
(2013) 08 BOM CK 0153

In the Bombay High Court

Case No : Letters Patent Appeal No. 10 of 2013

Defence Estate Officer

APPELLANT

Vs

Damodhar

RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(3), 43
Limitation Act, 1963 — Section 14, 2(j), 4, 5

Citation : (2013) 6 ABR 1113 : (2013) 6 BomCR 494 : (2013) 6 MhLj 404

Hon'ble Judges : P.N. Deshmukh, J;B.R. Gavai, J

Bench : Division Bench

Advocate : S.K. Mishra, Assistant Solicitor General of India, for the Appellant;
V.S. Kukday, for the Respondent

Judgement

1. Admit. Heard finally by consent of the learned counsel appearing for both the parties. The appeal takes exception to the judgment and order 3.10.2012 passed by the learned Single Judge in W.P. No. 3773 of 2012, thereby allowing the writ petition filed by the respondents herein and setting aside the order passed by the learned District Judge condoning the delay in filing an application for setting aside the Award.

2. The undisputed facts in the present matter are as such-

The Award of the Arbitration between the parties came to be served upon the present appellant on 6.10.2004. On 10.1.2005, an appeal for setting aside the same under the provisions of the Arbitration and Conciliation Act of 1996 (hereinafter referred to as Arbitration Act) came to be filed in this court. However, noticing that the application was tenable before the Court of learned District Judge and not before this court, the application was returned to the appellant on 25.1.2005. The application came to be filed before the learned District Judge on 8.2.2005. An application for condonation of delay came to be filed on behalf of the appellant on 8.2.2005. Undisputedly, the said application was rejected by the learned District Judge on 20.8.2005 observing that though

the delay is only of few days, in view of the law laid down by this court in the case of H.M.P. Engineers Ltd. and Others Vs. Ralies India Ltd. and Others, , holding that benefit of Section 14 of Limitation Act is not available for an application u/s 34 of the Arbitration Act, as such or the same could not be condoned. Undisputedly, the said order was affirmed by the learned Single Judge of this court in a writ petition and also by the Division Bench of this court in a letters patent appeal. The appellant filed a SLP before the Apex Court wherein leave was granted. The Apex Court disposed of the appeal bearing Civil Appeal No. 2601/06, by the judgment and order dated 15.2.2011, thereby holding that since in the case of Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department it was held that Section 14 of the Limitation Act is applicable, where application u/s 34 of the Arbitration Act is made, nothing remained to be decided in the said appeal. The orders passed by the Division Bench, the learned Single Judge as well as the learned District Judge were set aside and the learned District Judge, Nagpur was directed to rehear the application u/s 34 of the Arbitration Act along with the application for condonation of delay. On remand, the learned District Judge vide the judgment and order dated 11.11.2011 allowed the application. Being aggrieved thereby a writ petition came to be filed by the respondents before this court. The learned Single Judge of this court relying on the judgment of the Apex Court in the case of Assam Urban Water Supply and Sew. Board Vs. Subash Projects and Marketing Ltd., , allowed the petition and set aside the order passed by the learned District Judge. Being aggrieved thereby the present appeal is filed.

3. Shri Mishra, the learned Assistant Solicitor General of India, appearing on behalf of the appellant, submits that the learned Single Judge has grossly erred in relying on the judgment of the Apex Court in the case of Assam Urban Water Supply and Sewerage Board Vs. Subhash Projects and Marketing Limited. The learned Asst. SGI submits that the facts in the said case are totally different. He submits that in the said case, the prescribed period of 90 days did not come to an end during vacation but the 120th day fell during vacation and as such the Apex Court held that the benefit of Section 4 of the Limitation Act would not be available. The learned Asst. SGI submits that in the present case the question before the learned Single Judge was as to whether the benefit of Section 14 which was granted by the learned District Judge was rightly granted or not. The learned Asst. SGI, therefore, submits that this fact has not at all been taken into consideration by the learned Single Judge. Shri Mishra further submits that the learned Single Judge has also failed to take into consideration the order dated 15.2.2011 passed by the Apex Court between the same parties. The learned Asst. SGI submits that in view of the order dated 15.2.2011 passed between the present parties and the judgment of the Apex Court in the case of Consolidated Engineering Enterprises Vs. Principal Secretary Irrigation Department and others, the learned Single Judge ought not to have interfered with the order passed by the learned District Judge.

