

(1967) 10 MAD CK 0006

In the Madras High Court

Case No : Original Petition No. 213 of 1966

Engineering Construction Corporation, Ltd.

APPELLANT

Vs

Madras Port Trust, Madras and Another

RESPONDENT

Date of Decision : 03-10-1967

Acts Referred:

Arbitration Act, 1940 — Section 16, 30, 33

Citation : AIR 1968 Mad 335 : (1969) ILR (Mad) 737

Hon'ble Judges : Ramamurthi, J

Bench : Single Bench

Judgement

(1) This petition O. P. No. 213 of 1966 has been filed by the Engineering Construction Corporation, Limited, Bombay (hereinafter referred as "the Company") under Sections 16, 30 and

33 of the Arbitration Act, Act 10 of 1940, for setting aside a award dated 30th October 1965, delivered by the umpire Dr. P.V. Rajamannar, retired Chief Justice, the second respondent

herein. The first respondent is the Madras Port Trust. The award in question is filed by in the proceedings in O. P. No. 276 of 1965 and O. P. No. 280 of 1965 initiated by the Port Trust

and the Company respectively. This petition to set aside the award which was filed on 11th October 1966, is resisted by the Port Trust on the ground (amongst others) that it is barred by the

limitation under Art. 119(b) of the Limitation act, Act 36 of 1963 (hereinafter referred to as "the Act"). As this objection went to the root of the matter, I decided to here same as a

preliminary point, and I heard arguments by the counsel on both sides. I shall now briefly refer to the relevant facts bearing on this question of limitation.

(2) Engineering Construction Corporation, Ltd., entered into contract with the

Madras port Trust for the construction of dock walls, quay, apron, etc., for the new wet Dock at Madras.

Disputes arose between the parties concerning the claim of the Company against Port Trust for delayed supply of imported plants necessary for construction, compensation for delay caused

for reasons beyond the control of the contractors. The contractors made a total claim about Rs. 14,93,624.78 towards such compensation. As per Clause 71 of the general conditions of the

contract, the disputes between the parties were referred to two arbitrators Sri W. S. Krishnaswami Naidu, retired judge of the Madras High Court nominated by the Company and Sri N.

Somsundaram, retired Judge of the Madras High Court nominated by the Port Trust.

The arbitrators entered upon their reference, conducted their proceeding during which documents were filed on both sides and representative of both the parties put forward their respective

points of view. As the Arbitrators differed, they decided to refer the matter to Dr. P. V. Rajamannar as Umpire. The parties therefore appeared before the Umpire, who, after due notice to

the parties, pronounced an award on 30th October, 1965 in the premises of the Port Trust in the presence of the parties and their counsel. The Umpire immediately after pronouncing the

award signed the same in the presence of the parties and their counsel. The fees due to the Umpire had been paid by both the parties.

It may be mentioned, that throughout all the proceedings both before the Arbitrators and the Umpire as well as in this Court, Mr. P. Desai, legal assistant, appeared on behalf of the

Company while Mr. V.V. Raghvan represented the Port Trust. In connection with the proceedings of this Court, Mr. P. Desai has filed all the affidavits on behalf of the Company, touching

the relevant facts and the several stages of proceedings. As some objection raised by the Company about the sufficiency of the prior notice given by the Umpire with regard to the making

and the signing of the award, the Umpire again issued another notice on 3-12-1965 that he made and signed the award on 30th October 1965. In the meanwhile the Port trust filed the

petition O. P. No. 276 of 1965, on 25-11-1965 for directing the Umpire to file into Court his award dated 30th October 1965 and also filed a decree in accordance

with the said award

(Vide pp. 11 to 16 of the typed set, Vol. II) On 27-11-1965 the Company filed O. P. No. 280 of 1965 u/s 14(2) of the Arbitration Act and Order 43, Rule 4(2) of the Original Side Rules,

1955 for directing the Umpire to file into Court his award along with the depositions, document and all papers which have been taken and proved in the course of proceedings before him

and also for the directions for the issue of a notice of the filing of the award and for service of the upon the parties. (vide pp. 17 to 29 of the typed set, Vol. II). In both the petitions, the

Umpire was the second respondent and notices in all these petitions were received by the Umpire by the second week of December, 1965.

(3) The Master by his order dated 25-1-1966 directed both O. P. No. 276 of 1965 and O. P. No. 280 of 1965 to be posted before the Court and Kunhamed Kutti, J., Passed an order on

10-2-1966 (in the presence of counsel for all the parties) directing issue of notice to the Umpire returnable by 24-2-1966. It is not in dispute that on that date, the learned Judge indicated

(obviously out of reference for Dr. Rajamannar) that the notice should be properly worded, more to be in form of request and the following letter was accordingly addressed to the Dr.

Rajamannar:--

Sir,

Ref.--Arbitration--Award--In the matter of Disputes between the Engineering Construction Corporation, Ltd. and the Trustees of The Port of Madras.

Original petition Nos. 276 and 280 of 1965 were filed in this Court, u/s 14(2) of the Arbitration Act, by directing he filing of the Award made by you on 30-10-1965 and for passing the

decree in terms thereof.

Notices issued from this Court in these two petitions have been received by you on 10-12-1965 and 18-12-1965 respectively.

The Award may kindly be forwarded to this Court, with relevant record pertaining thereto, at your earliest convenience.

