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**(2009) 08 P&H CK 0024**

**In the Punjab And Haryana At Chandigarh**

**Case No :** First Appeal from Order No. 1573 of 2006

M/s Vijay Automobiles

APPELLANT

Vs

Hindustan Machine Tools Ltd. (Tractors) and another

RESPONDENT

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**Date of Decision :** 13-08-2009

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 12, 13, 13(5), 31, 31(7)  
Limitation Act, 1963 — Article 1 , 85

**Citation :** (2011) 163 PLR 130

**Hon'ble Judges :** Nirmaljit Kaur, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Nirmaljit Kaur, J.—This is an appeal against the order dated 20.12.2005 passed by the Additional District Judge, Panchkula, dismissing application u/s 34(3) and 13(5) of the Arbitration and Conciliation Act, 1996 (in short "the 1996 Act") for setting aside of the Award dated 11.06.2004 passed by the Arbitrator.

2. The facts, in short, are that the appellant Vijay Automobiles was a dealer for Tractors of respondent No.1, i.e. Hindustan Machine Tools Limited (HMT) from the year 1988 to 2001. As per the learned counsel for the appellant, the Memorandum of Understanding (MOU) was signed every year. The last MOU for the year 2000-2001 was signed between the parties on 01.04.2000. Clause 3 of the MOU specified that MOU shall cease on 31st of March, 2001 unless 60 days prior to the date of expiry i.e., the 31st of March, 2001, the appellant had to make a request for continuation of MOU for such further period as may be agreed to and such continuation shall be entirely at the discretion of H.M.T. Clause 3 of the MOU is reproduced below:-

"3. MOU shall cease on the expiry of 31st March, 2001 unless SIXTY DAYS prior to the date of expiry, viz. 31st March, 2001 the Dealer request HMT for the continuation of the MOU for such further period as may be agreed and such continuation shall be entirely at the discretion of HMT."

3. Learned counsel for the appellant further stated that no such request for continuation of dealership was made by the appellant firm before and after 31st of March, 2001. Respondent No.1, i.e. HMT remained silent for about three years after the expiry of the last MOU and on 14th of January, 2004, without taking consent from the appellant appointed Shri B.R. Vohra, Additional District and Sessions Judge (retired), Advocate as an Arbitrator, by invoking Clause 28 of the last MOU, which had already run its life. It is further stated that the appellant moved two applications under Sections 12 and 13 of the 1996 Act, but the same were dismissed, the impugned award was passed within a span of few days only.

4. While challenging the order dated 20.12.2005 passed by the Additional District Judge, Panchkula, learned counsel for the appellant raised the argument, that the Arbitrator has travelled beyond its jurisdiction while passing the impugned award dated 11.06.2004. The Arbitrator can go into the disputed amount which is due and payable only for the period from 01.04.2001 to 31.03.2001. The appellant contended that no amount was due and payable and whatever the amount stands in the accounts of respondent No.1, is an amount of interest compounding every year without there being any clause for interest on delayed payments. The MOU was to be signed after 1st of April or within two months of the previous expiry of MOU." The respondent-HMT has invoked the arbitration Clause 28 in view of the last MOU signed on 01.04.2000, pertaining to the year 2000-2001. The MOU had a life of one year and ceased to operate after 31.03.2001 unless a request is made by the appellant before 60 days prior to 31st March, 2001, for continuation of the MOU for further period as may be agreed upon., No such request was made by the appellant for the continuation of MOU.

5. It was further stated that there is a limitation of three years as has been provided under the 1996 Act and since the last MOU was signed on 01.04.2000 and the same was for one year, the term of the MOU expired on 31.03.2001, the limitation was, therefore, up till 31.03.2004. As such, the appointment of the Arbitrator on 14.01.2004 was beyond limitation period and even if for the sake of arguments, it is considered within three years from 31.03.2001, the Arbitrator cannot go into a dispute or claim prior to the date of the last MOU, i.e. 01.04.2000. Thus, if at all, he could only adjudicate upon the account or the quantity as ordered vide last MOU, signed on 01.04.2000 and not on the basis of any other MOU, signed prior to that period. Hence, the Award passed was in utter violation of the procedure as well as without any jurisdiction.

