

(1997) 11 DEL CK 0006

In the Delhi High Court

Case No : Interim Application No's. 4347 and 7082 of 1984 and Suit No. 142A of 1984

National Research Development Corporation of India

APPELLANT

Vs

Synthite Industrial Chemicals P. Ltd.

RESPONDENT

Date of Decision : 13-11-1997

Acts Referred:

Citation : (1998) 1 AD 858 : (1997) 4 CLT 605 : (1997) 69 DLT 1005 : (1997) 43 DRJ 601

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : K.S. Bakshi, M.A. George and T.K.A. Padmanabhan, for the Appellant;

Judgement

J.B. Goel, J.

(1) By this judgment I.A. Nos.4347/84, 7082/84 and Suit No.1142A/84 are being disposed of. Suit No.1142A/84 is a petition under Sections 14 and 17 of the Arbitration Act, 1940 (for short the Act) for filing arbitrator's Award dated 21st May, 1984 in the court and for passing a decree in terms of the said Award, I.A. No.7082/84 are the objections against the said Award filed by the defendant No.1. Defendant No.1 had also filed another objection petition (IA No.4347/84) under Sections 30 and 33 of the Act, before the award was filed in court and notice was given to it.

(2) Briefly, the facts are that the plaintiff a Govt. company, on 21st February, 1973 had entered into a license agreement with M/s. Arborites Private Ltd. of Cochin (for short Arborites) providing for disclosure by the former to the latter the use of the know how for the manufacture of spice oleoresins developed and invented by the Central Food Technical Research Institute, Mysore which they were entitled to use on the agreed terms for a period of 14 years commencing from 1.10.1971 on royalty @ 1-1/2% of net ex-factory sale price besides a premium of Rs.5,000.00 . On the same day, another tripartite agreement was

entered into between the plaintiff, Arborites and the M/s. Synthite Industrial Chemicals Pvt. Ltd. (for short SICL), defendant No.1 whereby Arborites assigned all its rights, benefits/obligations under the said license agreement to SICL.

(3) In terms of the agreements SICL was required to submit six monthly royalty returns and they actually submitted such returns up to 31st March, 1980. Royalty dues up to 31st March, 1977 were also paid. However, for the period 1st April, 1977 to 31st March, 1980 a sum of Rs. 2,87,550.12 remained due and the royalty returns were also not sent after 31st March, 1980, inspire of letter of demand dated 21/22 January, 1981. The agreement in its Clause 11 provided for arbitration of the disputes and differences arising between the parties by the Chairman of National Research Development Corporation (NRDC) or his nominee. plaintiff made reference to the Chairman and Dr. G.S.Sidhu, who was then the Chairman accepted the reference and called upon the parties to file their statement of claim and reply Along with their documents vide letter dated 22.10.1982. On request time for the purpose was extended. plaintiff filed their statement of claim on 25.11.1982 while defendant No. 1 submitted reply and counter claim dated 26.1.1983. Rejoinder reply was also filed by the plaintiff. Several dates were fixed by the arbitrator which were adjourned and nothing took place towards the progress of the arbitration. The defendant No.1 vide its letter dated 4.1.1984 raised two objections, one, that as the arbitrator had ceased to be the Chairman of Nrdc his authority as arbitrator has come to an end and secondly, the statutory period for making the award has expired and he could not proceed with the arbitration. This was disputed by the plaintiff. The learned arbitrator rejected both these objections on 5.4.1984 and gave notice of further proceedings to the parties for 10.5.1984. The defendant No. 1 did not participate in the arbitration proceedings and the arbitrator has given his ex parte award on 21st May, 1984.

(4) Defendant No. 1 in objections under Sections 19, 30 and 33 of the Act (being is No. 7082/84) has challenged the award as nullity, illegal and without jurisdiction on the following objections:-

(1)Dr. G.S. Sidhu was appointed as the arbitrator being the Chairman of Nrdc and not in his personal capacity and as he had ceased to be the Chairman of the Nrdc during the arbitration proceedings and he could not have acted as arbitrator thereafter, his award given after relinquishing the charge as Chairman, is without jurisdiction and void. (2) The arbitrator had entered on the reference on 22nd October, 1982 and the award having been made and published after expiry of the statutory period on 21st February, 1983, without extension of time for making the award is invalid. (3) That the license agreement and the tripartite indenture dated 21st February, 1973 were obtained by fraud, and objection to this effect was taken before the arbitrator. This question could not have been settled by the arbitrator but by the court; and the award could not be given without deciding this objection. The award is illegal and is without jurisdiction. (4) The arbitrator has misconducted the proceedings. (5) The award to pay the arbitrator's fee is

without jurisdiction since he could not act as arbitrator. (6) There is error of law on the face of the award.