4. Shri Kukde, the learned counsel appearing on behalf of the respondents, on

the contrary, submits that the learned Single Judge has rightly construed the judgment of the Apex Court in the case of Assam Urban Water Supply and Sewerage Board Vs. Subhash Projects and Marketing Limited to come to a conclusion that the present appellant was not entitled to get benefit of Section 4 and as such rightly passed an order. The learned counsel further submits that in any case the appellant is not entitled to benefit of Section 14. The learned counsel submits that had the appellant or their lawyer read the provisions u/s 34 of the Arbitration Act, a bare perusal thereof would have been sufficient to decide that the application has to be filed only before the District Court and not the High Court. The learned counsel, therefore, relying on the judgment of the Division Bench of this Court in the case of Premilaxmi And Co., Mumbai vs. Ingersoll Rand (India) Ltd., Bangalore and another, submits that no interference would be warranted with the judgment passed by the learned Single Judge.

5. Perusal of the record would reveal that initially the application filed by the appellant before this court was returned on 25.1.2005, which was filed before the learned District Judge on 8.2.2005. Along with the same, an application for condonation of delay also came to be filed. As observed herein above, the learned District Judge though found that the delay was only of few days, rejected the said application on the ground that in view of the law laid down by this court in the case of HMP Engineers Ltd. And others Vs. Ralies India Ltd. and others supra, the delay could not be condoned. The said order has been affirmed by the learned Single Judge in writ petition and by the Division Bench in LPA. However, it will be pertinent to note that the Apex Court in Civil Appeal No. 2601/2006 has allowed the appeal by quashing and setting aside the orders passed by the learned Division Bench, learned Single Judge as well as the learned District Judge and the learned District was directed to rehear the application u/s 34 of the Arbitration Act along with the application for condonation of delay. It is further pertinent to note that the Apex Court has held that in view of law laid down by the Apex Court by a bench consisting of three Hon"ble judges in the case of Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others cited supra, Section 14 of the Limitation Act was applicable to an application made u/s 34 of the Arbitration Act. On remand, the learned District Judge found that the application u/s 34 which was filed before this court on 10.1.2005 was bonafidely presented and as such the learned District Judge found that from the said date till 25.1.2005 that is the date on which the application was returned, the appellant was entitled to benefit of Section 14 of the Limitation Act. It is pertinent to note that the learned District Judge specifically referred to the orders passed by the Apex Court and observations made by the Apex Court. In so far as the delay between 25.1.2005 to 8.2.2005 is concerned, the learned District Judge relied on the affidavit in examination in chief of one Smt. Gita Kashyap Perti, who is an officer of the appellant wherein she has stated that this period was required for redrafting the petition, sending it to the officer concerned and signing it. Needless to state that the said period would be at the most of 13 days.