Curiously enough, Mr. Desai addressed some arguments which I could not follow, as to the nature of the order passed by Kunhamed Kutti, J., on 10-2-1966 as well as the communication

addressed by the registrar of this Court to the Umpire. Mr. Desai did not pursue the matter further and he accepted the position that the order passed by this Court on 10-2-1966 is one

directing the umpire to forward to this Court the award along with the relevant records pertaining thereto. The Umpire sent his reply on 24-3-1966 enclosing therewith the original award and

relevant documents, in all, including the award, seven enclosures. After the receipt of the award and the enclosures, the petitions were posted before the Court on 15-4-1966 and on that

occasion permission was granted to Mr. Desai to the records received from the Umpire and make his representation thereafter, if there should be any need for further directions from the

Court and the matter was adjourned to 21-4-1966.

On 16-4-1966, Mr. Desai checked the papers filed by the Umpire and immediately took out an application, Application No. 1124 of 1966 on 26-4-1966 supported by two affidavits dated

21-4-1966 (page 34 of the typed set, Vol. II) and an affidavit dated 23-4-1966 (p. 75 of the typed set, Vol. II). In these two affidavits, the complaint of Mr. Desai that the procedure

adopted by the Umpire while forwarding the award and the documents relevant thereto was not in accordance with the provisions of S. 14, sub-section (2) of the Arbitration Act read with

O. 43 R. 4, sub-rule (2) of the Original Side Rules and that the umpire had not forwarded to the Court some important crucial documents. A perusal of these two affidavits of Mr. Desai

shows that the Company was very keen about the Umpire filing into Court along with his award several documents, 13 in number, as set out in the affidavit; of these considerable stress and

insistence was laid upon three documents, items Nos. 2, 5 and 6, Exhibit C-9, copies of the minutes of the discussion held on 6th May, 1963 before the Chief Engineer, Madras Port Trust,

P-116, the original chart, dated 19-1-1962 and Exhibit P-117, the original chart dated 28th February, 1962.

The Company took up the position that what the Umpire has done was inadequate and incomplete and not in conformity with the Section 14(2) and the Original Side Rules and, therefor,

there should be an order directing the return to the Umpire the award and the documents which the Umpire forwarded to this Court on 24th March 1966 or in

the alternative to direct the

Umpire to file all the documents, particularly documents described as items 2, 4 to 10, 12 and 13 in para 5 of the first affidavit of Mr. Desai. Notice of this application was as the Umpire.

Thereupon, the Umpire filed a verified statement on 13-7-1966 (p. 84 of the typed set, Vol. II) enclosing therewith eight documents with a list containing the particulars thereof. At this stage,

it is sufficient to state that the umpire in this verified statement has stated: "'I don't in my possession items 2, 5 and 6.

(4) Mr. Desai was not satisfied with this verified statement (along with the enclosures) filed by the Umpire and Mr. Desai persisted in the stand that even this verified statement of the Umpire

and the enclosures did not improve the position and that what the umpire has done cannot be regarded as filing of the award u/s 14(2) of the Arbitration Act read with relevant rules of O. 18

of the Original Side Rules. Mr. Desai took exception to the statement of the Umpire that the latter was not in possession of items 2, 5 and 6, being Exhibits C-9, P-116 and P-117, the

objection being that the last two documents original charts formed part of record of Arbitrators and were filed before the Umpire and that the latter should, therefore, account for all these

documents which were marked and exhibited before him. Mr. V.V. Raghvan, counsel for the Port Trust, filed a verified statement on 21-7-1966 in which he traversed the several averments

contained in the two affidavits of Mr. Desai dated 21-4-1966 and 23-4-1966. Paragraphs 1 to 8 deal with the proceeding before the Umpire regarding the objections and points of rival

contentions pressed by both the parties. What is relevant for the present enquiry is contained in paragraph 9 of that verified affidavit of Mr. Raghvan in which, while denying the allegations of

Mr. Desai, Mr. Raghvan had merely stated that he (Mr. Raghvan) has read the verified statement of Dr. Rajamannar (Meaning thereby the verified statement dated 13-7-1966) and that that

verified statement correctly represented the position.

When Mr. Desai has been insisting upon the production and filing into Court, of two important documents, the original charts Exhibits P-116 and P-117, and taking particular statement of

the Umpire that the Umpire was not in possession of these documents, the Port Trust ought to have made a statement as to what happened to those documents, especially when these two

original documents were in custody of the Port trust after having marked as Exhibits before the Umpire, The exhibit marks themselves having been put by the Umpire in his own hand. The

significance of this criticism of the statement of Paragraph 9 of the verified statement of Mr. Raghvan will become apparent when I mentioned how the documents were filed and marked

before the Arbitrators and the Umpire. Both sides filed all their documents before the Arbitrators and except these two documents, the original charts, Exhibits P-116 and P-117, the rest of

the documents were all typed copies (and not the original themselves) as agreed to between the parties.

The records of the proceedings of the Arbitrators on 3rd July 1965 show that in the presence of Mr. Desai and Mr. Raghvan, the Arbitrators, in view of the different opinion between them,

referred the matter to the Umpire. It is necessary to extract hereunder the paragraph of that proceeding dated 3-7-1965.

Exs. P-115, P-116, P-68-c--Two copies R 22 two copies are returned to Mr. V.V. Raghvan on behalf of the Port Trust. Ex. P-112 is returned to Mr. P. Desai on behalf of the

Contractors.

Sd/- W.S. Krishnaswami Naidu,

Sd/- N. Somasundaram.

