Supreme Court of India
Food Corpn. Of India vs New India Assurance Co. Ltd on 15 February, 1994
Equivalent citations: 1994 AIR 1889, 1994 SCC (3) 324
Author: R Sahai
Bench: Sahai, R.M. (J)

PETITIONER:
FOOD CORPN. OF INDIA

Vs.

RESPONDENT:
NEW INDIA ASSURANCE CO. LTD

DATE OF JUDGMENT15/02/1994

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
BHARUCHA S.P. (J)
VENKATACHALA N. (J)

CITATION:
1994 AIR 1889 1994 SCC (3) 324
JT 1994 (1) 703 1994 SCALE (1)591

ACT:

HEADNOTE:

JUDGMENT:

The Judgments of the Court were delivered by R.M. SAHAI, J. (concurring)- Even though I respectfully agree with Brother Venkatachala, J., that the order of the Madras High Court allowing the appeal of the insurance guarantor and dismissing the suit of the appellant Corporation for recovery of the money is not liable to be maintained yet considering the importance of the legal issue involved in this appeal arising in day-to-day commercial dealings and absence of any authoritative pronouncement of this Court specially when the High Court has traversed wide field it appears appropriate to add a few words of my own.

2.Shortly the issue of law that arises for consideration in these appeals directed against judgment of Madras High Court is, if the suit filed after six months by the appellant, a public sector corporation, against Insurance Company was barred by time in view of the following recital in the Fidelity Insurance Guarantee-

> "[H]owever, that the corporation shall have no rights under this bond after the expiry of (period) six months from the date of the termination of the contract."

What does it mean? Does it restrict the right of the appellant precluding it from filing suit for recovery of money from the Insurance Company within six months from the date of termination of the contract or is it the outer limit for exercising the right of making the demand? What is the impact of Section 28 of the Contract Act on such clause? Since no factual dispute survives, and even if there was any it has been ironed out by the two courts below, the skeleton facts and findings as are necessary shall be referred as and where necessary for appreciating the legal issue. The appellant, as principal, appointed millers for procuring, hulling and supplying rice on certain conditions. To ensure its compliance the Insurance Company on behalf of the millers, executed Fidelity Insurance Guarantee in favour of the appellant guaranteeing honest accounting and refund of money received by the millers for supplying rice to the appellant. The appellant was given right under the guarantee to indemnify for any loss, directly, from the company. The exact words were:

> "We The Anand Insurance Company Limited do hereby undertake to indemnify and keep indemnified the Corporation to the extent of Rs 1,50,000 (Rupees One lakh and fifty thousand only) against any loss, claim, suit proceeding and expenses caused to or suffered by the Corporation by reason of any breach by the said miller of any term or condition of the said agreement and authorise the Corporation to recover the same directly from us."

Since there was breach of agreement the appellant filed suits for recovery of money against the millers and the company. The findings on agreement between the appellant and the miller and the company, the terms of agreement, its breach, shortfall in supply of rice, amount due etc. are all agreed to by both the courts below and were in fact more or less conceded. For instance on the relevant issues about the quantum of short delivery and the amount due to the appellant the trial court in Civil Appeal No. 1799 which is treated as leading found that it was admitted that the firm-defendant entered into agreement with the appellant to procure paddy, transport the same deliver to other millers as directed by the appellant for hulling converting it into rice and for supply. It further found that there was no dispute about the quantity of supply of paddy and the balance which ought to have been supplied. It, therefore, held that as regards Insurance Company the default occurred within the stipulated period of agreement. It observed that in reply notice sent by the company demanding the amount it was never claimed that the company was liable only if there was misappropriation or that the claim was barred by time. It was found that even in the written statement the plea of limitation was not raised. The trial court held that even though it was mentioned in the guarantee agreement that the appellant would lose all the claims as against the Insurance Company if it was not claimed within six months from the date of expiry of the contract of fidelity and the agreement terminated on February 15, 1971 and calculating six months from that date the claim was barred but non-filing of the suit within six months did not mean that the suit was barred by limitation. It held when the law of limitation allows a person to recover the amount within three years the parties could not agree to reduce the period of limitation and say that the amount should be claimed within the agreed time. Since by agreement time for recovery cannot be circumscribed against the provisions of the Limitation Act the suit could not be held to be barred by