(5) The plaintiff in reply has disputed these objections. The following issues were framed on April 23, 1986.

1. Whether Dr. G.S. Sidhu had jurisdiction to act as arbitrator after he ceased to be the Chairman of N.R.D.C. of India? 2. Whether the award dated 21.5.84 made and published by Dr. G.S. Sidhu is liable to be set aside on the grounds mentioned in the objections? 3. Whether the arbitration agreement shall cease to have effect u/s 19 of the Arbitration Act and whether the reference should be superseded? 4. Relief.

(6) The plaintiff filed the affidavit of Shri Deepak K. Singh, its Law Officer whereas the defendant No. 1 filed the affidavit of Shri George Paul, its Director.

(7) I have heard the learned counsel for the parties and my findings issue wise are as follows. Issue No. 1:

(8) Clause 11 of the agreement dated 21.2.1973 which is an arbitration clause reads as follows:

11. "If any dispute or difference arises between the parties hereto or their representatives or assigns with respect to their rights or liabilities or in regard to any other matter under these presents, save as to any matters the decision whereof is hereinbefore expressly provided for, the same shall be referred to the sole arbitration of the Chairman, National Research Development Corporation of India, and if he is unable or unwilling to act, to the sole arbitration of some other person appointed by him and willing to act as such arbitrator. The reference to the Arbitration shall be deemed to be a submission within the meaning of the Arbitration Act, 1940 or any statutory modifications or re-enactment thereof and the rules made there under for the time being in force shall apply to such reference and this deed shall be deemed to be a submission to such arbitration. It is the condition of this Clause that all hearings of the arbitration will take place at Delhi."

(9) The plaintiff vide letter dated 21.2.81 wrote to Chairman Nrdc pointing out that disputes had arisen between the parties in respect of their rights and liabilities under the agreement dated 21.2.1973 and the agreement containing arbitration clause providing reference of the disputes to the Chairman or his nominee. He was requested to act in accordance therewith. Dr. G.S. Sidhu, who was the Chairman of Nrdc vide his letter dated 22nd October, 1982 accepted the reference and called upon the plaintiff to file its statement of claim by 5.11.82 and the defendant to file its reply by 15.11.82 and the rejoinder by the plaintiff by 25.11.82 Along with their documents in support. Time was extended and the plaintiff filed its statement of claim on 25.11.82 and the defendant filed its reply cum counter claim dated 26.1.83. Rejoinder was filed on 16.12.1983. Some dates for hearing the parties were fixed but these were adjourned. The defendant

No. 1 vide letter dated 4.1.1984 sent through their advocate raised two objections about the jurisdiction of the arbitrators, one that since Dr. G.S. Sidhu (the arbitrator) had ceased to be the Chairman of Nrhc he no longer had jurisdiction to act as an arbitrator. Secondly that the statutory period for making the award has expired and for this reason also the arbitrator could not act as such. The plaintiff in reply dated 27.1.84 disputed these objections. The arbitrator decided the objections on 5.4.84 holding that he was the Chairman when reference was made and he was asked to act as arbitrator as such he could continue as arbitrator and that he had entered the reference only on 5.4.1984.

(10) It is not disputed that Shri G.S.Sidhu, the arbitrator had ceased to be the Chairman of Nrhc before he made his award on 21.5.1984, but after accepting the reference.

(11) Learned counsel for the defendant No. 1 has relied on Union of India and others Vs. M/s. Prabhat Kumar and Bros. and another, and Union of India Vs. Jagat Ram Trehan and Sons, , a Division Bench judgment of this Court in support of his contention that the arbitrator was not competent to act as arbitrator after he relinquished his office as Chairman.

(12) In the first case of M/s. Prabhat Kumar & Bros. the arbitration clause provided as under :-

"ARBITRATION- All disputes between the parties to the contract (other than those for which the decision of the Cwe or any other person is by the Contract expressed to be viable and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender documents".

".....If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new arbitrator to act in his place."

(13) Objection was taken before the trial court that the arbitrator having retired from government service was no longer competent to function as an arbitrator. This was rejected by the trial court and was upheld by the first appellate court and in revision by the High Court. However, on further appeal in the Supreme Court, this objection was upheld.

(14) In the other case of Union of India Vs. Jagat Ram Trehan & Sons the arbitration clause provided that "the arbitration shall cease upon the person (who is appointed arbitrator) `being transferred or vacating his office". It was held that the authority of the arbitrator came to an end when he relinquished the charge of the post held by him by virtue of which he was appointed as arbitrator.