6. While meeting the aforesaid arguments of the learned counsel for the appellant, Mr. R.K. Chhibber, Senior Counsel, appearing on behalf of the respondent-HMT submitted that no limitation is applicable in the facts of the present case and a reference was made to the Article 1 of the Limitation Act, 1963, which runs as under:-

Description of suit to run Period of Limitation Time from which period begins

1. For the balance due on a mutual open and current account, where there have been reciprocal demands between the parties. Three years The close of the year in which the last item admitted or proved is entered tin the account; such year to be computed as in the . account

7. It was further stated by the learned counsel for the respondent that the appellant is estopped by his own act and conduct from filing the present petition. The appellant, itself; is receiving the credits/debts in its account due to the transaction which took place between the answering respondent and the appellant even after 31.03.2001. The detail is given below:-

i) Debit entry due to supply of one No.HMT4511 Tractor vide invoice No.LKO/01-02/022 dated 22.05.2001, for Rs.2,73,369.00.

ii) Debit entry due to supply of one No.4922 Tractor vide invoice No.PJR/368/SHR/01-02/020 dated 10.07.2001 for Rs.2,92,138.00.

iii) Debit entry due to supply of one No. HMT 3522 DX Tractor vide invoice No.SAS/000250/2001/2002/SHR-073 dated 03.12.2001 for Rs.2,40,820.00 against their requirement for two tractors vide letter dated 04.12.2001.

iv) Credit entry for Rs. 1,80,000.00 for a cheque No.86138 dated 05.11.2002 as per statement of account for the financial year 2002-2003.

8. It is worth mentioning that the appellant, itself, appreciated reconciliation of accounts by the respondent and also have admitted and acknowledged their outstanding liability of the respondent, vide their letter dated 15.05.2002. Even the appellant had admitted and acknowledge their outstanding liability as well as expressed their desire to continue the business with the respondent, vide its letter dated 07.07.2003, which is already on record.

9. Thus, there is no doubt that in the present case, there is a mutual, open and current account and there is also reciprocal demands between the parties since the year 1988. As per the Article 1 of the Limitation Act, the last date when the account is operated has to be taken into account and the entire year, thereafter, has to be ignored for the purpose of counting the limitation. For example, if the account is operated on 05.03.2000, then the three years have to be counted from 01.01.2001. In the present case, the last order was placed on 04.12.2001, hence, the three years have to be counted from 01.01.2002, which expired on 31.12.2005. Hence, the appointment of Arbitrator on 14.01.2004 was within limitation, as also supported by the judgment rendered by this Court in the case of "State Bank of India v. M/s Kashmir Art Printing Press, Sir so, (1981) 83 P.L.R. 300, wherein it was held that:-

"11. In R.S.A. No.2997 of 1979 one more point arises with regard to limitation. The Courts below in the case, out of which this appeal arises, have taken the view that suit was within limitation against the principal debtors but was time barred against the surety. After hearing the counsel for the parties on this matter at length, I am of the view that the finding recorded by the Courts below on the

point of limitation is also incorrect. The facts of the case are that the Branch Manager allowed the defendants the benefit of Cash Credit Account with a limit of Rs.5000/-. A copy of the running account has been produced on the record as Exhibit P5, which shows that the persons who were allowed the benefit of Cash Credit Account had been withdrawing and repaying amounts upto to the limit of Rs.5000/- from time to time and on the debit balance, interest was accruing.

12. For such a running account, the limitation is provided under Article 1 of the 1963 Limitation Act, which is analogous to Article 85 of the earlier Limitation Act. According to Article 1, the limitation is three years, which starts from the close of the year in which the last item admitted or proved is entered in the account. Such year to be computed as in the account; meaning thereby that the year in which the last entry is made would be excluded in computing the period of limitation and thereafter i.e. from the following January, the limitation of three years would start. The facts of the present case show from Ex.P5, that the last entry is of 11th November, 1975, whereas the suit was filed on 18th November, 1975 i.e. within a week of the last entry. Hence, the entire suit even against the surety, was within limitation. The Courts below fell in error in the following Federal Bank of India (Punjab) Ltd. Vs. Som Dev Grover and Others, , on the facts of the present case, which is clearly distinguishable. That was a case of ordinary debtor and his surety and it was held that the suit can be within limitation from the date of acknowledgements against the principal debtor, but the acknowledgements cannot be used against the surety and if without acknowledgements, the suit is barred against the surety, it would be so and the acknowledgements cannot be used against him. It is true that the Courts below, the counsel for the State Bank of India did not argue the case on the basis on which, it has been argued before me. There, it appears, that the payments made by the principal debtor were relied upon by way of acknowledgements and that is how the Courts below proceeded to decide the case on that basis. Accordingly, I reverse the findings of the Courts below on the point of limitation and hold that the suit against the surety was also within the limitation."

10. Learned counsel for the respondent further stated that the appellant is restrained from raising any argument, whatsoever, as the appellant had moved two applications, Ex.P4 and Ex.P6, for terminating the arbitration proceedings. The aforesaid applications were dismissed by the Arbitrator by passing a detailed orders dated 01.05.2004 and 22.05.2004, Ex.P7. Then, the appellant-firm also filed a revision petition in this Court, Ex.P10, but the same was dismissed as withdrawn. Thereafter, the appellant submitted to the jurisdiction of the Arbitrator: As such, the appellant cannot be allowed to agitate the same afresh.