limitation. The suit was thus decreed both against the miller and the Insurance Company. In the High Court the appeal of miller was dismissed. And that order has become final. But the appeal of the company was allowed. It was held that as the policy has no force after expiry of six months from the date of termination of the contract no liability could be fastened on the Insurance Company. The court observed that the enforceability of the contract ceased after six months from the date of termination of contract which admittedly was March 15, 1971. The High Court found that a mere demand made by the appellant by notice sent on June 7, 1971 did not amount to enforceability. The High Court construed the Fidelity Insurance Guarantee offered by the Insurance Company to be effective only between February 15, 1970 to February 15, 1971. The High Court did not agree that once the notice was issued the relationship between the appellant and the Insurance Company was that of a creditor and debtor. It relied on a number of decisions both Indian and English and held that a clause in the Fidelity Insurance Guarantee to the effect that no claim shall be entertained after six months was not contrary to Section 28 of the Contract Act nor was it against public policy under Section 23 of the Contract Act.

3.Both the courts below thus found as a fact that an agreement was entered between the appellant and the company on March 24, 1970 stipulating period of guarantee from February 15, 1970 to February 15, 1971, that the default occurred on July 1, 1970, that the demand was made on June 17, 1971 and the suit was filed on January 20, 1973 but they differed as a matter of law on the effect of Section 28 of the Contract Act on such agreement. Section 28 is extracted below :

> "Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent."

The section is a departure from English law as there is no such statutory bar restraining parties from entering into such agreement. In Rehmatunnisa Begum v. Price' it was observed as a general principle that, "no man can exclude himself from the protection of the courts". The rationale obviously is to ensure protection against fair dealing even between unequal bargaining parties. The intention and objective being clear the courts' primary responsibility is to construe and interpret it in a manner so as to advance the objective and protect the interest of the party who might be frustrated by too technical and expensive approach in such matters. Further it is trite saying that the courts should lean in favour of construction which keeps the remedy alive, that is if two constructions are possible then the one favouring continuance of the suit is to be preferred than the one barring the remedy. Even though the phraseology of Section 28 is explicit and strikes at the very root by declaring any agreement curtailing the normal statutory period of limitation to be void the courts have, been influenced by the distinction drawn by English Courts in extinction of right by agreement and curtailment of limitation. For instance in Baroda Spg. and Wvg. Co. Ltd. v. Satyanarayen Marine and Fire Insurance Co. Ltd.2 the agreement providing, "if the claim to be made and rejected, an action or suit be not commenced 1 AIR 1917 PC 16:45 IA61:42 Bom 380:16 ALJ513 2 ILR 38 Bom 344: 15 Bom LR 948: 21 IC 694 within three months after such rejection ... all benefits under the policy shall be forfeited" was construed as extinguishing right and not the remedy. Reliance for this was placed on numerous English decisions and the Court was of opinion