(15) In both these cases the arbitration clause itself provided that the authority of the arbitrator was to cease on his resignation or vacating his office on being transferred. There is no such term agreed in the present agreement. These two

cases thus are not applicable as contended on behalf of the plaintiff.

(16) Learned counsel for the plaintiff on the other hand has contended that the arbitration clause neither contemplates that the authority of the appointed arbitrator will cease on his relinquishing his post nor there is any provision in the Act to supersede the arbitrator in such case and that once the arbitrator had entered upon the reference, he alone was competent to continue as arbitrator and the award is not invalid on this ground. In support he has relied on two authorities, (1) National Research Development Corporation of India Vs. Britelite Carbons Ltd., Jai Dayal Pearey Lal Vs. Chunni Lal Parsotam Dass and Another, .

(17) In the first case of National Research Development Corporation of India arbitration clause provided that the disputes and differences between the parties will be referred to the sole arbitration of the Chairman and if he is unable to act, to the sole arbitration of some other person appointed by him and willing to act as such. At the relevant time, there was no Chairman and the reference was made to the Managing Director of the company by order of Court in an application filed u/s 20 of the Act. The arbitrator entered upon the reference but in the meantime he retired. The defendant took objection that the arbitrator having retired from the office of the Managing Director, was not entitled to continue with the arbitration. The arbitrator did not agree with this objection. The defendant then filed an application before this court for referring the disputes to the Chairman of the Nrdc or to his nominee. It was held that when the disputes were referred to the arbitrator, he was holding the post of Managing Director and as he entered upon the reference during his tenure he was competent to continue the arbitration proceedings. In this case reliance has been placed to a Division Bench judgment of this Court in Sushila Seth and Others Vs. State of Madhya Pradesh, , where the arbitration clause provided for the decision of disputes between the parties by the Chief Engineer for the time being, it was held that since the cause of action arises when the disputes arise between the parties, it is the Chief Engineer who holds the office as Chief Engineer at the time the disputes arose and the necessity for the arbitration arises. It was irrelevant as to what happened thereafter, the crucial date was when the cause of action arose and not when the award was published. In this case designated authority was appointed as arbitrator even after his retirement.

(18) In the case of Jai Dayal Pearey Lal dispute between the two members of an Association was referred to arbitration according to the rules and bye-laws of the Association. Each party appointed one arbitrator who was in the list of representatives of the members of the Association. One of the arbitrators, subsequently ceased to be a representative of a member of the Association and thereafter the arbitration was carried on before the remaining sole arbitrator and an award was made. The bye-laws did not provide in express terms that an arbitrator shall cease to have authority as such on ceasing to be the representative of a member of the Association. It was held that the fact that the arbitrator who subsequently lost the representative capacity would not result in

taking away from him the authority of an arbitrator and the award was bad and was set aside.

(19) Same view has also been taken by the Orissa High Court in Union of India (UOI) Vs. Ch. Radhanath Nanda and Another, . In that case the agreement provided that the disputes shall be referred to the arbitration of the Superintending Engineer of the circle "for the time being". It was held that the words "for the time being" refers only to the date on which the reference was made to the arbitrator and the Superintending Engineer of the Circle to whom reference was made may dispose of the reference even though, he may be transferred elsewhere prior to his giving his decision.

(20) In the present case the arbitration clause does not provide that in case of transfer and vacating the office as Chairman, a vacancy would arise and the authority of the appointed arbitrator would come to an end. Nor in the absence of contrary intention in the arbitration agreement, the authority of the appointed arbitrator is revocable under the Act. The arbitration proceedings once commenced thus have to be taken to its logical end.

(21) In these circumstances, it follows that with his transfer Dr. G.S. Sidhu, the arbitrator has not ceased to be so nor has become incompetent to act as an arbitrator in the proceedings in hand. First issue is thus decided in the affirmative. Issue No. 2 :

(22) The first point is regarding limitation. Learned counsel for the defendant has contended that the reference to the arbitrator was made by the plaintiff vide its letter dated 21.2.1981 and the arbitrator entered on the reference on 22.10.1982 when he sent notices to the parties requiring them to file statement of claim, reply and rejoinder and the award could be made within four months of 22.10.1982 which expired on 21.2.1983 and the award made on 21.5.1984 is time barred. Learned counsel for the plaintiff has disputed it and according to him the arbitrator had entered on the reference on 5.4.1984 when he fixed the date for hearing objections about his competence to act as an arbitrator and actually decided this controversy.