6. The learned Single Judge basically relying on the judgment of the Apex Court in the case of Assam Urban Water Supply and Sewerage Board Vs. Subash Projects and Marketing Limited held that the appellant was not entitled to benefit of Section 14 and Section 4 of the Limitation Act. The learned Single Judge further went on to observe that assuming that the respondent (appellant herein) was bonafidely prosecuting the matter before the High Court instead of prosecuting the same before the proper forum, the benefit of provisions of Section 14 of the Limitation Act cannot be granted to the respondents. We find that the learned Single Judge has totally misconstrued the judgment of the Apex Court in the case of Assam Urban Water Supply and Sewerage Board Vs. Subash Projects and Marketing Limited. Firstly, the question as to whether Section 14 of the Limitation Act was applicable to an application u/s 34 of the Arbitration Act did not fall for consideration before the Apex Court in the said case. The only question that fall for consideration before the Apex Court was as to whether the period of 30 days, as provided under the proviso to sub-Section 3 of Section 34 of the Arbitration Act could be included in the term "prescribed period" as provided u/s 4 of the Limitation Act. It will be relevant to refer certain facts in the case for consideration before the Apex Court. The awards were received by the appellant therein on 26.8.2003. It could thus be seen that, as such the period of 90 days as provided under sub-Section 3 of Section 34 came to an end on 26.11.2003. However, the applications were filed by the appellant therein for setting aside the Award on 2.1.2004 i.e. much after expiry of period of 90 days. Along with the said application, separately two applications were made for extension of time as provided u/s 34(3) of the Arbitration Act. The said applications were dismissed on the ground of limitation. The Division Bench of the Gauhati High Court upheld the orders passed by the District Judge. Being aggrieved thereby the appellant therein approached the Apex Court. It was contended before the Apex Court that since the period of 30 days as provided under the proviso to sub-Section 3 of Section 34 fell during vacation, the appellant was entitled to benefit of Section 4 of the Limitation Act. In this factual background, the Apex Court observed thus-

10. The facts in the present case are peculiar. The arbitral awards were received by the appellants on 26.8.2003. No application for setting aside the arbitral awards was made by the appellants before elapse of three months from the receipt thereof. As a matter of fact, three months from the date of the receipt of the arbitral award by the appellants expired on 26.11.2003. The District Court had Christmas vacation for the period from 25.12.2003 to 1.1.2004. On reopening of the court i.e. on 2.1.2004, admittedly, the appellants made applications for setting aside those awards u/s 34 of the 1996 Act. If the period during which the District Court, Kamrup, Guwahati, remained closed during Christmas vacation, 2003 is extended and the appellants get the benefit of that period over and above the cap of thirty days as provided in Section 34(3), then the view of the High Court and the District Judge cannot be sustained. But this would depend on the applicability of Section 4 of the 1963 Act.

11. The question, therefore, that falls for our determination is whether the appellants are entitled to extension of time u/s 4 of the 1963 Act in the above facts?

12. Section 4 of the 1963 Act reads as under:

4. Expiry of prescribed period when court is closed.--Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when's the court reopens.

Explanation.--A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.

The above section enables a party to institute a suit, prefer an appeal or make an application on the day the court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed.

13. The crucial words in Section 4 of the 1963 Act are "prescribed period". What is the meaning of these words?

14. Section 2(j) of the 1963 Act defines:

2. (j) "period of limitation (which) means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act.

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside an arbitral award is three months. The period of 30 days mentioned in the proviso that follows sub-Section (3) of Section 34 of the 1996 Act is not the "period of limitation" and, therefore, not the "prescribed period" for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the "period of limitation" or, in other words, the "prescribed period", in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.

15. Seen thus, the applications made by the appellants on 2.1.2004 for setting aside the arbitral award dated 26.8.2003 were liable to be dismissed and have rightly been dismissed by the District Judge, Kamrup, Guwahati, as time barred.

(emphasis supplied)

7. It can thus be seen that the Apex Court has held that for getting benefit of Section 4 of the Limitation Act, the party would be entitled to the benefit of filing an application during vacation if the period prescribed to file an appeal expires on a date when the court is closed and the application is filed in the court on the