that, "what the plaintiff was forbidden to do under the agreement was to limit the time within which he was to enforce the right but what he had actually done was to limit the time within which he was to have any rights to enforce and that appears to be very different thing". In Vulcan Insurance Co. v. Maharaj Singh3 this Court, incidentally, in a different context referred to the decision in Baroda Spg.2 and observed that a clause like the one which provided that: "In no case whatever shall the company be liable for any loss or damage after the expiration of twelve months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration" was not hit by Section 28 of the Contract Act. Similar clause was considered in Pearl Insurance Co. v. Atma Ram4 on which reliance was placed by the High Court. Since the Bombay decision in Baroda Spg.2 has been referred, even though incidentally in Vulcan Insurance3 and it has been observed that clause like the one which came up for consideration in that case was not hit by Section 28 of the Contract Act the distinction drawn by the Bombay High Court on strength of English decisions between agreements giving up the right to enforce and the one curtailing limitation may be assumed to be valid. The occasion to draw such distinction flows from the anxiety of the courts to interfere as less as possible in agreements unless it is unconscionable or against public policy etc. Where statutory prohibition is placed on agreements and they are declared to be void the provision has to be construed strictly and applied restrictively confining to only those situations which are squarely covered in it. It is for this reason that any agreement which was not specifically covered in Section 28 was not held to be invalid. When this Court observed in Vulcan Insurance3 that clause like 19, in that, case was not violative of Section 28 it, obviously, meant that where filing of suit within specified time agreed between parties is made dependent on any consideration precedent then such agreement would not be void. And probably, rightly, as then it is not an agreement curtailing limitation but providing for doing one or other thing and filing the suit only after condition precedent was complied. Some of such decisions which were relied by the High Court were Kasim Ali Bulbul v. New India Assurance Co.5; Girdharilal Honuman Bux v. Eagle Star and British Dominions Insurance Co. Ltd.6; G. Rainey v. Burma Fire and Marine Insurance Co. Ltd.'; Pt. Prithvi Nath Mulla v. Union of India8 and Ramji Karamsi v. Unique Motor and General Insurance Co. Ltd.9 In all 3 (1976) 1 SCC 943: AIR 1976 SC 287 4 AIR 1960 Punj 236 (FB): 62 Punj LR 273 5 AIR 1968 J&K 39: 1967 Kash LI 144 6 AIR 1924 Cal 186: 27 CWN 955: 80 IC 637 7 AIR 1926 Rangoon 3: 3 Rang 383: 91 IC 622 8 AIR 1962 J&K 15 9 AIR 1951 Bom 347: 52 Bom LR 703 these the filing of the suit within stipulated period was dependent on rejection of claim. It could be validly said that it was not violative of Section 28 of the Contract Act as the agreement did not curtail limitation but provided for that if the suit was not filed within the stipulated period after rejection of clause the plaintiff shall lose all rights or benefits. No further is necessary to be said as it shall be explained later that it was not necessary for the High Court to enter into this aspect at all. As regards the decision in South British Fire & Marine Insurance Co. of New Zealand v. Brajanath Shaha10 on which reliance was placed by the High Court, it itself observed that it was not very relevant as the effect of Section 28 of the Contract Act on such agreement was not expressly considered. Yet it placed reliance on observations to the effect "it was considered in argument that in England the agreement in clause (18) would be perfectly valid; and it cannot, I think, be contended that insurance companies in India have less need than such companies in England of the protection afforded by an agreement for the acceleration of legal proceedings to be brought against them. That being so, there is no less reason to suppose that the legislature intended Section 28 to have far-reaching effect for which the plaintiff contended". But what the High Court lost sight of was that

there was no provision like Section 28 of the Contract Act in English law and, therefore, any agreement curtailing the period of limitation than that what was provided under the ordinary law was not void. The various English decisions, adverted to by the High Court, namely, Bank of England v. Vagliano Brothers' 1, Ford v. Baron12, Thimbley v. Barton13, Walker v. Nevil14 therefore, do not appear to be appropriate for deciding either the effect of Section 28 or for the construction of the Fidelity Insurance Guarantee clause. The High Court further placed reliance on the following passage from Porter's Law of Insurance :

> "In Porter's Law of Insurance (6th Edn.) page 195 it is stated that insurance may lawfully limit the time within which an action may be brought to a period less than that allowed by the statute of limitation and that the true ground, on which the clause limiting the time of claim rests and is maintainable is that, by the contract of the parties the right to indemnity in case of loss and the liability of the Company therefor do not became absolute, unless the remedy is sought within the time fixed by the condition in the policy."