11. In any case, the following facts are evident:-

i) Even after the expiry of last MOU on 31.03.2001, the transaction continued between the parties and the supply of the tractors was made by the appellant and were being continuously supplied to the appellant;

ii) The accounts were not settled between the parties even after the expiry of the last MOU;

iii) The security which was deposited by the appellant firm in the year 1988 was never withdrawn, which continued to remain operative against the subsequent MOUs.

iv) The Company maintained regular account of the firm,

v) The letter dated 15.05.2002, Ex.R2, show that an outstanding balance of Rs.3483318/-, was admitted by the appellant firm.

vi) The letter dated 07.07.2003, Ex.R3, was written by the firm, requesting for waiving off the interest and to adjust the security amount against the outstanding amount.

12. In order to arrive at just and proper decision of the case, para 8 and 9 of the impugned award would be relevant and the same reads as follows:-

"8. Shri S.K. Khullar, CW1, while testifying the affidavit PI, has adduced in evidence documents P-2 to P-38, which includes Memorandum of Understandings Ex.P-11 to P-23. He has also proved the statement of account P-24 and various letters Ex.P26, P-27, P-30, P-32 and P-33 sent by the respondents. In the letter Ex.P32 and Ex.P33, the respondents have offered to clear the outstanding principal amount of the claimant, in case the interest amount is waived. This necessarily follows that the respondents are admitting that the principal amount and interest as demanded by the claimant was due from them.

9. Shri S.P. Gupta, Manager (Accounts) while tendering his affidavit P-2 has testified that the statement of account P-24 was correct and true, as per original records. Both these witnesses have deposed that a sum of Rs.46,14,500.79 was due from the respondents as on 31.08.2003. They have also sworn in their affidavits that there was running account of the respondents and there was current, mutual, regular and reciprocal accounts of the respondents with the claimant."

13. In view of the discussion made above, I have no hesitation in holding that the accounts of the respondent was regular, continuous, mutual and reciprocal, and as such, on account of the fact that the tractors were being continuously supplied even after the expiry of the MOU and taking into consideration that the accounts were never settled between the parties, MOU was being regularly signed without any break, the firm had never resigned from the dealership during the period till the dispute, accounts were being regularly maintained and the finding recorded to the effect that the outstanding balance amount of Rs.3483318/-, after adjustment was admitted and their only prayer was with respect to the interest, I find that the Arbitrator was competent to go into the accounts even prior to the last MOU, i.e. 01.04.2000 and the award is therefore, within jurisdiction.

14. It would not only amount to grave injustice, but also wholly illegal to ignore the obvious outstanding amount, due to the respondent only on the hyper technical ground that a new MOU was signed every year, whereas the truth is that there was no break in the dealings and there was a regular continuous business, and the account was never settled in spite of their being maintained regularly.

15. However, at this stage, learned counsel for the appellant also challenged the grant of interest on the ground that the Arbitrator had no jurisdiction to grant the same.

16. There is no merit in the contention raised by learned counsel for the appellant, inasmuch as Section 31(7) of the 1996 Act provides that the Arbitrator has the power to award interest at all four stages. Section 31 of the 1996 Act reads as follows:-

"31. From and contents of arbitral award:-

(1) to (6) xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx

(7)(a) unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."

This fact has also been judicially settled by the Apex Court in the cases of State of Orissa Vs. B.N. Agarwalla, etc., and T.P. George Vs. State of Kerala and Another, . In para 9 of the judgment rendered in the case of T.P. George (supra), the Apex Court held that:-

"9. The next question is whether the High Court was right in setting aside the award of the interest from the date of the Award. This Court has held in the case of M/s. Jagdish Rai and Brothers Vs. Union of India, , that the award of interest ought to be granted in all cases when there is a decree of money, unless there are strong reasons to decline the same. In the case of M/s. Jagdish Rai and Brothers Vs. Union of India, , this Court has held that there are four stages of grant of interest vis. (1) from the stage of accrual of cause of action till filing of the arbitration proceedings, (2) during pendency of the proceedings before arbitrator, (3) future interest arising between date of award and date of the decree and (4) interest arising from date of decree till realisation of award. The power of Court to grant interest from date of decree is not in doubt. In the case of Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir, this Court has held that the Arbitrator is competent to award interest from the date of the

Award.

This Court has held in the case of Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, , that the arbitrator has power to grant interest pendente lite.

Recently in the case of Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, Vs. N.C. Budharaj (Dead) by Lrs. etc. etc., , this Court has held that arbitrator can award interest for the preference period. Thus, as per law laid down by this Court interest can be awarded at all four stages. The reasoning given by the High Court that interest cannot be awarded by the arbitrator is thus fallacious and cannot be sustained. In our view the direction to pay interest from date of Award cannot be faulted. The impugned judgment to the extent that it disallows the interest from the date of the Award is set aside."

17. In view of the foregoing discussion, the appeal is dismissed being devoid of merit.