P.Radha Bai vs P.Ashok Kumar on 26 September, 2018

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Bench: S. Abdul Nazeer, N. V. Ramana

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 7710-7713 OF 2013

P. RADHA BAI AND ORS. …APPELL

VERSUS

P. ASHOK KUMAR AND ANR. …RESPO

J U D G M E N T N.V. RAMANA, J.

1. These appeals are filed, aggrieved by the judgment and order dated 18.06.2012 in the Civil Revision Petition Nos. 2151, 2246, 2383 and 2458 of 2012 passed by the High Court of Judicature at Andhra Pradesh at Hyderabad.

2. An interesting question of law arises in this batch of petitions, concerning the applicability of Section 17 of the Limitation Act, 1963 ['Limitation Act'] for condonation of a delay caused on the account of alleged fraud played on the objector (party challenging the award) beyond the period prescribed under Section 34 (3) of the Arbitration and Conciliation Act of 1996 ['Arbitration Act'].

3. The facts which give rise to this question fall into a narrow compass. Originally one Mr. P. Kishan Lal carried on business and acquired several properties. On his death, Mr. P. Kishan Lal was survived by eight (8) legal heirs

(Appellant Nos. 1 to 6 and Respondent Nos. 1 and 2).

4. After the death of Mr. Kishan Lal, several disputes have cropped up on the division of properties. Having failed to resolve the dispute, the parties turned towards arbitration to resolve the dispute. Five Arbitrators were appointed to adjudicate and distribute eleven properties belonging to them.

5. On 18.02.2010, the arbitrators passed a unanimous Award providing for the division of properties and businesses. The parties received the Award on 21.02.2010. There is no dispute on the receipt of the Award by the parties.

6. The Respondents allege that after the pronouncement of the award, the Appellants in bad faith entered into a Memorandum of Understanding (MoU) with the Respondents. According to the Respondents, the Appellants agreed to give certain additional properties to Respondent No. 1, which were more than what were provided in the Award. The Respondents alleged that after entering into the MoU, the Appellants were required to execute Gift and Release Deeds to give effect to the MoU. However, the Appellants delayed the execution of the Gift and Release Deeds as contemplated by the MoU.

7. In the meanwhile, the three□month period and the extended period of 30 days for challenging an Award under Section 34(3) of the Arbitration Act had expired. After the time limit expired, the Appellants filed an Execution Petition (EP) for execution of the Award. The trial court held that EP was not maintainable. On appeal, the High Court set aside the order of the trial court and held that the Execution Petition was maintainable and directed the trial court to decide it on merits.

8. When the Respondents realized that the Appellants were delaying the execution of the Gift Deed contemplated by the MoU, the Respondents on 08.02.2011 filed an application under Section 34(3) of the Arbitration Act for setting aside the Award. This filing was 236 days after the receipt of the Award by the Respondents. The application was accompanied by another application under Section 5 of the Limitation Act seeking condonation of the delay of 236 days. In the application for condonation of delay, the Respondents alleged that:

a. Award was served on the Respondents on 21.02.2010;

b. They were laypersons and were not aware of the legal requirement of filing objections within the period prescribed under the Arbitration Act.

c. Since they were dissatisfied with the Award, they raised objections before the learned Arbitrators. The Arbitrators called upon all the parties and

conducted conciliation. Accordingly, the parties entered into a MoU. The MoU contemplated for execution of Gift Deed and Release Deed in favour of Respondent No.1.

However, the Appellants failed to execute the required documents as per the MoU with an intent to defeat their rights.

d. One of the Respondents was physically indisposed for one month.

9. During the pendency of the aforesaid interim application, seeking condonation of the delay, the Respondents filed another application being I.A. No. 1977 of 2011 in I.A. No. 598 of 2011, seeking an order of the trial court to summon the Sub-registrar, Charminar to prove the veracity of the Memorandum of Understanding and to counter the allegations raised by the Appellants herein, as to the falsification and fabrication of the Memorandum dated 09.04.2010. For completeness of narration, it may be stated that additional I.A.s, being I.A. No. 210 and 211 of 2012, were sought by the Respondent seeking certain documents to be brought on record.