Some dispute was raised before me as to whether throughout the proceedings before the Arbitrators, the two charts Exhibits P-115 and P-116 (Evidently a mistake for Exhibits P-116 and

P-117) were in the custody of the Arbitrators and retained by them or whether they were with the Port Trust throughout, but as and when necessary, were made available to the two

Arbitrators in the course of their proceedings. In view of this note, in the proceeding before the Arbitrators, one has to proceed on the footing that the two charts were with the Arbitrators; at

any rate, at the time when the matter was referred to the Umpire, the charts were handed over to Mr. Raghvan. Before the Umpire, all the documents which were filed before the Arbitrators

were filed and all the exhibits were given the same exhibit numbers, the markings of the exhibits numbers having been made by the Umpire himself as is seen from the set of papers, Volume II

documents with index. As the two charts were with the Port Trust, the Preparation of the index which was made by the Company, (Items 19 and 20 at page 10) it is specifically recited that

these the two charts were produced before the Arbitrators and ""now in the possession of the Madras Port Trust Authorities"". There is no dispute that these two charts were made available

before the Umpire, he having marked them as Exhibits P-116 and P-117. Under normal circumstances these documents were original documents, ought to have come into the custody of the

Umpire, at any rate at the time when he pronounced the award and when he filed the documents along with the award into Court.

Mr. Desai in his affidavits in Application 1124/66 insisted that even if these two original charts were permitted by Umpire to be in the custody of Port Trust, it was the duty of the Umpire to

have got back the original charts, being crucial original documents, and kept in the custody of the Umpire and filed into Court when he filed the award as important enclosures thereto. From

Mr. Desai's point of view, the position was that the Umpire while filing some more documents on 3-7-1966 simply stated that he did not have in his possession the two charts. Mr. Raghvan

in his verified statement of the 21st July 1966 did not disclosed as to what happened to these original charts, but simply affirmed the statement of the Umpire. If Mr. Raghvan had at least

stated that the two charts were throughout in the custody of the Port Trust after 3-7-1965, the charts, however, made available to the Umpire in his proceeding from time to time. Mr. Desai

would have been satisfied with that statement; but, in view of the situation that there was no satisfactory account as to what happened to these two originals from either the Umpire or the

Port Trust, Mr. Desai filed another affidavit on 28-7-1966 again insisting upon these the production of these two documents or a full disclosure as to what happened to them.

The two O. Ps., O. P. Nos. 276 and 280 of 1965, and the Application No. 1124 of 1966 were all posted to 4-8-1966. On that day, the Umpire further filed a verified statement in reply to

the affidavit of Mr. Desai dated 28-7-1966. In this second verified statement, the Umpire stated that these three documents, Ex. C-9 the copy of the minutes of the discussion and Exhibits

P-116 and P-117 the two original charts, were with the Madras Port Trust themselves and not handed over to the Umpire at any time. The Umpire also made reference to the Company's

reservation while filing the typed set of documents Volume II to the effect that these two charts ""are in the possession of the Madras Port Trust Authorities"". In view of the verified statement

of the Umpire, it is seen that after the termination of the proceedings before the Arbitrators, the two charts, the originals, were throughout in the possession of the Madras Port Trust

Authorities, though made available on all occasion in the proceedings before the Umpire and the Umpire did not secure the custody of these two documents when he pronounced the award,

presumably because, the Company was agreeable and had no objection, up to that moment, to these documents were in the custody of the Port Trust Authorities. It is hardly necessary to

mention that if Mr. Desai has desired or insisted those at the time of pronouncement of the award, to be secured by the Umpire, the latter would have readily complied with that request. It is

only on 4-8-1966, on the final dates of hearing of these matters, that Mr. Raghvan gave an undertaking to produce Exhibit C-9, the minutes of discussion and two original charts, Exhibits P-

116 and P-117, whenever necessary. Mr. P. Venkataswami, counsel appearing for the Umpire has made the following notes in his case papers at the time of hearing on 4-8-1966.

2nd verified statement filed by the Umpire. Mr. V.V. Raghvan produce C-9; P-116 and P-117 whenever necessary.

Sd/- P. V. 4-8-1966.

Application closed.

Item No. 10 notes of arguments need not be filed.

Sd/- P. V. 4-8-1966.

These notes made by Mr. Venkataswamy correspond to following order which Kunhamed Kutti, J. passed on the same day.

Excepting notes of arguments which is Item 10 in the list, all other documents, have been put into Court. This application need not therefore pending. Closed.

It is after the disposal of this application No. 1124 of 1966 in the manner aforesaid that arguments were heard, on the same day on the two petitions, O. P. Nos. 276 and 280 of 1965, and

orders thereon pronounced by the learned Judge on 17-8-1966.

(5) As it has got an important bearing on the plea of limitation raised by the Port Trust, it is necessary to sum up at this stage as to what exactly had happened upto 4-8-1966.

(6) Both petition had filed petitions u/s 14(2) of the Arbitration Act read with order 43 of the Original Side Rules for directing the Umpire to file the award into Court together with the

pleadings and the document and all other papers relating to the reference. When the Umpire filed the award u/s 14(2) of the Act inclosing some only of the documents, the Company was

objecting and protesting that what the Umpire had was not the proper compliance with the provisions of Section 14(2) and that an order declaring the filing of the award in terms of Sec.

14(2) ought not to be passed until all the original documents were filed into court by the Umpire. The various steps taken by the Company were not mala fide or frivolous, merely not protect

or gain time, but steps taken with perfect bona fides and they also resulted in the Umpire filing some more documents and the Company was informed only on 4-8-1966 as to what actually

happened to the original documents, Exhibits C-9, P-116 and P-117, and as to why the Umpire was not in position to file the original documents along with the award or thereafter.

It is important to bear in mind that but for the information and undertaking given by Mr. Raghvan to produce these originals, the Company would have insisted upon the Court passing an

order returning to the Umpire award and the documents so far filed.