It is indeed doubtful if the time-limit for bringing an action can be lawfully limited and brought to a period less than that allowed by the Statute. By lawful limit the author appeared to mean by a valid and legal agreement. But no agreement could be entered against statute. The statement was made in context of English law and not Section 28 of the Contract Act. The only 10 ILR (1909) 36 Cal 516: 13 CWN 425: 2 IC 573 11 1891 AC 107: 7 TLR 333 12 (1848) 11 QB 871 13 (1838) 3 M & W 210:150 ER 11 19 14 (1864) 3 H & C 403: 159 ER 588 extent to which it could be helpful could be in the sense explained in various decisions. That is if curtailment of limitation is dependent on happening or otherwise of some other agreement it may not be strictly in the mischief of Section 28.

4.Truly speaking the entire discussion on Section 28 of the Contract Act, its broad sweep yet narrow reach could have been avoided by examining the nature of Fidelity Guarantee and the clause in the agreement. 'Fidelity' according to dictionary means faithfulness, loyalty. In insurance terminology it is understood as assurance to indemnify against loss consequent upon the dishonesty or default. Usually the assured and the person whose fidelity is assured stand to each other in relation of employer and employee. As the use of the word 'fidelity' indicates, "it is a policy intended to protect the assured against the contingency of breach of fidelity on part of a person in whom confidence has been placed". It is a contract whereby, for a consideration, one agrees to indemnify another against loss arising from the want of honesty, integrity or fidelity of an employee or other person holding a position of trust. In Black's Law Dictionary 'fidelity insurance' is explained as under:

> "Fidelity Insurance Form of insurance in which the insurer undertakes to guaranty the fidelity of an officer, agent, or employee of the assured, or rather to indemnify the latter for losses caused by dishonesty or a want of fidelity on the part of such a person." In Halsbury's Laws of England, Vol. 25, 4th Edn. a Fidelity Guarantee Insurance is described as pecuniary loss insurance, not falling within normal class related to contingency but, "for making payment in the event of a specified event occurring, the payment representing either the loss or the possibility of loss which that event entails. ... A Fidelity Policy which insures the assured against losses which

> he may sustain by the default of his employee is a policy of pecuniary loss insurance." It is a policy, "intended to protect the assured against the contingency of a breach of fidelity on the part of a person in whom confidence has been placed.....". In paragraph 798 dealing with time and notice it is stated:
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> "The duty of giving notice of the loss to the insurers does not arise until the employer has satisfied himself of his employee's dishonesty; the employer is under no duty to notify mere suspicion. However, if the policy fixes a time from the date of loss for giving notice to the insurers, the assured will be unable to recover if the time has expired before he becomes aware of the loss."

5.Fidelity Guarantee is thus different from contingency guarantee. The insurance under it is for honesty, against negligence or for being faithful and loyal. The protection afforded is different than normal insurance policies. Its consequences and enforcement are also not the same. The employer or the principal has first to be satisfied about the breach. No action can be taken on suspicion. In contingency insurance the cause of action arises immediately whereas in Fidelity Guarantee it has to be ascertained and verified. And on being satisfied the company must necessarily be informed of it to enable the principal to seek its remedy in the court of law.

6.Such being the nature of Fidelity Insurance its enforceability depends on satisfaction by the insured of dishonesty or negligence of the other side and its intimation either during the contract period or within the time agreed from the termination of contract. The trial court found that the millers during latter period of contract became negligent and left no choice with the appellant except to get the paddy hulled from others. For this violation the appellant exercised right of claiming the dues under the bond within the stipulated period. None of the cases relied by the High Court related to Fidelity Insurance Guarantee. Nor the clause in any of the decisions was similar.