10. By order dated 21.02.2012, the trial court dismissed the IA.

No. 598 of 2011, pertaining to the condonation of delay in filing the Section 34 application. The Trial Court while dismissing the aforesaid application as indicated above, reasoned as under- i. That the Court is not empowered to stretch the limitation period beyond the requisite period given under Section 34 of the Arbitration Act. ii. Placing reliance on Union of India vs. Popular Construction Co., (2001) 8 SCC 470 and Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department, (2008) 7 SCC 169, held that the language of Section 34 of the Arbitration Act mandated a strict adherence to the time period provided thereunder and the extension beyond the same was not possible under any circumstances. Therefore, Section 5 of the Limitation Act was not applicable to an application filed under Section 34 of the Arbitration Act.

iii. Based on the aforesaid judgments of this Hon'ble Court, and the provisions of Section 34 (3) of the Arbitration Act, the City Civil Court held that Section 5 of the Limitation Act, 1963, has no application, as the Court has no power to condone the delay beyond three months and thirty days. On this ground alone, the objections filed under Section 34 were liable to be dismissed.

iv. That the trial court rejected the contention that the Respondent (objector) was unable to file the objections within the period of limitation on the ground of illness and no medical certificate was provided to substantiate such claim.

v. That ignorance of law on behalf of the Respondents, to be not aware of the technicalities provided under

Section 34 of the Arbitration Act was not excusable. vi. Moreover, the trial court came to a conclusion that equitable grounds cannot be utilized to create exceptions not mandated under the statutory law. We may note that the trial court although discussed about the existence of the Memorandum of Understanding dated 09.04.2010 and its impact on the Respondent's delay in filing the Section 34 application, there is no specific discussion concerning the applicability of Section 17 of the Limitation Act in the trial court order. Moreover, other interim applications filed by the respondents were also dismissed consequentially.

11. Being aggrieved by the dismissal, respondents preferred four Civil Revision petitions, before the High Court of Andhra Pradesh under Article 227 of the Constitution of India, being C.R.P. No. 2151, 2246, 2383 and 2458 of 2012. By the impugned order dated 18.06.2012, the High Court remanded the matter to the trial court concerning the applicability of Section 17 of the Limitation Act in an application under Section 34 of the Arbitration Act. The High Court observed "Even though Mr. K. Prabhakar, learned counsel for the respondents sought to argue that when Section 5 of the Act is excluded, automatically Section 17 of the Act also gets excluded, I refrain from expressing any opinion on this aspect, because this is required to be considered by the lower court at the first instance before this Court examines the same at an appropriate stage. On this short ground, I feel that it is just and appropriate to remand the matter back to the learned Chief Judge, City Civil Court, Hyderabad for considering the above□mentioned pleadings of the petitioners and pronouncing upon the same with reference to the applicability or otherwise of the provision of Section 17 of the Act. Therefore, without expressing any opinion on these aspects, the learned Chief Judge is directed to reconsider the case only to this limited extent and pass a fresh order after hearing both parties, within a period of two months from the date of receipt of this order. It is made clear that the orders of the lower Court in respect of the other aspects stand confirmed".

(emphasis supplied)

12. Aggrieved by the remand order passed by the High Court on the applicability of Section 17 of the Limitation Act to the proceedings, the Appellants have approached this Court in these appeals.

13. Before we delve into any other aspect of this case, it may be important to note that we would have agreed with the High Court wherein a remand may have been required in usual course for considering the applicability of Section 17 of the Limitation Act as there is an apparent insufficiency of reasons in the trial court order. But, in this case there has been a considerable delay in resolving the dispute. The very purpose of speedy justice delivery mechanism would be frustrated by such delays if the matter is allowed to linger before the courts. We had positively persuaded the parties several times to come to an amicable settlement and asked

the advocates representing them to use their good offices to refer parties to mediation and avoid decades of litigation. But, our efforts were not met with much success in any event.

14. The High Court could have examined the legal issue of applicability of Section 17 of the Limitation Act to an application filed under Section 34 of the Arbitration Act. This is a pure question of law. Only if Section 17 of Limitation Act was applicable to a Section 34 application, the question of factual satisfaction of the ingredients of Section 17 to the present case and a consequent remand to the trial court would arise.

15. The learned counsel for the appellants, Mr. Devansh A. Mohta, argued that□i. Limitation period provided under Section 34 (3) of the Arbitration Act begins 'only' upon the receipt of the award by the parties and the same cannot be diluted by a different starting point provided under the Limitation Act, in light of Section 29 (2) of the Limitation Act.

ii. The period of limitation under Section 34(3) of the Arbitration Act is 'unbreakable' and is meant to run continuously.

iii. Definitive time limit is necessary to ensure expeditious and effective resolution of disputes between the parties.

iv. The mandate of Popular Construction Case (supra) and Consolidated Engineering Case (supra) wherein the emphasis on 'fixed period' needs to be given effect to.

v. The expression 'had received the arbitral award' found in Section 34 (3) of the Arbitration Act expressly excludes applicability of Section 17 of the Limitation Act.

vi. This Court should appreciate the difference between concealment of right to action being different from preventing a person from taking action.