(7) A proceeding u/s 14(2) initiated by either of the parties to an arbitration is undoubtedly a judicial proceeding and when there is a controversy between the parties as to what original

documents and enclosures which the Umpire had filed into Court along with award, the Court should hear the representation of the Umpire, if any and pass a final order either returning the

award and the enclosures to the Umpire or an order that the award would duly filed into Court in accordance with Section 14(2) of the Act. It is after this stage is reached that as part and

parcel of this order that the Court should issue notice to the parties of the filing of the award so as to start limitation. In this case, O. P. Nos. 276 and 280 of 1965 were pending and

arguments were heard only on 4-8-1966 as to the nature of the order to be passed and the Court, after hearing the arguments, reserved judgment and pronounced orders on 17-8-1966. On

4-8-1966, in his arguments, Mr. Desai insisted the Court should pass an order that the award has been filed in accordance with Section 14(2) and that formal notice of the filing of the award

should also be issued to the parties in accordance with section 14(2) of the Act. It is implicit in the section 14(2) that the Court has to pronounce a judicial order and also give notice to

the parties of the filing of the award.

Mr. Raghvan, however, then urged before Kunahmed Kutti, J., that the Company has full knowledge or notice of the filing of the award" on 16-4-1966 when they inspected the award and

records filed by the Umpire after obtaining permission from the Court and that any application to set aside the award, 30 days thereafter, would be barred under Article 119(b) of the

Limitation Act of 1963 and that a right which had clearly become barred by time by 4-8-1966 could not be received by the Court being asked to pass a fresh order giving notice of the filing

of the award. In other words on behalf of the filing of the award. In other words on behalf of the Port Trust it was then urged that under the guise of the award, the Company cannot get a

second starting point of limitation under Article 119(b) of the Limitation Act.

The learned Judge after adverting to all that had transpired up to 4-8-1966 and after considering the decisions cited on both sides held that such knowledge as could be attributed to the

Company was not sufficient to hold service of notice of the filing of the award within the meaning of the Column 3 of Article 119(b) of the Limitation Act and that a notice contemplated u/s

14(2) of the Arbitration Act should be given to the Company and that such a notice would be given within a week thereafter the petitions reposted after service of such notice. On the crucial

question of knowledge, this consider order is in favour of the Company and against the Port Trust. It is in the background of this order that I have to consider the objection of limitation raised

by the Port Trust.

(8) the Arbitration Act of 1940 which is consolidating and amending Act is exhaustive on the subject and one uniform single legislation repealing the arbitration Act of 1899 and the Second

Schedule of the Code of Civil Procedure, 1908. It is sufficient if the brief reference is made to the provisions therein concerning the filing of the award and the issue of notice of such filing.

The Arbitration Act of 1899 applied only to arbitrations without the intervention of Court. Section 11(2) of that Act provided that at the request of any party, the Arbitrator shall cause the

award to be filed into Court and notice of filing shall be given to the parties by the Arbitrator. The particular provisions of the Limitation Act with regard to the filing or the setting aside of the

award did not apply to an award under the Act of 1899. With regard to Section 11(2) of the Act 1899 it is to be noticed that the notice of the filing of the award is to be given by the

Arbitrator and not by the Court.

Some of the leading decisions, particularly of the Calcutta High Court, took the view that the act of filing of the award of the Arbitrator was merely a ministerial act, that the failure on the part

of the Arbitrator to give notice of such filing of award would not render it a nullity and that the party aggrieved can complain only if in fact he would be prejudiced by such failure to give

notice. (Vide--Udaichand Panna Lall V. Debibux Jewanram, ILR (1920) Cal 951 = AIR 1920 Cal 853 and Sunil Kumar Saha Vs. The State, . I may also refer to the following observations

of Shadi Lal, Chief Justice, in Firm Jai Narain Babu Lal v. Firm Narain Das jaini Mal, 3 lah 296 = AIR 1922 Lah 369, where the learned Chief Justice, after comparing the provisions of

Paragraphs 20 and 21 of the Second Schedule of the Code of Civil Procedure, 1908 with Sections 11 and 14 of the Arbitration Act of 1899 observed that under the Arbitration Act, no

order that the filing of the award under that statute (Act of 1899) is a ministerial act and is done by the Arbitrators. In this decision, reference is made to the discordant note struck by the

Allahabad High Court in Nainsukh Das and Nagar Mal Vs. Gajanand and Shyam Lal, .

There is some divergence of judicial opinion on the question whether the Court dealing with a private award under the provisions of Arbitration Act has jurisdiction to determine a dispute as

to the factum or the validity of the contract containing the arbitration clause, but even if the Court can entertain the determine objections going to the root of the contract, there can be no

doubt that the Act itself does not provide for an appeal from the judgment of the Court on those objections. It is true that Sec. 104(f) of the CPC provides an appeal from an order filing or

refusing to file an award made without the intervention of the Court, but a comparison of paragraphs 20 and 21 of the Second Schedule of the CPC with the corresponding sections of the

Arbitration Act shows that, while a court dealing with a private award under the said schedule makes an order is ever made by the Court acting under the Arbitration Act. The foiling of the

award under that statute is a ministerial act and is done by the arbitrators; vide Section 11, sub-section (2); and unless the award is remitted under Sec. 13, or set aside u/s 14, it becomes

enforceable as if it were a decree of the Court, vide Section 15. Whether the Court rejects the objections to the award or accepts them it seems that the order made by it is not called an

order filing or refusing to file the award. The Court, therefore, never passes an order of that description, and consequently its decision on the objections is not appealable under any

law. This is the view taken by the Calcutta High Court in ILR (1918) Cal 502 = AIR 1918 Cal 191, the Chief Court of Lower Burma in P.W. Ripley v. V. J. Nahapiet, (1912) 17 Ind Cas

902, and the Sind Court in Kewalram Ghansham Das v. M/s. Donald Graham and Co. (1911) 10 Ind Cas 211. A discordant note has, however, been struck by the Allahabad High Court in

ILR (1921) All 348 = (AIR 1921 All 273); but with all respect to the learned Judges, I am Unable to concur in their decision.

