

(2025) 08 AHC CK 0637

In the Allahabad High Court

Case No : Civil Misc. Arbitration Application No. 61 Of 2021

Bhookan Saran Transmitted From Alld. 73 Arba Of 2021

APPELLANT

Vs

Hindustan Petroleum Corp.Ltd Thru.Chairman And M.D.And
Anr

RESPONDENT

Date of Decision : 05-08-2025

Acts Referred:

Code of Criminal Procedure Act, 1973 — Section 125, 146

Indian Penal Code, 1860 — Section 323, 494, 498A

Protection of Women from Domestic Violence Act, 2005 — Section 12

Citation : (2025) 08 AHC CK 0637

Hon'ble Judges : Ram Manohar Narayan Mishra, J

Bench : Single Bench

Advocate : Ashok Kumar Yadav, Prem Shankar, Kedar Nath Mishra

Final Decision : Allowed

Judgement

Jaspreet Singh, J.

I.A.Nos.2, 3, 4 and 5 of 2024

1. Heard Shri Agendra Sinha, learned counsel for the petitioner and Shri Shikhar Anand, learned counsel appearing for the respondent.

2. At the outset, it may be noticed that the instant petition under Section 11(6) of the Arbitration & Conciliation Act of 1996 (hereinafter referred to Act of 1996) was dismissed for want of prosecution by means of order dated 26.09.2023.

3. The petitioner has moved an application for recall of the said order alongwith an application seeking condonation of delay. While the said application was pending the petitioner has moved another application for substitution informing that the sole petitioner Bhookan Saran expired and his legal heirs are to be brought on record.

4. The Court has considered the application for recall as well as the application

seeking condonation of delay in doing so and finds that the cause shown is sufficient. Accordingly the application for recall as well as the application seeking condonation of delay are allowed. The order dated 26.09.2023 is recalled. The petition stands restored after condonation of delay.

5. The Court has thereafter considered the application for substitution alongwith the application seeking condonation for delay and the ground shown therein is found sufficient. Accordingly, the application for condonation of delay and substitution are allowed. Learned counsel for the appellant shall carry out the necessary amendment and file an amended memo of the parties with the office of the Court in e-format within a week. It is also made clear that the office shall ensure carrying out the amendment before issuing the certified copy of this order.

On merits

6. Shri Agendra Sinha, learned counsel appearing for the petitioner submitted that the parties had entered in a dealership agreement dated 09.01.1991. The said agreement in clause 68 contained a dispute resolution mechanism. It was provided that in case of any dispute between the parties, the same shall be referred to the Sole Arbitration of Managing Director of the Corporation or some other officer of the Corporation, who may be nominated by the Managing Director to Act as the Sole Arbitrator.

7. In the aforesaid backdrop, it was stated that the petitioner was running his dealership under the name and style of M/s Kumar Filling Station. Certain disputed accrued between the parties arising out of the said agreement. As a consequence, the respondent issued a show cause to the petitioner dated 13.07.2010. The petitioner furnished his reply to the said show cause on 07.10.2010 wherein all the allegations made against the petitioner were disputed.

8. The respondent considering the reply of the petitioner issued a termination letter dated 09.05.2011 citing infringement of clauses 9, 44, 46, 47(ii) and 58 of the dealership agreement.

9. The petitioner being aggrieved against the unilateral termination of the dealership invoked the arbitration clause. In reply to the same, the respondent issued a letter dated 31.10.2011 proposing the name of a retired officer of HPCL as the Arbitrator and requested the petitioner to give his consent.

10. It appears to be the watershed moment in the litigation as the petitioner states that he did not give his consent in response to the letter issued by the respondent dated 31.10.2011 on the ground that his wife Hosiyari Devi fell seriously ill and on account of her illness the petitioner could not peruse the matter. Later his wife expired on account of prolonged illness and thereafter the petitioner sent a letter to the respondent on 25.09.2019 seeking appointment of an Arbitrator which was rejected by the respondent by means of their letter dated 20.03.2020 stating that the claims of the petitioner were barred by

limitation.

11. It is further stated that thereafter on account of COVID-19 Pandemic, the courts remained shut and once again the petitioner vide letter dated 23.11.2020 sent another letter to the respondent seeking appointment of a Sole Arbitrator which too was dismissed vide letter dated 11.01.2021 citing the earlier ground that it was barred by limitation.

12. It is in the aforesaid backdrop that the petitioner has filed the instant petition under Section 11(6) of the Act of 1996 and in support of his submissions, learned counsel for the petitioner has relied upon the decision of the Apex Court in HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad, 2024 SCC OnLine SC 3190.