16. On the contrary, the learned counsel for the respondents, Mr. Yashraj Singh Deora, had contended that□i. The reasoning provided under Popular Construction Case (supra) and Consolidated Engineering Case (supra) clearly indicates to the applicability of Section 17 of the Limitation Act, similar to the applicability of Section 14 of the Limitation Act.

ii. Limitation Act is applicable to all proceedings before the court.

iii. It is evident that the Arbitration Act under Section 34 (3) provides for a different time period than the one present under Article 137 of the Limitation Act, accordingly, the special law would therefore, prevail in so far as the issue of period of limitation is concerned. However, for 'computation of the period of limitation' or arriving at the 'prescribed period' the

provisions of Section 4 to 24 of the Limitation Act would automatically apply unless they are expressly excluded by the special law.

iv. That it has been highly inequitable for the respondents, who were victims of bad faith negotiation undertaken by the Appellants to derail the respondents from pursuing this case for enforcement of their rights.

17. We have heard the counsels for both the parties at length, and also perused the material available on record.

18. We are now to examine whether Section 17 of the Limitation Act is applicable while determining the limitation period under Section 34(3) of the Arbitration Act?

19. This analysis has to necessarily begin from Section 29(2) of the Limitation Act, which states
29 (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(emphasis added)

20. Section 29(2) is divided into 2 limbs. This is evident from the conjunctive "and" in the said provision. The inter-relation between these two limbs was considered by a Bench of five Judges of this Court in Vidyacharan Shukla v. Khubchand Baghel, [1964] 6 SCR 129.

21. The first part stipulates that the limitation period prescribed by the special law or local law will prevail over the limitation period prescribed in the Schedule to the Limitation Act. In this case, the Arbitration Act is a "special law" which prescribes a specific period of limitation in Section 34(3) for filing objections to an arbitral award passed under the 1996 Act and consequently the provisions of Arbitration Act would apply. We also note that there is no provision under the Limitation Act dealing with challenging an Award passed under the Arbitration Act.

22. The second part mandates that Sections 4 to 24 of the Limitation Act will apply for determining the period of limitation "only in so far as, and to the extent to which, they are not expressly excluded by such special or local law." Thus the extent of the application of Sections 4 to 24 of Limitation Act will apply for determining the limitation period under the Arbitration Act only if they are not expressly excluded by Arbitration Act.

23. We are conscious that this Court in several pronouncements has extended Section 14 of Limitation Act to Section 34 of

Arbitration Act and thereby excluded the time spent in bonafide pursuing proceedings in a Court which lacks jurisdiction. (State of Goa v. Western Builders (2006) 6 SCC 239 at para 25; Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department, (2008) 7 SCC 169 at para 27 and 29; Coal India Ltd. v. Ujjal Transport Agency, (2011) 1 SCC 117 at para 6; M.P. Housing Board v. Mohanlal & Co., (2016) 14 SCC 199 at para 13). Similarly, this Court also extended Section 12 of the Limitation Act to the Arbitration Act and excluded the day on which the Award was received from computing the starting period under Section 34(3). We note that none of these cases dealt with the question whether the scheme of Section 17 of the Limitation Act is consistent with Section 34 of the Arbitration Act.

24. Relying on these pronouncements, the Respondents' counsel asserted that there is no express exclusion of Section 17 in the Arbitration Act and therefore the benefit of Section 17 of Limitation Act should be extended while determining the period of limitation under Section 34(3).

25. This requires us to consider the phrase "express exclusion" in Section 29(2) of the Limitation Act. This Court in a series of cases held that the express exclusion can be inferred either from the language of the special law or it can be necessarily implied from the scheme and object of the special law.

26. A Bench of five Judges in Vidyacharan Shukla v. Khubchand Baghel, AIR 1964 SC 1099, interpreting the phrase "express exclusion" observed:

> "The contention is that sub-section (3) of Section 116-A of the Act not only provides a period of limitation for such an appeal, but also the circumstances under which the delay can be excused, indicating thereby that the general provisions of the Limitation Act are excluded. There are two answers to this argument. Firstly, Section 29(2)(a) of the Limitation Act speaks of express exclusion but there is no express exclusion in sub-section (3) of Section 116-A of the Act; secondly, the proviso from which an implied exclusion is sought to be drawn does not lead to any such necessary implication".