* * * *

Upon an examination of the various provisions of the Arbitration Act, I am of opinion that an order adjudicating upon objections to an award is nowhere as an order filing or refusing to file an

award, though there can be no doubt that such an order is in substance similar to the corresponding order passed under the provisions of the Civil Procedure

Code"".

(9) section 320 of the CPC of 1859 contained a provision that when an award had been made, it shall be submitted to the Court under the signature of the Arbitrator together with the

depositions, exhibits etc., and section 325 provided that a judgment shall follow upon the award if it is not remitted or set aside. With regards to the arbitrations without the intervention of the

Court, section 327 provides that any party interested in the award may within six month from the date of the award apply to the court for the award to be filed in the Court and that the Court

shall direct notice to be given to Arbitrator to show cause why the award should not be filed and if no sufficient cause be shown against the award, the award shall be filed and be enforced

as an award under the provisions of this chapter.

Under the Code of 1882, Section 516 provided that in case of arbitrations through Court, the Arbitrators shall cause the award to be filed into Court in notice of the filing shall be given to

the parties. With regards to arbitrations without the intervention of the Court, Section 525 provided that any of the persons interested in the award may apply to the court having jurisdiction

over the matter to which the award relates, that the award be filed into Court and Court shall direct notice to be given to parties requiring them to show cause why the award should not be

filed. u/s 526 if no cause is shown against the award, the court shall order it to be filed and such award shall take effect as an award made under the provisions of that chapter.

In the Code of 1908, Second Schedule contained the provision in paragraph 10, that in the case of an arbitration in a suit, the arbitrator who made the award shall file the same into Court

and notice of the filling shall be given to the parties. Paragraphs 20 and 21 contained the provisions regards to the filing of an award in case of arbitration without the intervention of the Court.

Paragraph 20 provided that the party interested in the award may apply to the Court having jurisdiction over the award that the award be filed into Court and Paragraph 21 provided that if

no objection is shown, the Court shall order the award be filed and shall pronounce judgment according to the award. The aforesaid provisions (in striking contrast with Section 11(2) of the

Arbitration Act of 1899) show that at any rate in the case of arbitration without the intervention of Court, the Court after giving notice to the parties concerned and after hearing their

objections only, should pass an order that the award may be filed. u/s 104(f) of the Code of Civil Procedure, 1908, an appeal was also provided from an order filing or refusing to file an

award.

(10) Under the Limitation Act of 1871, Act of 1877, and the Act of 1908, time limit of ten days was fixed for proceedings to set aside an award under the Civil Procedure Code, time

commencing to run from the date of the award. The relevant Articles were respectively Articles 155, 158 and 158. With regard to proceedings for filing in Court of an award under the Civil

Procedure Code, the time limit was six months under the Limitation Act of 1871, Act of 1877, and Act of 1908. Under the Act of 1871, Time commenced to run when the award was

submitted to the Court and notice of submission had been given to the persons concerned. But under the Act of 1877 and under the Act of 1908, time commenced to run when the award

was submitted to the Court.

As regard the starting point of limitation, under Article 158 under the Act of 1908, there was a conflict in the decisions. In view of paragraph 10 of Schedule II of the CPC which required

the Court to give the parties notice of the filing of the award some decisions took the view that time under Article 158 would run only from the date of the service of the notice of the filing of

the award had that the third column under Article 158 "when the award submitted to the Court" should be read along with the relevant provision in paragraphs 10 and 21 of Schedule II of

the Code of 1908. (Vide Sahib Rai v. Chait Ram, AIR 1915 Lah 352, Sitaram v. Rupram, AIR 1917 Nag 211, Kalianbharti v. Rochanbai, AIR 1914 Sind 141 and Sova Chand Bhutoria

v. Hurry Bux Deora, ILR (1919) Cal 721 = AIR 1919 Cal 224. A contrary view was taken in some of the decisions of the effect, to which it is unnecessary to make reference, to the effect

that the limitation commenced to run from the date of the filing of the award itself. The important point to be noticed is that in view of the divergence of the opinion, third column of the Article

158 in the Limitation Act of 1908 was amended under Article XVIII of 1919, which came into force with effect from 17th September 1919. The result of amendment was that in the place of

the words "when the award is submitted to the Court" in the third column, the following words were substituted; "when the award is filed in the Court and notice of the filing has been given to

the parties". The significance of this amendment in Act XVIII of 1919 is adverted to in the decision of Allahabad High Court, immediately after the amendment, in *Firm Sheo Bakhsh Rai*

Gunpat Rai Vs. Firm Mansuma Sri Ram Mahadeo, .

After the Arbitration Act of 1940, consequent amendment were carried out in Art. 158 and Article 178 omitted all reference to the Code of C. P. in Column I of both the Articles. Art. 158

provided a time limit of 30 days for any proceeding under the Arbitration Act of 1940 to set aside an award remitted for reconsideration, the time under the third column commencing to run

from the date of service of the notice of the filing of the award. Under Article 178, a time limit of 90 days was fixed for a proceeding under the Arbitration Act of 1940 for the filing in Court

of an award, the time commencing to run under the third from the date of service of the notice of the making of award. As observed earlier, the Arbitration Act of 1940 is a consolidating

statute constituting one single exhaustive uniform code on the law of Arbitration throughout India and whatever distinctions and differences, whether minor or major, or technical or otherwise

between the provisions of the CPC and the Arbitration Act of 1899 that existed, were swept away, with the result that in the filing of an award and the notice that is to be given as to the filing

of the award, in what manner and by whom the notice should be given and such other matters, are now governed only by Section 14 of the Arbitration Act of 1940.