date on which the court reopens. The Apex Court has held that the period prescribed for filing an application was provided in the main provision of sub-Section 3 of Section 34 i.e. 90 days. It was further held that the period of 30 days mentioned in the proviso of sub-Section 3 of Section 34 is not a "period of limitation" and therefore cannot be construed to be a "prescribed period". It can thus clearly be seen that even according to the Apex Court the period prescribed for filing application as provided sub-Section 3 of Section 34 of the Arbitration Act is 90 days. Undisputedly, in the present case, the period of 90 days expired on 5.1.2005. Undisputedly, the said period was during the Christmas vacation. Undisputedly, the application was filed on 10.1.2005. Present is not the case wherein the 120th day had fallen during the vacation, but is the case wherein 90th day, which is a period prescribed under sub-Section 3 for filing an application, had fallen during the vacation. In that view of the matter, we have no hesitation to say that the learned Single Judge has erred in holding that the present case is covered by the judgment of the Apex Court in the case Assam Urban Water Supply and Sewerage Board Vs. Subhash Projects and Marketing Limited. Apart from that, another glaring error that appears to have been committed by the learned Single Judge, is not taking into consideration the judgment and order of the Apex Court between the present parties. It would be relevant to refer to the order passed by the Apex Court in Civil Appeal No. 2601 of 2006 which is between present parties.

The short question of for determination in the appeal is whether Section 14 of the Limitation Act, 1963, applies in respect of a proceeding u/s 34 of the Arbitration and Conciliation Act 1996, challenging an award. On 8th May 2006, leave was granted in this matter and liberty was given to apply for expedition hearing. In this case, the award had been passed by the Arbitrator on 30, September, 2004, and was communicated to the appellant on 6th October, 2004. The appellant filed the appeal on 10th January, 2005, u/s 34 of the Arbitration and Conciliation Act, 1996, before the High Court, to challenge the award. The appeal was returned by the High Court on 25th January 2005 and was, thereafter, filed by the appellant in the court of District Judge, Nagpur on 8th February, 2005, with an application u/s 14 of the Limitation Act for condonation of delay of 34 days in filing the appeal. The same was dismissed by the learned District Judge on the ground that Section 14 of the Limitation Act had no application to a proceeding u/s 34 of the Arbitration and Conciliation Act. The learned Single Judge and the Division Bench of the High Court confirmed the said order, dismissing the writ petition as well as the Letters Patent Appeal filed by the appellant herein. It is the order of the Division Bench, which is the subject matter of challenge in the present appeal.

During the pendency of this matter, a Bench of three judges of this Court in the case of Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department (supra), has held that Section 14 of the Limitation Act, is applicable to an application submitted u/s 34 of the Arbitration and Conciliation Act, 1996.

Having regard to the above, nothing further remains to be decided in this appeal. The appeal is, accordingly, disposed of in the above terms. The orders passed by the Division Bench, the learned Single Judge as well as the learned District Judge, are all set aside and the learned District Judge, Nagpur is directed to rehear the application u/s 34 of the Arbitration and Conciliation Act, 1996, along with the application for condonation of delay filed in connection with the said proceeding. There will be no order as to costs.

8. It can thus be seen that the Apex Court was oblivious of the fact that in earlier round an application of the present appellant was rejected in view of the legal position that the benefit of Section 14 cannot be given to application u/s 34 of Arbitration Act and has observed that in view of the law laid down by the bench consisting of three judges of the Apex Court in the case of Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department, it was held that Section 14 of the Limitation Act was applicable to an application submitted u/s 34 of the Arbitration Act. In this premises, the order passed by the District Judge, the learned Single Judge of this court and the Division Bench of this court came to be set aside by the Apex Court and the learned District Judge was directed to consider the application u/s 34 afresh along with an application for condonation of delay. It is relevant to note that the learned District Judge in his order has specifically referred to the order passed by the Apex Court and direction issued by the Apex Court to decide the matter in the light of the observations of the Apex Court. The learned District Judge found that in view of the law laid down by the Apex Court, the period between 25.1.2005 to 8.2.2005 was entitled to be excluded by giving benefit of the provisions of Section 14 of the Limitation Act. In so far as the remaining period of 13 days is concerned, the learned District Judge found that though Smt. Gita Kashyap Perti, an officer with the appellant had specifically filed an affidavit in lieu of examination in chief giving the details as to how the said period was liable to be condoned, the said witness was not cross-examined and as such her evidence had gone unchallenged and therefore found that the said period was also liable to be condoned.

