

**(2008) 05 GAU CK 0017**  
**In the Gauhati High Court**  
**Case No : Arbitration Petition No. 14 of 2005**

Mitra & Co.and Ors.

APPELLANT

Vs

National Insurance Company Ltd.and Anr.

RESPONDENT

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**Date of Decision :** 19-05-2008

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 11, 11

**Citation :** (2008) 5 GLR 252

**Hon'ble Judges :** Jasti Chelameswar, C.J.

**Bench :** Single Bench

**Advocate :** H.K.Deka, H.Nath, K.K.Bhatta, S.S.Sharma, S.Singh, G.Jalan,  
Advocates appearing for Parties

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## Judgement

1. The Application is filed under section 11 of the Arbitration and Conciliation Act, 1996. The first applicant is a business concern, represented by the second applicant as its proprietor. The respondent is the National Insurance Company, a Government of India undertaking.

2. On 3.12.1999 the applicants took a Fire Insurance Policy with the Oriental Insurance Company with an insured sum of Rs. 7,00,000 for the stock in trade of the shop of the applicants. In course of time, as there was increase in the business of the applicants, consequently the applicants/petitioners took another policy for Rs. 7,00,000 on 21.2.2000 from the same insurer, i.e. Oriental Insurance Company Ltd. which was valid for the period 23.2.2000 to 22.2.2001.

3. On 23.2.2000 a fire accident took place causing extensive damage to the business premises of the applicants. The applicants, therefore, preferred a claim on 25.9.2000 before the respondent. Some correspondence ensued thereafter the details of which may not be necessary for the present.

4. On 28.6.2001 the respondents issued letter to the applicant/petitioners informing that the claim of the applicants was settled for a sum of Rs. 3,99,000. On receipt of the same the applicant by letter dated 5.7.2001 protested against

the settlement on the ground that the settlement was unjust and requested that the matter be referred for arbitration under the terms and conditions of the contract between the parties. Thereafter, the respondents by their letter dated 18.7.2001 called upon the applicant/petitioners to indicate the area of difference for referring the matter for arbitration.

5. On 3.9.2001 the applicants requested the respondents to make arrangement to pay a sum of Rs. 6,64,504 towards insurance of the loss suffered by the applicants. The applicants by the above letter further intimated the respondents that in the event if the money is not paid, the applicant called upon the respondents to refer the dispute for arbitration. Thereafter, a lot of correspondence took place between the parties, but eventually the respondents did not agree to refer the matter to arbitration and, hence, the present application.

6. The respondents filed affidavit in opposition. The only objection made by the respondent is that the applicants demanded the respondents to refer the matter for arbitration on 3.9.2001, which demand was not admitted and accepted by the respondents, and, therefore, the applicants ought to have filed an application, such as the present one within, a period of three years from the date of the demand since the application, as such, is within the meaning of section 2(b) of Limitation Act, 1963 read with article 137 of the Schedule. According to the respondents such an application ought to have been filed on or before 4.9.2004.

7. The only question that is required to be examined is whether the present application is barred by limitation, as argued by the respondents.

8. The question as to the interpretation of article 137 of the Limitation Act, 1963 fell for consideration of the Supreme Court in Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma, AIR 1977 SC 282. It was a case where the respondent before the Supreme Court filed application under sections 10 and 16 of the Indian Telegraph Act, 1885 read with section 51 of the Indian Electricity Act, 1910 claiming compensation against the appellant before the Supreme Court. Such an application was filed before the District Judge as required under section 16(3) of the Indian Telegraph Act. One of the questions was whether the expression "application" occurring under article 137 of the Limitation Act, 1963 should be an application filed under one of the provisions of the provisions of the Code of Civil Procedure. The Supreme Court at para 18 of the judgment held that "application contemplated under article 137 are not applications confined to the Code of Civil Procedure" and further held that there could be application under any other Act. Nonetheless, the Supreme Court also held that "application" should be an application made to a court.

"The alteration of the division as well as the change in the collocation of words in article 137 of the Limitation Act, 1963 compared with article 181 of the 1908 Limitation Act shows that applications contemplated under article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act

there was no division between applications in specified cases and other application as in the 1963 Limitation Act. The words "any other application" under article 137 cannot be said on the principle of *edujusdem* generic to be applications under the Civil Procedure Code other than those mentioned in Part I of the third division. Any other applications under article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when court is closed and extension of prescribed period if applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application during such period."

9. Therefore, in the present case undoubtedly the application is an application contemplated under article 137 of the Schedule to the Limitation Act, 1963 but the question is whether such application is made to the court as contemplated under Limitation Act, 1963.

10. In my view the question is no more *res integra*. A Constitution Bench of the Supreme Court in *SBP and Co. v. Patel Engineering Ltd.* and *Ann*, (2005) 8 SCC 618 at paragraph 18 held as follows :

"18. It is true that the power under section 11(6) of the Act is not conferred on the Supreme Court or on the High Court, but it is conferred on the Chief Justice of India or the chief Justice of the High Court. One possible reason for specifying the authority as the Chief Justice, could be that if it were merely the conferment of the power on the High Court, or the Supreme Court, the matter would be governed by the normal procedure of that court, including the right of appeal and Parliament obviously wanted to avoid that situation, since one of the objection was to restrict the interference by courts in the arbitral process. Therefore, the power was conferred on the highest judicial authority in the country and in the State in their capacities as Chief Justices. They have been conferred the power or the right to pass an order contemplated by section 11 of the Act. We have already seen that it is not possible to envisage that the power is conferred on the Chief Justice as *persona designate*. Therefore, the fact that the power is presided over by him is not sufficient to hold that the power, thus, conferred is merely an administrative power and is not a judicial power."

The issue was whether the power exercised by the Chief Justice under section 11 of the Arbitration and Conciliation Act is administrative or judicial in nature. Dealing with the question the Supreme Court took note of the fact at paragraph 15 that the above mentioned enactment is based on the UNCITRAL Model Law of International Commercial Arbitration. Section 11 of the Act is based on article 11 of the abovementioned Model Law. While the corresponding provision of the Model Law employed the expression "court" departure was made under section 11 by the Parliament and replaced the word "court" by the words "Chief Justice."

"Replacing of the word "court" in the Model Law with the expression "Chief Justice" in the Act, appears to be more for excluding the exercise of power by the

District Court any by the court as an entity leading to obvious consequences in the matter of the procedure to be followed an the rights of appeal governing the matter."

11. Therefore, notwithstanding the fact that the power exercised by the Chief Justice under section 11 of the Act is though judicial in nature, Chief Justice is not equated with the court.

12. In the circumstances, the objection raised by the respondents, in may opinion, is not tenable and accordingly rejected.

13. The application is, therefore, allowed.

14. Justice S.P. Rajkhowa is appointed as the sole arbitrator to adjudicate upon the dispute between the parties herein arising out of the Fire Insurance Policy dated 3.12.1999.