(11) Under the Limitation Act of 1963 (Act XXXVI of 1963), both Articles 158 and 178 of the Limitation Act of 1908 are dealt with in a single Article, Article 119 which runs as follows:--

119.

Under the Arbitration Act 1940

(a) for the filing in Court of an days award: Thirty days. The date of service of

notice of the making of the award:

(b) for setting aside an award or getting an award reconsideration: Thirty days
The date of service of the notice of the filing of the award.

The only relevant change under the Act of 1963 is the fixing up the time limit of thirty days for both.

(12) It will thus be seen that the question of limitation will have to be decided with reference to the third Column of Article 119 of the Limitation Act and Section 14(2) of the Arbitration Act

of 1940.

(13) It is settled law that the filing of an award in Court sine Qua non to an order either u/s 17 making the judgment in terms of the award or an order setting aside the award or to an order

setting aside the award u/s 30 of the Act. Vide Sanapala Suryanarayana and Others Vs. Sanapala Ramachandra Rao (died) his Lrs. and Others, , and also full bench decision in O.

Mohamed Yusuf Levai Saheb Vs. S. Hajee Mohammed Hussain Rowther (died) and Others, , in which also (following the judgment of the Supreme Court in Kumbha Mawji Vs. Union of

India (UOI), , it was held that an application to set aside the award will be mentioned only after the award comes into Court and not earlier and the time for an application to set aside the

award would only thereafter. In section 14 of Arbitration Act of 1940, the Legislature had adopted the provisions of Schedule II of the CPC of 1908 and had given effect to the decisions

rendered thereunder that notice of the filing of award should be given by the Court (and not by the Arbitrator).

Another important matter on which express provision is made adopting paragraph 10 of the Schedule II of the CPC in section 14(2) is that the Arbitrator while filing the award into Court

must be file also depositions and documents which have been taken and proved before him. There was no such provision in Section 11 of Act of 1899. Section 14(2) further provides ""after

the award is filed, the Court shall thereupon give notice of the filing of award"". The significance of the word ""thereupon"" not found in paragraph 10 of Schedule II of the CPC must be borne

in mind. If there is a dispute as to whether the acts done by the Arbitrator amount of filing of an award the Court should decide that question as a lis in

judicial manner. A declaration by the

Court that the award has been filed in no longer ministerial act--Vide, *Kumbha Mawji Vs. Union of India (UOI)*, , in which the Supreme Court had to judicially decode whether or not what

the Arbitrator had done amounted to his filing of award into Court in terms of Section 14(2) of the Act. In a case arising under Schedule II of Code of Civil Procedure, 1908, a Bench of the

Court, in *R.A. Arunachala Ayyar Vs. Louis Dreyfus and Co.*, , has observed that under the award should be filed, is necessary; but under the Civil Procedure Code, the matter is different

and that the Court should Pass an order after hearing the objections when an award has been filed. (Vide observations at page 115).

Reference may also be made to recent decision of the Supreme Court in *Hindustan Construction Company Ltd. Vs. Union of India (UOI)*., , from which it will be seen that a proceeding u/s

14(2) is in very sense a judicial proceeding and if objections are raised as to filing of the award, the Court must consider those objection and pronounce a decision and whether or not the

filing the award satisfied the requirements of Sec. 14(2) of the Arbitration Act. In that case a High Court took the view that the filing of certified copy of the award by the Arbitration was not

proper compliance with section 14(2) of the Act and that either the original or signed copy of the award should be filed. But this decision of High Court was reversed by the Supreme Court

and it was held that what the Arbitrator has done is sufficient. After holding that there has been proper compliance with section 14(2), the Supreme Court sent the matter back for investigation

on the merits. Particular reference to this aspect of the matter concerning the nature and scope of the enquiry by the Court u/s 14(2) is made in this judgment as the same has been

overlooked in the course of the arguments by learned counsel for the Port Trust.

(14) In the instant case when the Umpire in response to its notice forwarded the award to the Court, that would be sufficient compliance with Section 14(2) of the Act. u/s 14(2) of the Act,

the actual filing of the award by the Umpire, himself is not essential, provided of course, there is no other omission of the Umpire. *Kumbha Mawji Vs. Union of India (UOI)*, . When an

award is sought to be filed, an objection may be raised as to the Court in which it should be filed; an objection may be raised as regard to the registration of the or an objection may be

raised, where the award is filed by third party, whether the latter had the authority of the Arbitrator to file the award into Court; or, an objection may be raised that under Article 119(a) of

the Limitation Act, thirty days had elapsed from the service of the notice of the making of the award. There may be several such situation or occasions. When objection is raised as to the

filing of the award, the Court has to pronounce judgment declaring that the award has been properly filed and also issue notice of the filing of the award and only then limitations would

commence to run. If the depositions and documents are not filed, and if no objection is taken and a decree is passed in terms of the award, later on, the award cannot be attacked on the

ground that under S. 14(2) of the Act, the depositions and documents are not filed along with the award. But a party, at the time of the filing of the award is entitled to insist upon the

arbitrator filing the depositions and the documents and the Court is bound to hear such objection and pass some order and it is only then the stage would reach to the filing of the award.

(15) as regard to the mandatory character of the duty which is coat upon the Court u/s 14(2) of the Act give notice to the parties of the filing of the award, my attention is drawn to several

decisions in which it was held that even though the provision is mandatory, notice need not be given, when the party concerned has actual knowledge of the filing of the award into Court

either by himself or through his counsel being actually present in Court, when the award is filed into Court or the Court informing the party or his counsel about the filing of the award into

Court. Reliance was placed upon these decisions by Mr. Raghvan in support of his contention that limitation had commenced to run either on 24-3-1966 or on 15-4-1966 when Mr. Desai

inspected the award in Court or, at any rate, on 4-8-1966, when after the receipt of the further statement of the Umpire that the three documents are with Mr. Raghvan, the latter undertook

to produce them whenever necessary.