9. We are at pains to say that though the learned District Judge had specifically referred to the judgment of the Apex Court in its order and how it was deciding the matter as per the direction of the Apex Court, there is not even a reference to the judgment of the Apex Court between the parties in the judgment and order passed by the learned Single Judge.

10. Apart from that, the law as laid down by the Apex Court in the case of Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department (supra) clearly holds that benefit of Section 14 is available also in the proceedings where application u/s 34(3) of the Arbitration Act is made. What has been held is that there is no power in the court to extend limitation beyond 30 days as provided in proviso to sub-Section 3 of Section 34 by taking recourse to Section 5 of the Limitation Act. It will be relevant to refer to paragraph 19 of

the judgment of the Apex Court.

19. A bare reading of sub-Section (3) of Section 34 read with the proviso makes it abundantly clear that the application for setting aside the award on the grounds mentioned in sub-Section (2) of Section 34 will have to be made within three months. The period can further be extended, on sufficient cause being shown, by another period of 30 days but not thereafter. It means that as far as application for setting aside the award is concerned, the period of limitation prescribed is three months which can be extended by another period of 30 days, on sufficient cause being shown to the satisfaction of the court.

It would also be relevant to refer to paragraph 23 of the aforesaid judgment.

23. At this stage it would be relevant to ascertain whether there is any express provision in the act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted u/s 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings u/s 34 are for the purpose of challenging the award whereas the proceeding referred to u/s 43 are the original proceedings which can be equated with a suit in a court. Hence, Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section (4) of Section 43, inter alia, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted u/s 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made u/s 34 of the Act. It is to be noticed that the powers u/s 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction u/s 34 of the Act, cannot be exercised suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not usually long. Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of Section 34 of the Act of 1996, the intention of the legislature to

exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted u/s 34 of the Act of 1996 for setting aside an arbitral award.

11. It can thus be clearly seen that the Apex Court has held that the application for setting aside the award has to be made within a period of three months. However, the period can further be extended on sufficient cause being shown by another period of 30 days. The perusal of the judgment would, therefore, clearly reveal that the Apex Court in an unequivocal term has held that the provisions of Section 14 of the Limitation Act would be applicable to the application u/s 34 of the Arbitration and Conciliation Act 1996. The Apex Court has further held that there is no provision in the 1996 Act which excludes application u/s 14 of the Limitation Act to the application u/s 34 of the Arbitration Act. The Apex Court has further held that the total period of four months within which an application for setting aside Arbitration award has to be made is not unusually long. It has been further held that Section 34 of the Arbitration Act would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it. It has been further held that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provide for exclusion of certain period. We are of the considered view that the case of the present appellant was clearly governed by the aforesaid judgment of the Apex Court in the case of Consolidated Engineering Enterprises (supra).

12. The Apex Court in the case of The Regional Manager and Another Vs. Pawan Kumar Dubey, has succinctly described as to what would constitute Ratio decidendi.

It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a word of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

13. It can thus be seen that the ratio decidendi has been defined as a rule deducible from the application of law to the facts and circumstances of the case and not some conclusions based upon facts which may appear to be similar. It has been further held that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case of similar facts.

14. As already discussed herein above, in the case of Assam Urban Water Supply and Sewerage Board (supra) the question for consideration was as to whether the period of 30 days as provided in proviso to sub-Section 3 which is an addition to 90 days as provided in the main provision, if falls on a holiday, whether a

party was entitled to benefit u/s 4 of the Limitation Act or not. The Apex Court found that on a combined reading of Section 2(j) and 4 of the Limitation Act it is only the initial period of 90 days which can be construed to be a "prescribed period" and the subsequent period of 30 days cannot be included in the "prescribed period". In that view of the matter, the Apex Court found that the application which was filed after reopening, since 120th day fell in a vacation, was not entitled to benefit of Section 14 inasmuch as the prescribed period expired on 90th day. Such is not the case here. Here, the 90th day had fallen during the vacation and the application had been filed immediately after reopening. The appellant was therefore, entitled to benefit of Section 4. In that view of the matter, the reliance placed by the learned Single Judge on the said judgment, in our considered view, is not well merited.