13. Learned counsel for the respondent, HPCL Shri Shikhar Anand has vehemently opposed the aforesaid submissions and stated that once the dealership of the petitioner was terminated on 09.05.2011, the cause of action accrued to the petitioner. Once the cause of action had accrued and the time began to run then the same would not stop.

14. It is urged that the petitioner had invoked the arbitration clause by means of his letter and the respondent accepted the same and proposed the name of a retired officer of the HPCL. However, the petitioner did not give his consent.

15. It is further submitted that thereafter the petitioner remained silent from 2011 and only in 2019 i.e. after eight years, he moved another letter with the request to appoint an Arbitrator which was rejected by the respondent on 20.03.2020. In the aforesaid circumstances where the petitioner was aware that the respondent had taken a stand that the claims of the petitioner were barred yet again he kept quite for few months and then again by means of his letter dated 23.11.2020 sought the same relief of appointment of an Arbitrator which was again rejected on 11.01.2021 and thereafter the petitioner had approached this Court by means of the instant petition which is not maintainable as the same is barred by limitation.

16. Learned counsel for the respondent has relied upon the decision of the Apex Court in Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam, (2020) 14 SCC 643, Secunderabad Cantonment Board v. B. Ramachandraiah and others, (2021) 5 SCC 705 and B and T AG v. Ministry of Defence, 2023 SCC OnLine SC 657.

17. The Court has heard the learned counsel for the parties and also perused the material on record.

18. The issue before this Court is whether the petition under Section 11(6) of the Act of 1996 dated 28.07.2021 could be entertained in the given facts and circumstances relating to a cause of action which accrued to the petitioner on 09.05.2011 when his dealership agreement was terminated.

19. Considering the submissions of the learned counsel for the parties and from

the perusal of the material on record, it is not disputed that the dealership agreement was entered between the parties which contained in an arbitration clause. It is also not disputed that the said dealership was terminated vide letter dated 09.05.2011. It is also not disputed that the petitioner had invoked the arbitration clause and in furtherance thereof the respondent vide their letter dated 31.10.2011 had proposed the name of a retired officer of the Corporation to act as a Sole Arbitrator and the consent of the petitioner was sought and admittedly the petitioner did not respond to the said letter.

20. In the aforesaid admitted backdrop, the contention of the petitioner is that he could not give his consent as his wife fell seriously ill in the year 2011. In this context, the petitioner has filed several photocopies of documents cumulatively as annexure no.10. The said documents at running page 72 indicate that it relates to year 1997, similarly, the document page no.73 of the year 1996. Certain pathological reports brought on record are also of the year 1996 (running page 76 to 77). Certain other documents have been brought on record which relate to the year February 2015 onwards, then there are certain documents relating to the year 2017. Few documents have been brought on record relating to August 2020.

21. The fact remains that neither in the pleading it has been indicated as to what disease or illness inflicted the wife of the petitioner and how he was handicapped from continuing the proceedings. Apparently, the documents relate to the year 1996-97 which have no relevance at all to the cause of action accruing in the year 2011. There are no documents of the year 2011 which can indicate that the wife of the petitioner fell seriously ill. It appears that deliberate attempt has been made to introduce the document with an intend to cover a span of nine years. This Court upon examining the said documents and the contention of the petitioner is unable to accept the explanation as offered for seeking condonation of delay of more than nine years.

22. It is now too well settled to be disputed that it is not the length of delay which is material rather it is the sufficiency of cause which is important. Even a short delay if not adequately explained can be fatal whereas even if the delay is huge but adequately explained then the same can also be condoned. It is also to be kept in mind that even though the concept of sufficient cause may be liberally construed yet it has to be borne in mind that it may not work injustice to the other side as condonation of delay is not an act of generosity. In *H. Guruswamy & Ors. v. A. Krishnaiah*, 2025 SCC OnLine SC 54 the Apex Court had the occasion to consider the issue of condonation of delay and it held as under:-

"13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as "liberal approach", "Justice oriented approach", "substantial justice" should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."

23. Recently, the Apex Court in *Thirunagalingam v. Lingeswaran*, 2025 SCC OnLine SC 1093 held as under :-

"31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32. Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet."