7.To determine the nature of agreement entered between the company and the appellant and whether the clause in the agreement could be construed as providing for limitation during which a suit could be filed for recovery of dues, the relevant portion of the agreement is extracted below:

> "We The Anand Insurance Company Limited further agree that the guarantee herein contained shall remain in full force and effective up to and inclusive of February 15, 1971 the date referred to above or the expiry of the extended period from time if any and that it shall continue to be enforceable till all the dues of the Corporation under or by virtue of the said agreement has/have been fully paid and its claim satisfied or discharged or till the Regional Manager of the Food Corporation of India certified that the terms and conditions of the said agreement have been fully and properly carried out by the said miller and accordingly discharges the guarantee subject, however, that the Corporation shall have no rights under this bond after the expiry of (period) six months from the date of the termination of the contract."

Since the foundation of such guarantee is protection against dishonesty the law should be construed so as to promote honesty and fairness and frustrate dishonesty. As has been explained in Halsbury's

Laws of England the appellant could have taken action against the company not on suspicion but on satisfaction that the agent was not willing to act honestly and if the period of six months mentioned in the agreement is taken as time-limit then it was only to put the company on notice. In other words if the appellant informed within six months of termination of contract that the agent was not acting honestly then it had discharged its obligation under the bond. A right under an agreement or a statute may be enforced in the manner provided. The right of the appellant under the agreement was to recover all dues against the miller, directly, from the company. That was never in dispute. How to recover it? First by making a demand and on delay or refusal by moving the machinery provided in the agreement or by approaching the court. Enforceability thus commences from making of demand and extends to ultimate vindication of the claim. When the appellant gave notice to the company informing it of the default and made demand of the amount due it was an exercise of right under the bond for satisfaction of its claim arising out ofnegligence of the miller. And this right, undisputedly, was exercised within six months from the termination of contract.

8. From the agreement it is clear that it does not contain any clause which could be said to be contrary to Section 28 of the Contract Act nor it imposes any restriction to file a suit within six months from the date of determination of the contract as claimed by the company and held by the High Court. What was agreed was that the appellant would not have any right under this bond after the expiry of six months from the date of the termination of the contract. This cannot be construed as curtailing the normal period of limitation provided for filing of the suit. If it is construed so it may run the risk of being violative of Section 28 of the Contract Act. It only puts embargo on the right of the appellant to make its claim known not later than six months from the date of termination of contract. It is in keeping with the principle which has been explained in English decisions and by our own court that the insurance companies should not be kept in dark for long and they must be apprised of their liabilities immediately both for facility and certainty. The High Court erroneously construed it as giving up the right of enforceability of its claim after six months. Since the period is provided under the agreement the appellant had to move within this period asserting its right and apprising the company of the breach or violation by the miller to enable it either to pay or to persuade the miller to pay itself. It does not directly or indirectly curtail the period of limitation nor does it anywhere provide that the Corporation shall be precluded from filing suit after expiry of six months. It can utmost be construed as a condition precedent for filing of the suit that the appellant should have exercised the right within the period agreed to between the parties. The right was enforced under the agreement when notice was issued and the company was required to pay the amount. Assertion of right is one thing than enforcing it in a court of law. The agreement does not anywhere deal with enforcement of right in a court of law. It only deals with assertion of right. The assertion of right, therefore, was governed by the agreement and it is imperative as well that the party concerned must put the other side on notice by asserting the right within a particular time as provided in the agreement to enable the other side not only to comply with the demand but also to put on guard that in case it is not complied it may have to face proceedings in the court of law. Since admittedly the Corporation did issue notice prior to expiry of six months from the termination of contract, it was in accordance with the Fidelity Insurance clause and, therefore, the suit filed by the appellant was within time.

9.In the result, these appeals succeed and are allowed. The judgment and order of the Madras High Court are set aside and the decree passed by the trial court shall stand restored.

VENKATACHALA, J. (for Bharucha, J. and himselj)- Leave is granted in the SLP.

11.The question requiring determination in these appeals relates to the period of limitation within which a suit against a guarantor under the contract concerned of Fidelity Insurance Guarantee could have been brought for enforcement of its obligation thereunder.

