSL OPINION:

- 4.1 Arbitration and Conciliation Act, 1996 was enacted with an object of resolving the disputes within a certain time framework which will promote the confidence among the individuals who are opting for this Alternative Dispute Resolution Mechanism.
- 4.2 Arbitration provides a sense of confidence to the parties to resolve their dispute but the delay in disposing the case not only dilutes the purpose of the Act, but the litigants may also lose faith in the justice delivery system. It will raise the question on Arbitration as an effective mechanism to resolve the dispute and will also affect the ease of doing business as well as the economy of the country.
- 4.3 Therefore, the view of Supreme Court was in the right direction that the applications filed must be decided within a specific time period as provided in the Act to foster and protect the very idea for which the Act was enacted at the first place.