27. This principle was further crystallised in Hukumdev Narain Yadav v. Lalit Narain Mishra, (1974) 2 SCC 133 wherein a Bench of three Judges held that:

> "It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is, in this case the Act, and

> the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special taw does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject□ matter and scheme of the special law exclude their operation". (emphasis added)

28. A Bench of three Judges in Commissioner of Customs and Central Excise v. Hongo India (P) Ltd., (2009) 5 SCC 791 reiterated this principle when it held:

> "It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject□ matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court".

29. These principles were reiterated by this Court in Union of India v. Popular Construction Co., (2001) 8 SCC 470 at page 474; Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission, (2010) 5 SCC 23 at para 32; Gopal Sardar v. Karuna Sardar, (2004) 4 SCC 252 at para 13.

30. Thus, the inquiry is □whether the text or the scheme and object of the Arbitration Act excludes the application of Section 17 of Limitation Act while determining the limitation period?

31. We therefore have to contrast Section 17 of the Limitation Act with Section 34(3) of the Arbitration Act. The relevant part of Section 17 states

17. Effect of fraud or mistake.— (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him, the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

> 32. Section 17 does not extend or break the limitation period. It only postpones or defers the commencement of the limitation period. This is evident from the phrase "the period of limitation shall not begin to run".
>
> 33. In contrast, Section 34(3) of the Arbitration Act states
>
> 34. Application for setting aside arbitral award□ ... ... (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal.

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter. (emphasis added)

34. Section 34(3) deserves careful scrutiny and its characteristics must be highlighted:

(a) Section 34 is the only remedy for challenging an award passed under Part I of the Arbitration Act. Section 34(3) is a limitation provision, which is an inbuilt into the remedy provision. One does not have to look at the Limitation Act or any other provision for identifying the limitation period for challenging an Award passed under Part I of the Arbitration Act.

(b) The time limit for commencement of limitation period is also provided in Section 34(3) i.e. the time from which a party making an application "had received the Arbitral Award" or disposal of a request under Section 33 for corrections and interpretation of the Award.

(c) Section 34(3) prohibits the filing of an application for setting aside of an Award after three months have elapsed from the date of receipt of Award or disposal of a request under Section 33. Section 34(3) uses the phrase "an application for setting aside may not be made after three months have elapsed". The phrase "may not be made" is from the UNCITRAL Model Law[1] and has been understood to mean "cannot be made". The High Court of Singapore in ABC Co. Ltd v. XYZ Co. Ltd, [2003] SGHC

[1] " An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal".

107) "The starting point of this discussion must be the Model Law itself. On the aspect of time, Article 34(3) is brief. All it says is that the application may not be made after the lapse of three months from a specified date. Although the words used are 'may not' these must be interpreted as 'cannot' as it is clear that the intention is to limit the time during which an award may be challenged. This interpretation is supported by material relating to the discussions amongst the drafters of the Model Law. It appears to me that the court would not be able to entertain any application lodged after the expiry of the three months period as Article 34 has been drafted as the all□encompassing, and only, basis for challenging an award in court. It does not provide for any extension of the time period and, as the court derives its jurisdiction to hear the application from the Article alone, the absence of such a provision means the court has not been conferred with the power to extend time".

(d) The limitation provision in Section 34(3) also provides for condonation of delay. Unlike Section 5 of Limitation Act, the delay can only be condoned for 30 days on showing sufficient cause. The crucial phrase "but not thereafter" reveals the legislative intent to fix an outer boundary period for challenging an Award.

(e) Once the time limit or extended time limit for challenging the arbitral award expires, the period for enforcing the award under Section 36 of the Arbitration Act commences. This is evident from the phrase "where the time for making an application to set aside the arbitral award under Section 34 has expired".2 There is an integral nexus between the period prescribed under Section 34(3) to challenge the Award and the commencement of the enforcement period under Section 36 to execute the Award.

35. If Section 17 of the Limitation Act were to be applied to determining the limitation period under Section 34(3), it would have the following consequences

(a) In Section 34(3), the commencement period for computing limitation is the date of receipt of award or 2 36. Enforcement.—Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.

the date of disposal of request under Section 33 (i.e correction/additional award).