12.Facts necessary for determining the said question lie in a narrow compass. Respondent 3 concerned in Civil Appeal Nos. 1799 of 1982 and 5354 of 1990 and Respondent 2 concerned in Civil Appeal No. 2267 of 1987 and Civil Appeal arising out of SLP No. 11864 of 1982 are, each of them a rice miller which had obtained from Respondent 1 concerned in each of them, an Insurance Company a Fidelity Insurance Guarantee under which the latter had undertaken to indemnify and keep indemnified the appellant, the Food Corporation of India, hereinafter referred to as 'the Corporation', in money against any loss caused to or suffered by it for miller's breach of performance of the terms and conditions of the agreement entered into by it with the appellant. Such Fidelity Insurance Guarantee empowered the Food Corporation of India to make its claim directly against the Insurance Company concerned to recover the amount of loss. The material clauses in all the contracts of Fidelity Insurance Guarantees with which we are concerned being similar except for dates and names of parties, we propose to determine the question arising for consideration in these appeals with reference to such clauses in the contract of Fidelity Insurance Guarantee concerned in Civil Appeal No. 1799 of 1982, which read thus :

> "We agree to pay the Corporation on demand any sum which may become payable to the Corporation under the said agreement and in respect of which we The Anand Insurance Company Ltd. hereby give this guarantee for payment. We The Anand Insurance Company Limited agree that the Corporation shall be the sole judge whether the said miller has committed any breach or breaches of any of the terms and conditions of the said agreement and the extent of loss, cost charges and expenses suffered or incurred by the Corporation on account thereof. We The Anand Insurance Company Limited further agree that the guarantee herein contained shall remain in full force and effective up to and inclusive of February 15, 1971 the date referred to above or the expiry of the extended period of time, if any, and that it shall continue to be enforceable till all the dues of the Corporation under or by virtue of the said agreement has/have been fully paid and its claim satisfied or discharged or till the Regional Manager of the Food Corporation of India certified that the terms and conditions of the said agreement have been fully and properly carried out by the said miller and accordingly discharges the guarantee subject, however, that the Corporation shall have no rights under this bond after the expiry of (period) six months from the date of termination of the contract."

13. The Corporation, when found that each of the said rice millers were liable to make good certain amounts for losses arising from breaches of the terms and conditions of the respective contracts

entered into between them, placed demands with the Insurance Company concerned for payment of those amounts as per the Fidelity Insurance Guarantees given by the Insurance Company concerned, well before the expiry of the period of six months from the date of termination of the contract with the rice miller, as required under the Fidelity Insurance Guarantee. But such demands were not made good by the respective Insurance Companies. This situation led the Corporation to the necessity of filing suits against the Insurance Companies concerned in civil courts of competent jurisdiction for recovery of the moneys liable to be paid according to the demand made to them in terms of the Fidelity Insurance Guarantees, arraying in those suits the respective rice millers also as party-defendants. Those courts, after trial of suits made decrees in them against the rice miller concerned, the respondent-Insurance Company and also the respondent the New India Assurance Company Limited, in which the respondent-Insurance Company in each suit had been merged by then. Against the decrees so made, while one set of first appeals was filed by the rice millers concerned, another set of first appeals was filed by the Insurance Companies concerned. The High Court of Judicature at Madras, before which the said appeals were filed, while dismissing the appeals of the rice millers, allowed the appeals of the Insurance Companies. The High Court allowed the appeals of the Insurance Companies, on its view that the terms of the Fidelity Insurance Guarantee concerned in each appeal did not entitle the Corporation to file suits against the Insurance Companies concerned after the expiry of 'six months' period from the date of termination of respective contracts entered into between the Corporation and the rice millers. It is the sustainability of the said view of the High Court which arises for determination in the present appeals filed by the Corporation, as is indicated in the question which we have set out in the beginning of this judgment.