24. In the aforesaid backdrop, now if the decision of the Apex Court in *HPCL Bio-*

Fuels Ltd. (supra) is seen, it would reveal that the Apex Court in para 117 has held as under:-

"117. As discussed in the foregoing parts of this judgment, the period of limitation to file an application under Section 11(6) of the Act, 1996 is governed as provided in Article 137 of the Schedule to the Limitation Act, that is, three years. We have observed that the benefit available under Section 14 of the Limitation Act will also be available in respect of applications made under Section 11(6) of the Act, 1996. Thus, in the absence of any specific statutory exclusion, there is no good reason to hold that the benefit under Section 5 of the Limitation Act cannot be availed for the purpose of condonation of delay caused in filing a Section 11(6) application."

However, after considering the various decisions of the Apex Court on the aforesaid point, it laid the ratio in paras 123 and 124 as under:-

"123. The primary intent behind Section 5 of the Limitation Act is not to permit litigants to exploit procedural loopholes and continue with the legal proceedings in multiple forums. Rather, it aims to provide a safeguard for genuinely deserving applicants who might have missed a deadline due to unavoidable circumstances. This provision reflects the intent of the legislature to balance the principles of justice and fairness, ensuring that procedural delays do not hinder the pursuit of substantive justice. Section 5 of the Limitation Act embodies the principle that genuine delay should not be a bar access to justice, thus allowing flexibility in the interest of equity, while simultaneously deterring abuse of this leniency to prolong litigation unnecessarily.

124. The legislative intent of expeditious dispute resolution under the Act, 1996 must also be kept in mind by the courts while considering an application for condonation of delay in the filing of an application for appointment of arbitrator under Section 11(6). Thus, the court should exercise its discretion under Section 5 of the Limitation Act only in exceptional cases where a very strong case is made by the applicant for the condonation of delay in filing a Section 11(6) application."

25. Thus, it is clear that the scheme of the Arbitration & Conciliation Act of 1996 is such that the Court while examining its powers to condone the delay can do so only in exceptional cases, where a strong case is made out for condonation of delay in filing an application under Section 11(6) of the Act of 1996. Needless to say in light of the averments which have been made in the petition i.e. paras 15 to 20, this Court does not find that cause for delay of nine years has been adequately explained.

26. Insofar as the decision cited by the learned counsel for the respondents are concerned, suffice to state that the Apex Court in B and T AG (supra) has considered the other decisions as cited by the respondent hence, it will be appropriate to consider the relevant paras of B and T AG (supra) which notices the law on the subject.

"31. Since a petition under Section 11(6) of the 1996 Act for seeking appointment of Arbitral Tribunal is required to be filed before the High Court or the Supreme Court, as the case may be, Article 137 of the Schedule to the 1963 Act would apply.

32. Article 137 reads thus:

"Description of suit

Period of limitation

Time from when period begins to run

137. Any other application for which no period of limitation is provided elsewhere in this Division.

Three years.

When the right to apply accrues."

33. A plain reading of the aforesaid Article would indicate that the period of limitation in cases covered by Article 137 is three years and the said period would begin to run when the right to apply accrues.

34. The starting point of limitation under Article 137 according to third column of the Article is the date when "the right to apply arises". This being a residuary Article to be adopted to different classes of applications, the expression "the right to apply" is an expression of a broad common law principle and should be interpreted according to the circumstances of each case. "The right to apply" has been interpreted to mean "the right to apply first arises". (See : *Merla Ramanna v. Nallaparaju* [*Merla Ramanna v. Nallaparaju*, 1955 SCC OnLine SC 116 : (1955) 2 SCR 938 : AIR 1956 SC 87] .)

35. Further, it would be necessary to refer to Section 9 of the 1963 Act which reads thus:

"9. Continuous running of time.—Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues."

(emphasis supplied)

48. In *BSNL v. Nortel Networks (India) (P) Ltd.* [*BSNL v. Nortel Networks (India) (P) Ltd.*, (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] , this Court undertook a comprehensive analysis of the relevant provisions and held that in cases where claims are ex facie time-barred, the Court may refuse to make reference under Section 11 of the 1996 Act. This decision assumes importance and we should

look into the same in little details. The appellant BSNL issued a tender notification inviting bids for planning, engineering, supply, insulation, testing and commissioning of GSM based cellular mobile network in the Southern region. The respondent company was awarded the purchase order. On completion of the project, the appellant withheld an amount of Rs 99.70 crores towards the liquidated damages and other levies. The respondent raised a claim on 13-5-2014 for payment of the abovesaid amount from the appellant who rejected the claim on 4-8-2014.