If Section 17 were to be applied for computing the limitation period under Section 34(3), the starting period of limitation would be the date of discovery of the alleged fraud or mistake. The starting point for limitation under Section 34(3) would be different from the Limitation Act.

(b) The proviso to Section 34(3) enables a Court to entertain an application to challenge an Award after the three months period is expired, but only within an additional period of thirty dates, "but not thereafter". The use of the phrase "but not thereafter" shows that the 120 days period is the outer boundary for challenging an Award. If Section 17 were to be applied, the outer boundary for challenging an Award could go beyond 120 days. The phrase "but not thereafter" would be rendered redundant and otiose. This Court has consistently taken this view that the words "but not thereafter" in the proviso of Section 34 (3) of the Arbitration Act are of a mandatory nature, and couched in negative terms, which leaves no room for doubt. (State of Himachal Pradesh v. Himachal Techno Engineers & Anr., (2010) 12 SCC 210, Assam Urban Water Supply & Sewerage Board v. Subash Projects & Marketing Ltd., (2012) 2 SCC 624 and Anilkumar Jinabhai Patel (D) through LRs v. Pravinchandra Jinabhai Patel & Ors., (2018) SCC Online SC 276)

36. In our view, the aforesaid inconsistencies with the language of Section 34(3) of Arbitration Act tantamount to an "express exclusion" of Section 17 of Limitation Act.

37. This Court in Popular Construction Case (supra) at page 474 followed the same approach when it relied on the phrase "but not thereafter" to hold that Section 5 of Limitation Act was expressly excluded.

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

(emphasis added)

38. Further, the exclusion of Section 17 is also necessarily implied when one looks at the scheme and object of the Arbitration Act.

39. First, the purpose of Arbitration Act was to provide for a speedy dispute resolution process. The Statement of Objects and Reasons reveal that the legislative intent of enacting the Arbitration Act was to provide parties with an efficient alternative dispute resolution system which gives litigants an expedited resolution of disputes while reducing the burden on the courts. Article 34(3) reflects this intent when it defines the commencement and concluding period for challenging an Award. This Court in Popular Construction Case (supra) highlighted the importance of the fixed periods under the Arbitration Act. We may also add that the finality is a fundamental principle enshrined under the Arbitration Act and a definitive time limit for challenging an Award is necessary for ensuring finality. If Section 17 were to be applied, an Award can be challenged even after 120 days.

This would defeat the Arbitration Act's objective of speedy resolution of disputes. The finality of award would also be in a limbo as a party can challenge an Award even after the 120 day period.

40. Second, extending Section 17 of Limitation Act to Section 34 would do violence to the scheme of the Arbitration Act. As discussed above, Section 36 enables a party to apply for enforcement of Award when the period for challenging an Award under S.34 has expired. However, if Section 17 were to be extended to Section 34, the determination of "time for making an application to set aside

the arbitral award" in Section 36 will become uncertain and create confusion in the enforcement of Award. This runs counter to the scheme and object of the Arbitration Act.

41. Third, Section 34(3) reflects the principle of unbreakability.

Dr. Peter Binder in International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions, 2 nd Ed., observed:

> "An application for setting aside an award can only be made during the three months following the date on which the party making the application has received the award. Only if a party has made a request for correction or interpretation of the award under Art. 33 does the time limit of three months begin after the tribunal has disposed of the request. This exception from the three-month time limit was subject to criticism in the Working group due to fears that it could be used as a delaying tactics. However, although "an unbreakable time limit for applications for setting aside" was sought as being desirable for the sake of "certainty and expediency" the prevailing view was that the words ought to be retained "since they presented the reasonable consequence of article 33". According to this "unbreakability" of time limit and true to the "certainty and expediency" of the arbitral awards, any grounds for setting aside the award that emerge after the three-month time limit has expired cannot be raised.

42. Extending Section 17 of the Limitation Act would go contrary to the principle of 'unbreakability' enshrined under Section 34(3) of the Arbitration Act.

43. The Respondents have argued that if Section 17 is not extended to Section 34, it would cause enormous injustice and provide scope for parties to play mischief. The Respondents have cited several illustrations where on account of fraud of the party, an objecting party can be precluded from challenging an Award and extending Section 17 would come to the rescue of such a party.