He relied upon the decision in Bhola Nath Mallick Vs. Mahadev Mallick, , in which

the Bench of Calcutta High Court had held that a party who is already cognizant of the filing of the award

in the case and applied to the Court for leave to examine the award and for time to file, objections, service of notice of filing the award becomes unnecessary and that even if the Court has

failed to give notice to him, the date when he enters appearance of the proceedings will be deemed to be the date of notice of the filing of the award and an application filed more than thirty

days for such date will be barred. That decision is distinguishable as in that case the party concerned wanted permission to inspect the award and to raise his objections to the award itself

and not on the question whether what the Arbitrators had done in that case was sufficient compliance as to constitute a filing of an award under S. 14(2).

(16) My attention was also drawn to the bench decision of the Andhra Pradesh High Court in Bollaram George Vs. Kadpak Lingiah, , that notice under S. 14(2) was not as the award was

filed in Court in the presence of both the parties. The same view was taken in Kawalsingh v. Baldeosingh, AIR 1961 Orissa 143. In the Nagpur case, the award was filed in the presence of

both the parties and the party affected by the award wanted time to file his objections to the award. He did not want time to inspect the award with a view to raise an objection whether the

filing of the award was in accordance with Sec. 14(2) of the Arbitration Act. It is unnecessary to multiply authorities that in certain situations, the party's clear knowledge of filing of the

award is sufficient to reckon limitation and that actual notice by the Court about the filing of the award is not necessary.

In the latest Bench Decision of the Calcutta High Court in Chaturbhuji Sohanlal Vs. Clive Mills Co. Ltd., , after reviewing entire case law, the Bench observed that at the time of the filing of

the award, if the defendant is personally present in Court, the procedure laid down for service upon need not be complied with and that the Court must not make the process of service a

mere ritual which ignores the real object of service and rest on mere technicalities. The same view was taken in the latest decision of the Andhra Pradesh High Court in Venkata Subbarao v.

S. Ammiraju, 1966 2 AWR 6, in which it was held that a formal notice under sec. 14(2) was not necessary if the parties were present in Court when the award was

filed and that there may

not be better proof of knowledge on the part of the parties about the filing of the award than the presence of the parties in Court when the Arbitrator files his award.

(17) While considering the observations in the several decision which has dealt with the mandatory character of the issue of notice under Sec. 14(2) cases dealing with the question of

limitation will have to be distinguished from cases want of notice u/s 14(2) of the Act, the award is sought to be set aside on the principle of the natural justice u/s 30 as vitiating the entire

proceedings. These cases may stand on the different footing and omission to comply with sec. 14(2) may not go to the root of the matter. But cases arising under the Limitation Act, Art. 158

of the Act of 1908 corresponding to Article 119 of the present Act, will have to be considered from a different perspective. even so Mr. Raghvan placed considerable reliance upon the

decision of the Supreme Court reported in Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, , as completely supporting his contention since that case

arose under Article 158 of the Limitation Act. In that case, during the pendency of the suit for petition, there was reference to arbitration and Arbitrator filed the award in Court on 18th

February, 1948 in the presence of the parties. The Judge adjourned the matter to March 22nd, 1948 for "" "Parties" say to the Arbitrator's report"". On March 16, 1948, the first defendant

filed a petition praying that certain papers and documents are called for from the Arbitrators and on March 22nd another petition was filed on behalf of the first defendant praying for 15 days

time for going through the papers and documents which he had asked the Arbitrator to send the Court and to make his representation regarding to the Arbitrators award. The Court granted

the request and the defendant filed his objections, but later on, withdraw those objections. All this happened when the first defendant also acted as guardian for his minor son the 12th

defendant filed an application for cancelling his appointment as the guardian of the minor 12th defendant and appointing the mother of the minor 12th defendant as guardian and the mother

was so appointed on 16th June, 1948. after some adjournments, on 9th

November, 1948, the mother filed a written statement in the suit and also question the validity of the award and

prayed that it may declared null and void and suit proceeded with on its merits. The Court below held that the minor 12th defendant was barred by time under Art. 158 of the Limitation Act.

The main argument was that under Article 158, time would commence to run only from the date of service of the notice of the filing of the award, no such notice in writing was issued by the

Court u/s 14(2) of the Act intimating that the award had been filed in the Court and therefore time never began to run against the minor 12th defendant. On the other side it was contended

that limitation began to run from 21-2-1948, the date on which the award was filed into Court and the judge Adjourned the matter for the parties to raise their objections or, at any rate, from

September 7, 1948 when the guardian was applied for time to file the statement. The records showed that on 21-2-1948, the pleaders were present when the award was filed into Court and

therefore it was urged that notice to Counsel for the filing of the award meant or amounted to notice to the parties.

Reliance was placed upon the following observations at page 669:

We see no ground to construe the expression "date of service of notice" in Col. 3 of Article 158 of the Limitation Act to mean only a notice to served in a formal manner. When a

Legislature used the word "notice" it must be presumed to have borne in mind that it means not only formal intimation but also an informal one. Similarly, it must be deemed to have in mind

the fact that the service of a notice would include constructive or informal notice. If its intention were to exclude the latter sense of the words "notice" and "service" it would have said so

explicitly. It has not done so here. Moreover, to construe the expression as meaning only a written notice served only on the party to be affected, will leave the door open to that even though

with full knowledge of the filing of the award he has taken part in the subsequent proceedings, to challenge the decree based upon the award at any time upon the ground for want of the

proper notice his right to the filing of the award had not even accrued. such a result would stultify the whole object which underlies the process of arbitration--the speedy decision of a dispute

by a tribunal chosen by parties"".