49. The respondent in Nortel Networks [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] , after a period of over 5.5 years invoked the arbitration clause and requested for the appointment of an independent arbitrator on 29-4-2020. It was also contended that the dispute of withholding the said amount, would fall within the ambit of arbitrable disputes under the agreement. The appellant on 9-6-2020 replied that the request for appointment of an arbitrator could not be entertained since the case had already been closed and the notice invoking arbitration was time-barred.

58. In Secunderabad Cantonment Board v. B. Ramachandraiah & Sons [Secunderabad Cantonment Board v. B. Ramachandraiah & Sons, (2021) 5 SCC 705 : (2021) 3 SCC (Civ) 335] , while taking note of both Nortel Networks case [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] and Geo Miller [Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd., (2020) 14 SCC 643] , it is held as under : (Secunderabad Cantonment Board case [Secunderabad Cantonment Board v. B. Ramachandraiah & Sons, (2021) 5 SCC 705 : (2021) 3 SCC (Civ) 335] , SCC pp. 722-23, para 19)

"19. Applying the aforesaid judgments to the facts of this case, so far as the applicability of Article 137 of the Limitation Act to the applications under Section 11 of the Arbitration Act is concerned, it is clear that the demand for arbitration in the present case was made by the letter dated 7-11-2006. This demand was reiterated by a letter dated 13-1-2007, which letter itself informed the appellant that appointment of an arbitrator would have to be made within 30 days. At the very latest, therefore, on the facts of this case, time began to run on and from 12-2-2007. The appellant's laconic letter dated 23-1 -2007, which stated that the matter was under consideration, was within the 30-day period. On and from 12-2-2007, when no arbitrator was appointed, the cause of action for appointment of an arbitrator accrued to the respondent and time began running from that day. Obviously, once time has started running, any final rejection by the appellant by its letter dated 10-11-2010 would not give any fresh start to a limitation period which has already begun running, following the mandate of Section 9 of the Limitation Act. This being the case, the High Court was clearly in error in stating that since the applications under Section 11 of the Arbitration Act were filed on 6-11-2013, they were within the limitation period of three years starting from 10-11-2020. On this count, the applications under Section 11 of

the Arbitration Act, themselves being hopelessly time-barred, no arbitrator could have been appointed by the High Court.”

(emphasis supplied)

67. In Law of Arbitration by Justice Bachawat at p. 549, commenting on Section 37, it is stated that subject to the 1963 Act, every arbitration must be commenced within the prescribed period. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the cause of action accrues, so in the case of arbitrations the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) “action” and “cause of arbitration” should be construed as arbitration and cause of arbitration. The cause of arbitration arises when the claimant becomes entitled to raise the question, that is, when the claimant acquires the right to require arbitration. An application under Section 11 of the 1996 Act is governed by Article 137 of the Schedule to the 1963 Act and must be made within 3 years from the date when the right to apply first accrues. There is no right to apply until there is a clear and unequivocal denial of that right by the respondent. It must, therefore, be clear that the claim for arbitration must be raised as soon as the cause for arbitration arises as in the case of cause of action arisen in a civil action.

68. Whether any particular facts constitute a cause of action has to be determined with reference to the facts of each case and with reference to, the substance, rather than the form of the action. If an infringement of a right happens at a particular time, the whole cause of action will be said to have arisen then and there. In such a case, it is not open to a party to sit tight and not to file an application for settlement of dispute of his right, which had been infringed, within the time provided by the Limitation Act, and, allow his right to be extinguished by lapse of time, and thereafter, to wait for another cause of action and then file an application under Section 11 of the 1996 Act for establishment of his right which was not then alive, and, which had been long extinguished because, in such a case, such an application would mean an application for revival of a right, which had long been extinguished under the 1963 Act and is, therefore, dead for all purposes. Such proceedings would not be maintainable and would obviously be met by the plea of limitation under Article 137 of the 1963 Act.

75. The observations made by this Court in Panchu Gopal [Panchu Gopal Bose v. Port of Calcutta, (1993) 4 SCC 338] in paras 10, 11, 12, 13, 14 and 15 respectively, are also relevant. The observations read as under : (SCC pp. 345-47, paras 10-15)

“10. In West Riding County Council v. Huddersfield Corpn. [West Riding County

Council v. Huddersfield Corpn., (1957) 1 QB 540 : (1957) 2 WLR 428 : (1957) 1 All ER 669] the Queen's Bench Division, Lord Goddard, C.J. (as he then was) held that the Limitation Act applies to arbitrations as it applies to actions in the High Court and the making, after a claim has become statute-barred, of a submission of it to arbitration, does not prevent the statute of limitation being pleaded. Russel on Arbitration, 19th Edn., reiterates the above proposition. At p. 4 it was further stated that the parties to an arbitration agreement may provide therein, if they wish, that an arbitration must be commenced within a shorter period than that allowed by statute; but the court then has power to enlarge the time so agreed. The period of limitation for commencing an arbitration runs from the date on which the cause of arbitration accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration takes place upon the dispute concerned.