(23) The reference was made by the parties as per the arbitration agreement without the intervention of the court. Extension of time has not been granted by the court nor the time for making of the arbitration was agreed in the agreement. As such by virtue of Section 3 Clause 3 of the First Schedule to the Act will be applicable which provides that :

"The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the court may allow."

(24) The question thus is when the arbitrator entered on the reference. There has been difference of opinion on this.

(25) In *Baker Vs. Stephens* (1867) 2 Qb 523, it has been held that an arbitrator enters on a reference, not when he accepts the office, or takes upon himself the functions of arbitrator by giving notice of his intention to proceed, but when he enters into the matter of the reference, either with both parties before him or under a peremptory appointment enabling him to proceed ex parte. The Allahabad High Court in a previous case in *Sardar Mal Hardat Rai Vs. Sheo Baksh Rai Sri Narain*, Air 1922 All. 106 adopted this view.

(26) This has been followed by Lahore High Court in *Abdul Majid Vs. Bahawal Bakhsh* Air 1950 Lah. 174. In that case the arbitrator on a certain date decided that no further notice need be sent to one of the party and on a subsequent date the ex parte order was given by him. It was held that the arbitrator entered on the reference on subsequent date when the ex parte order was given.

(27) A Division Bench of the Calcutta High Court in *Nanda Kishore Goswami and Another Vs. Bally Co-operative Credit Society, Ltd. and Others*, has held that an arbitrator cannot be said to enter on the reference the moment that he is appointed an arbitrator but when he actually begins the work in the presence of the parties or with notice to them before he can be said to have entered on the reference.

(28) A different view has been expressed later by English Court of Appeal in *Iossifoglu Vs. Coumantaros* (1941) 1 Kb 396 where it was held that the arbitrators entered upon a reference as soon as they have accepted their appointment and have communicated with each other about the reference. In other words, the arbitrator enters upon a reference not necessarily at the time of actual hearing by them but even at a much earlier stage. Baker's case (supra) was not considered in this case.

(29) This latter view of English Court has been adopted in some of the decisions by some High Courts *Bajranglal Laduram Vs. Ganesh Commercial Co. Ltd.* ; *Harish Chandra Saxena Vs. Union of India* 1965 (Suppl.) Punjab Law Reporter 206. In both the cases it was held that the arbitrator entered on the reference when notice was given to the parties for filing their statements.

(30) However, Madhya Pradesh High Court in *Ramsahai Sheduram Vs. Harishchandra Dullchandji and Another*, has held that it is not necessarily the date on which the arbitrator has before him the versions of the parties of the subject matter of the controversy. It would be the date on which he does the first appropriate judicial act in connection with the controversy referred to him, by way of examining witness, hearing arguments and the like.

(31) The High Court of Jammu & Kashmir in *Assadulla Makhdoomi V. Lassa Baba* Air 1966 J K 1 has held that the arbitrator would be deemed to have entered on the reference on that day when he applied his mind to the dispute between the parties.

(32) The Orissa High Court in *Kalinga Otto (P) Ltd. Vs. Charanjit Kochhar*, has

followed Patna High Court referred to below view that an arbitrator enters upon a reference when after accepting the reference, he applies his mind and does something in furtherance and execution of the work of arbitration.

(33) A Division Bench of the Patna High Court in *Soneylal Thakur Vs. Lachhminarain Thakur and Another*, has disagreed with *Whether Dr. Vs. Coumantaros*'s case to the extent it was held that the arbitrators enter upon a reference as soon as they accept their appointment. But it was followed to the extent that they entered upon the reference when they communicated with each other about reference. In *Babubhai Vanmalidas Mehta Vs. Prabhod Pranshankar Joshi*, while agreeing with the contention that an arbitrator does not enter upon reference the moment he accepts his appointment but when takes upon himself an exercise of a function referable to his position as an arbitrator. It was held that where an arbitrator held preliminary meeting and gave directions to the parties as to the progress of the arbitration proceedings before him, he then exercised the functions of an arbitrator and then has entered upon the reference.

(34) The case law has been considered by the Full Bench of the Calcutta High Court in *Ramanath Agarwalla Vs. Goenka and Co. and Others*, , where two conflicting views, one appearing in *Baker*'s case and the judgments following it and the other arising out of *Iossifoglu Vs. Coumantaros* case have been considered and *Bajrang Lal* has been overruled. There it has been observed that acting as arbitrator includes (a) entering on reference; (b) proceeding with the reference and (c) making of award. The expression acting as an arbitrator is wider than entering on the reference. Entering on reference, Therefore, refers to the first step that the arbitrator takes in the reference, that is to say, when he begins to deal with the reference. Doing of the ministerial acts is not entering on the reference. It is only when he first applies his mind to the dispute referred to him that he enters on the reference.