Mr. Desai is not completely correct when he sought to distinguish this decision of the Supreme Court. The ratio of the Supreme Court decision is that knowledge of the counsel of the filing of

the award, when actually present in Court would amount to knowledge of the party and no further notice is necessary and that it would happen whenever there is an arbitration through the

intervention of Court and such a situation may not always exist, when there is arbitration without the intervention of Court. If an award been filed by the Arbitrator himself without any

proceeding by either of the parties, u/s 14(2) calling the Arbitrator to file the award mere knowledge of the filing of the award would not be sufficient and there Court should give notice in

writing in conformity with Section 14(2). But, even in the case of an arbitration without the intervention of the Court, if a proceeding is initiated by either of the parties calling upon the

arbitrator to file the award and if in such a proceeding when both sides are represented by counsel the arbitrator files the award in Court to the knowledge of the respective counsel, notice

under Sec. 14(2), thereafter, may not be necessary.

As I understand the decision of the Supreme Court, the main point of distinction is, really not, whether the arbitration is through the intervention of Court and Without the intervention of

Court, but whether the award came to be filed into Court without any prior proceedings, the Arbitrator himself, of his own accord, filing the award into Court, or whether after proceedings

had been initiated under Sec. 14(2) in which counsel had entered appearance for both sides, The arbitrator files the award into Court. If this is real basis of distinction indicated of the

decision of the Supreme Court, it will have to be held that notice of counsel in the instant case about the filing of the award would start the running of time under Article 119 of the Limitation

Act. As observed earlier, the objection raised here is more fundamental. Mr. Desai, throughout objected that there has not been compliance with Section 14(2) of the Act and the Court

should pronounce decision hearing his objection whether there has been any compliance or whether the Court should not pass an order returning the award and the papers to Umpire. The

very objection that the Company had obtained knowledge of the filing of the award was raised by the Port Trust, but was overruled. The Court itself decided that a notice of the filing of the

award should be issued and would be issued within 25-8-1966. This is binding upon both the parties. In fact paragraph 2 and 34 of the objection statement of the Port Trust proceeded on

the footing that a decision of Court dated 17-8-1966 is final and binding upon both the parties.

(18) Mr. Desai relied upon the decision in *Hasanalli Abdulalli Malabari Vs. Shantilal Bhaidas Marfatia and Others*, , in which the award was filed by the Arbitrator on 2-7-1958, but without

complying with Rules framed by the Bombay High Court as to document to be attached to the award (similar to Order XVIII of the Original side Rules in our Court) and latter on necessary

affidavit had been filed, the award should be considered to have been filed on that day and notice of the filing of the award be issued to the parties and process fee paid. This notice was

served on 3-9-1959, and the application to set aside the award was made on 27-9-1958. The application was resisted as barred by limitation on the ground that time commenced to run

from 19-8-1958 when the award was passed in presence of both the parties who were aware of filing of award. In support of this contention, reliance was placed upon the decision in *Bhola*

Nath Mallick Vs. Mahadev Mallick, and AIR 1957 Nag 57. This argument was rejected on the ground that these were all cases where the Court did not pass an order for the issue of a

notice and that if the Court passed an order for issue of a notice limitation would commence to run only after the service of such notice. In the instant case, the position is fortiori as there is

serious contests as to whether provisions of Section 14(2) was complied with.

(19) Mr. Desai also relied upon the fact that in paragraph 2 of the objection statement where the plea of the limitation is raised, it is not specifically stated as to the particular date on which

the Company must be held to have full knowledge of filing of award. When a plea of limitation is raised on the ground of the service of notice or knowledge, such a plea should contain all the

particulars and details. I therefore hold that limitation would commence to run only from 13-9-1966 when the notice of filing of the award was served upon the

Company and this petition to

set aside the award which was filed on 11-10-1966 is well within the time.

(20) By way of abundant caution, the Company has filed an application No. 2298 of 1967, u/s 5 of the Limitation Act of 1963 and the port trust has filed its objections. It is true that Section

5 of the Act of 1908 did not apply to an application set aside the award under the Arbitration Act as Section 5 was not made applicable to proceedings under the Arbitration Act. But u/s 5

of the Arbitration Act. But u/s 5 of the Arbitration Act, there is no such restriction. Section 5 would apply to any and every application other than an application under Order 21 of the Code

of Civil Procedure. In a recent judgment of mine in C. R. P. No. 1259 of 1962 (Mad.), I have adverted to the vital change that have been brought about by Section 5 of present Act. I have

pointed out that the scheme of Section 5 of the present Act is to provided for an automatic application of the section to all applications without any difference whatsoever under any special

or local law--(vide also Mitra's Law of Limitation, 8th Edn., Vol. I, p. 85). In the instant case, the Company has been acting with perfect bona fides and has also been racing for time. It

cannot be said that the Company resorted to any proceeding merely with a view to gain time. It is only the 4th August 1966, the Company was informed of the exact position with regard to

the originals of the crucial documents. If the Company did not file an application earlier, It was because it insisted upon the Court passing an order that the award has been filed and that

notice of such filing should be issued. Even if the Company was wrong in taking up this attitude, I have no hesitation in holding that all the facts adverted to earlier do establish sufficient cause

for the company not having filed the application in time. I see no substance in the objection raised by the Port Trust. Application No. 2298 of 1967 ordered.

(21) On the preliminary point, I hold that the petition is in time.

GGM/DVC

(22) Order accordingly.