11. Therefore, the period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.

12. In Russell on Arbitration, at pp. 72 and 73 it is stated thus:

'Disputes under a contract may also be removed, in effect, from the jurisdiction of the court, by including an arbitration clause in the contract, providing that any arbitration under it must be commenced within a certain time or not at all, and going on to provide that if an arbitration is not so commenced the claim concerned shall be barred. Such provisions are not necessarily found together. Thus the contract may limit the time for arbitration without barring the claim depriving a party who is out of time of his right to claim arbitration but leaving open a right of action in the courts. Or it may make compliance with a time-limit a condition of any claim without limiting the operation of the arbitration clause, leaving a party who is out of time with the right to claim arbitration but so that it is a defence in the arbitration that the claim is out of time and barred. Nor, since the provisions concerned are essentially separate, is there anything to prevent the party relying on the limitation clause waiving his objection to arbitration whilst still relying on the clause as barring the claim.'

At p. 80 it is stated thus:

'An extension of time is not automatic and it is only granted if "undue hardship" would otherwise be caused. Not all hardship, however, is "undue hardship"; it may be proper that hardship caused to a party by his own default should be borne by him, and not transferred to the other party by allowing a claim to be reopened after it has become barred. The mere fact that a claim was barred could not be held to be "undue hardship".'

13. The Law of Arbitration by Justice Bachawat in Chapter 37 at p. 549 it is stated that just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the claim accrues, so also in the case of arbitrations, the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) "action" and "cause of action" in the Limitation Act should be construed as arbitration and cause of arbitration. The cause of arbitration, therefore, arises when the claimant becomes entitled to raise the question i.e. when the claimant acquires the right to require arbitration. The limitation would run from the date when cause of arbitration would have accrued, but for the agreement.

14. Arbitration implies to charter out timeous commencement of arbitration availing the arbitral agreement, as soon as difference or dispute has arisen. Delay defeats justice and equity aid the promptitude and resultant consequences. Defaulting party should bear the hardship and should not transmit the hardship to the other party, after the claim in the cause of arbitration was allowed to be barred. The question, therefore, as posed earlier is whether the court would be justified to permit a contracting party to rescind the contract or the court can revoke the authority to refer the disputes or differences to arbitration. Justice Bachawat in his Law of Arbitration, at p. 552 stated that 'in an appropriate case leave should be given to revoke the authority of the arbitrator'. It was also stated that an ordinary submission without special stipulation limiting or conditioning the functions of the arbitrator carried with it the implication that the arbitrator should give effect to all legal defences such as that of limitation. Accordingly the arbitrator was entitled and bound to apply the law of limitation. Section 3 of the Limitation Act applied by way of analogy to arbitration proceedings, and like interpretation was given to Section 14 of the Limitation Act. The proceedings before the arbitration are like civil proceedings before the court within the meaning of Section 14 of the Limitation Act. By consent the parties have substituted the arbitrator for a court of law to arbitrate their disputes or differences. It is, therefore, open to the parties to plead in the proceedings before him of limitation as a defence.

15. In Mustiu and Boyd's Commercial Arbitration (1982 Edn.) under the heading "Hopeless Claim" in Chapter 31 at p. 436 it is stated thus:

'There is undoubtedly no jurisdiction to interfere by way of injunction to prevent the respondent from being harassed by a claim which can never lead to valid award for example in cases where claim is brought in respect of the alleged arbitration agreement which does not really exist or which has ceased to exist. So also where the dispute lies outside the scope of arbitration agreement.' "

(emphasis supplied)

27. Considering the consistent dictum of the Apex Court as noticed hereinabove, this Court is of the clear view that the petitioner has been unable to explain the

cause for delay of over nine years and the ground shown does not fall within the exceptional circumstances, which may persuade this Court to entertain the petition. Even if Section 5 of the Limitation Act is considered as suggested by the learned counsel for the petitioner yet in light of paras 123 and 124 of HPCL Bio-Fuels Ltd. (supra) no case for interference is made out, hence, the said decision does not come to the aid of the petitioner.

28. For the aforesaid reasons, the petition is dismissed as barred by limitation. There shall be no order as to costs.