14. The learned counsel for the Corporation, the common appellant in these appeals, submitted that the High Court had misread the clause in the contract of Fidelity Insurance Guarantee relating to period within which claim or demand against the Insurance Company was allowed to be made as the period within which a suit against the Insurance Company had to be filed and it is such misreading which has led the High Court to allow the first appeals of Insurance Companies, by the judgments and decrees under the present appeals. He, therefore, sought for our interference with the judgments and decrees of the High Court and their reversal.

15.The learned counsel for the respondents in the appeals, the Insurance Companies, however, sought to support the view taken by the High Court on the clause containing the restriction relating to the period allowed for the claim under the contracts of Fidelity Insurance Guarantee.

16.The submission made on behalf of the appellant in the appeals, in our view, is well founded and deserves acceptance while the submission made on behalf of the respondents does not merit acceptance.

17.Indisputably, under the material clauses of the respective bonds (contracts) of Fidelity Insurance Guarantee which we have reproduced earlier as contained in a representative bond, the Insurance Company concerned therein has in unequivocal terms undertaken to make good the sum of money up to the limit specified therein, when claimed by the Corporation (appellant) as the loss suffered by it on account of breaches committed by the rice miller concerned of the terms of the agreement

entered into with it. But that undertaking of the Insurance Company to make good the sum of money claimed by the Corporation is made, as seen from the said clauses, subject to the restriction which reads :

"... that the Corporation shall have no rights under this bond after the expiry of (period) six months from the date of termination of the contract."

18.Contract, the termination of which is envisaged in the above restriction is the contract (agreement) which had been entered into by the rice miller with the Corporation, cannot be disputed and in fact does not appear to have been disputed, both in the trial court and the High Court. Since the restriction says that the Corporation shall have no rights under the bond after the expiry of six months from the date of termination of the contract, the rights of the Corporation under the contract continue to exist for six months beyond the period during which the contract could be in force unless the dues of the Corporation under the contract are paid or satisfied in the manner provided for in the clauses of the bond itself, as could be seen therefrom. Therefore, what is envisaged by the 'restriction' is that the Corporation, if wants to exercise or enforce the rights given to it under the Fidelity Insurance Guarantee Bond, it could present before the Insurance Company, the claim for its loss under the contract entered into with the rice miller even up to the period of six months from the date of termination of the contract and not beyond. None of the clauses nor the restriction in the bond, to which we have adverted, require that a suit or legal proceeding should be instituted by the Corporation for enforcing its right under the bond against the Insurance Company within a period of six months from the date of termination of the contract. Therefore, the restriction adverted to in the clauses of the bond, envisages the need for the Corporation to lodge a claim based on the bond, before the Insurance Company within a period of six months from the date of termination of the contract as becomes clear from the express language of the clause in which that restriction is imposed and the express language of the clauses which have preceded it. In fact the period of limitation for filing a suit or instituting a legal proceeding by the Corporation for recovery of the claim made against the Insurance Company could also be regarded as commencing from the date when the Insurance Company expressly refuses to honour the claim or from a date when its conduct amounts to refusal to honour the claim, in that, such default could also give rise to the cause of action for the institution of the suit or legal proceeding by the Corporation against the Insurance Company. Hence, it would not be correct to say that suits filed by the Corporation out of which the present appeals arise were barred under the restriction adverted to, in that, they were not filed within six months envisaged in that restriction. From this, it follows that the High Court was not right in holding that the I restriction' in the clause of the bond did not enable the Corporation to file its suit against the Insurance Company for non-honouring of its claims, after the lapse of the period of six months from the date of termination of the contract and consequently in setting aside the decrees of the trial courts on that account.

19.In the result, we allow these appeals, set aside the decrees of the High Court appealed against and restore the decrees made in the suits by the trial courts against which the first appeals had been filed in the High Court. However, in the circumstances of these appeals, we make no orders as to costs.

ORDER OF COURT

20. For reasons given by us in our separate but concurring orders (Sahai, J.and Venkatachala, J.) the appeals are allowed. The judgment and decree of the High Court are set aside and that of the trial court is restored. We, however, make no order as to costs.