44. The Respondent's contention proceeds on a misconceived notion of Section 17. Even if Section 17 were to be extended to Section 34, it would not address the Respondent's grievance. Section 17 does not defer the starting point of the limitation period merely because the Appellants has committed fraud. Section 17 does not encompass all kinds of frauds and mistakes. Section 17(1)(b) and (d) only encompasses only those fraudulent conduct or act of concealment of documents which have the effect of suppressing the knowledge entitling a party to pursue its legal remedy. Once a party becomes aware of the antecedent facts necessary to pursue a legal proceeding, the limitation period commences.

45. This principle is illustrated by a ruling of this Court in Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari, 1950 SCR 852. The facts of this case are broadly similar. A decree holder files an execution petition after the expiry of limitation period (12 years of the passing of decree). To overcome the limitation bar, the decree-holder alleged that the judgement debtor prevented the execution of a decree by suppressing the ownership of certain assets (ownership of newspaper in those facts) and in support placed reliance on Section 18 of Limitation Act, 1908 (equivalent of Section 17)3 Rejecting this contention, this Court observed:

> 19. In our opinion, the facts necessary to establish fraud under Section 18 of the Limitation Act are neither admitted nor proved in the present case. Concealing from a person the knowledge of his right to apply for execution of a decree is undoubtedly different from preventing him from exercising his right, of which he has knowledge. Section 18 of the Limitation Act postulates the former alternative. ..... The fraud pleaded, namely suppression of ownership of the Prabhat newspaper, did not conceal from him his right to make an application for execution of the decree.

46. Similarly in Pallav Sheth v. Custodian, (2001) 7 SCC 549, this Court observed that Section 17 comes to the rescue of a party for "failing to adopt legal proceedings when the facts or material necessary for him to do so have been willfully concealed from him "

> 3 Although there is a slight difference in the text of S.18 of Limitation Act, 1908 and S.17 of Limitation Act, 1963, the relevant provision for the present case remains the same.

47. In the context of Section 34, a party can challenge an award as soon as it receives the award. Once an award is received, a party has knowledge of the award and the limitation period commences. The objecting party is therefore precluded from invoking Section 17(1)(b) & (d) once it has knowledge of the Award. Section 17(1)(a) and (c) of Limitation Act may not even apply, if they are extended to Section 34, since they deal with a scenario where the application is "based upon" the fraud of the respondent or if the application is for "relief from the consequences of a mistake". Section 34 application is based on the award and not on the fraud of the respondent and does not seek the relief of consequence of a mistake.

48. The fraudulent conduct where Section 17 of the Limitation Act would have helped the objecting party is where there was a fraud in the delivery of the award. However, in such a scenario, resort to section 17 is not necessary. If there is any fraud in the delivery of Award, the requirement of receipt of Award under Section 34(3) itself is not satisfied. Any receipt of Award must be effective receipt. This Court in Union of India v. Tecco Trichy

Engineers & Contractors, (2005) 4 SCC 239 held that:

> "8. The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be "received" by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.
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> 9. In the context of a huge organisation like the Railways, the copy of the award has to be received by the person who has knowledge of the proceedings and who would be the best person to understand and appreciate the arbitral award and also to take a decision in the matter of moving an application under sub-section (1) or (5) of Section 33 or under sub-section (1) of Section 34".

49. In view of the above, we hold that once the party has received the Award, the limitation period under Section 34(3) of the Arbitration Act commences. Section 17 of the Limitation Act would not come to the rescue of such objecting party.

50. In the present case, the Respondents had a right to challenge the Award under Section 34 the moment they received it. In this case, Respondents received the Award on 21.02.2010. The alleged MoU was executed on 09.04.2010. Once the Respondents received the Award, the time under Section 34(3) commenced and any subsequent disability even as per Section 17 or Section 9 of Limitation Act is immaterial. Merely because the Appellant had committed some fraud, it would not affect the Respondents right to challenge the Award if the facts entitling the filing of a Section 34 Application was within their knowledge. The moment the Respondents have received the Award, the three months period prescribed under Section 34(3) begins to commence. It was incumbent on the Respondents to have instituted an application under Section 34 challenging an award.

Therefore, in light of the discussion above, there would not have been any point for meaningful remand as the question of law is answered against the Respondents herein.

51. In light of the aforesaid legal position, the judgment and order of the High court dated 18.06.2012, in Civil Revision Petition Nos. 2151, 2246, 2383 and 2458 of 2012 are set□aside, and also the order allowing I.A. No. 598 of 2011 condoning the delay of 236 days in filing the objections is set aside, accordingly these appeals are allowed with no order as to costs.

……J. (N. V. Ramana) ……J. (S. Abdul Nazeer) New Delhi, September 26, 2018