15. The learned Judge has also failed to take into consideration that the present case was a case which is squarely covered by the judgment of the Apex Court delivered by a Bench consisting of three Hon'ble judges in the case of Consolidated Engineering Enterprises. In the said case, the question as to whether the provisions of Section 14 of the Limitation Act are applicable to Section 34 of the Arbitration Act directly fell for consideration. Not only this, but in an appeal between the parties, the Supreme Court has clearly observed that in view of the judgment of the three Hon'ble Judges in Consolidated Engineering Enterprises case, the earlier orders passed by the learned District Judge holding that the appellant was not entitled to benefit of Section 14 and affirmation thereof by the learned Single Judge in writ petition and by the Division Bench in the LPA were not sustainable and therefore all the said judgments and orders were quashed and set aside. Had the learned Single Judge noticed the judgment and order of the Apex Court passed between the present parties and the judgment of the Apex Court in the case of Consolidated Engineering Enterprises on the basis of which the Apex Court has passed order dated 15.2.2011, may be the learned Single Judge would not have passed the order which has been passed in writ petition. At the cost of repetition, we may state that the learned District Judge, whose order was assailed before the learned Single Judge, has in detail narrated the history including the remand by the Apex Court. It is further to be noted that apart from the delay between 10.1.2005 to 25.1.2005 which has been condoned by the learned Single Judge by taking recourse to Section 14 of the Limitation Act, further delay of 13 days has been condoned on the ground that in an affidavit filed in lieu of examination in chief on behalf of the appellant sufficient cause was shown and that neither the said witness was cross-examined nor called for cross-examination and therefore her evidence had gone unchallenged. As held by the Apex Court in the case of Consolidated Engineering Enterprises, the further delay in addition to the one u/s 14 can be condoned only to the extent of 30 days. Undisputedly, in the present case the delay which is of 13 days is much less than 30 days as provided under the proviso of Sub-Section 3 of Section 34 of the Arbitration Act.

16. In so far as the judgment of the Division Bench of this Court in the case of

Premlaxmi and Co. Mumbai Vs. Ingersoll Rand (India) Ltd., Bangalore and another, which is relied on by the respondent is concerned, in the said judgment the delay was of a years and as such the Court found that the benefit of Section 14 could not be given. In the present case, the delay is hardly of 13 days. As such the judgment is not applicable in the facts of the present case.

17. In that view of the matter we find that the learned Single Judge has committed a gross error in ignoring the judgment and order of the Apex Court between the same parties in appeal no. 2601/2006 dated 15.2.2011 which clearly holds that the benefit of Section 14 is applicable to an application submitted u/s 34 and remands the matter to the learned District Judge for reconsideration, and also not considering the judgment of the bench consisting of three Hon"ble judges of the Apex Court in the case of Consolidated Engineering Enterprises.

18. In that view of the matter we are of the considered view that the learned Single Judge was not justified in reversing the well reasoned order passed by the learned District Judge which was passed on the remand as per the direction of the Apex Court. In that view of the matter, the appeal succeeds. The impugned order is quashed and set aside. The judgment and order passed by the learned District Judge is upheld. At this stage, Shri Kukde, the learned counsel appearing on behalf of the respondents requests for a direction to the learned District Judge to decide the Arbitration Application as filed by the appellant within a stipulated period. We find the request to be reasonable. We, therefore, direct the learned District Judge to decide the application filed by the appellant u/s 34 as expeditiously as possible and in any case within a period of one year from today.