(35) And the questions referred were answered as follows :-

(1)An Arbitrator does not enter on the reference as soon as he assumes the office of an Arbitrator. An Arbitrator does not necessarily enter on the reference when he actually commences the decision of the matter in the presence of both parties or ex parte. An Arbitrator enters on a reference when he first applies his mind to the dispute or controversy re him depending on the facts and circumstances of each case."

(36) *BABUBHAI*'S case has not been followed by a Division Bench of the Bombay High Court in *Jolly Steel Industries Pvt. Ltd., Poona Vs. Union of India and Another*, but has followed Full Bench judgment of Calcutta High Court in *Ramanath Agarwalla Vs. Goenka and Co. and Others*, and it has been held that :

"An arbitrator does not enter on the reference as soon as he assumes the office of an arbitrator. The arbitrator does not necessarily enter on the reference when he actually commences the decision of the matter in the presence of both parties or ex parte. An arbitrator enters on a reference when he first applies his mind to

the disputes or controversy before him depending on facts and circumstances of each case. "

(37) In this case, the arbitrator was appointed on 12.11.1971. He issued notices to the parties on 17.11.1971. Claims and replies were submitted on 25.11.1971 and 25.1.1972. On 31.1.1972 the arbitrator issued notices calling upon the parties to appear before him on 7.2.1972 to enable him to hear and dispose of the dispute. But no hearing could take place on that date. Hearing was adjourned to 21.2.1972 when witnesses were examined and this latter date was held to be the date when the arbitrator had entered on the reference.

This latter view has also been followed by Gujarat High Court in a recent judgment in Gujarat Water Supply and Sewerage Board, Gandhinagar Vs. Unique Erectors (Guj) Pvt. Ltd. and Another, where also it was held "that the arbitrator enters upon the reference on the date on which he starts the adjudicative part of his function and not when he starts just the ministerial part of his function".

(38) This legal position which represents the later view of majority of the High Courts is in support of the proposition that the arbitrator does not enter on reference when he accepts his office nor when he sends notices calling upon the parties to submit their claims and counter-claims or does any other ministerial acts. The arbitrator enters on the reference on the date when he applies his mind towards the adjudicative part of his function as an arbitrator in the presence of the parties or ex parte after due notice to them. I, with respect, am in agreement with this view.

(39) In the present case the plaintiff informed the arbitrator vide their letter dated 21.2.1981 that disputes had arisen between the parties out of the agreement dated 21.2.1973 which are to be resolved by the Chairman of the plaintiff or his nominee. Dr. G.S. Sidhu who was the then Chairman of the plaintiff vide his letter dated 22.10.1982 accepted to act as the arbitrator when he called upon the parties to file statement of claim and reply etc. Statement by plaintiff was filed on 25.11.1982 . The defendant vide their letter dated 10.12.1982 asked for one month's time which was granted by the arbitrator and the defendant filed their reply-cum-counter claim on 26.1.1983. The plaintiff filed their rejoinder on 16.12.1983. In the meantime, some dates had been fixed but these were merely adjourned by the arbitrator for one reason or the other. When the date was fixed for 7.1.1984, the defendant vide their telegram followed by letter dated 4.1.1984 had raised objection to the jurisdiction of the arbitrator on two grounds; (1) that he had ceased to be Chairman of Nrdc and (2) period of four months had expired after his entering on reference on 25.11.1982. Reply was filed by the plaintiff and the case was fixed for 5.4.1984. The defendant vide their letter dated 22.3.1984 informed the arbitrator that the defendant did not intend to appear before the arbitrator or take part in any proceedings either on 5th April, 1984 or any other date as he was not the arbitrator in the reference. The defendant did not appear before the arbitrator on 5.4.1984. On that date the arbitrator decided both the objections holding : (i) that he was the Chairman of

Nrdc when he was asked to act as arbitrator. (ii) He had heard the matter for the first time on 5.4.1984 and as such he will be deemed to have entered upon reference on 5.4.1984. The case was fixed for 10.5.84 at New Delhi and he gave one more opportunity to the defendant to produce their documents. Both the parties were directed to produce their entire evidence on 10.5.1984 and it was also notified that failing this he shall decide the matter ex parte. Copies of these proceedings were also sent to the parties. On 10.5.1984 no one appeared on behalf of the defendant and plaintiff examined two witnesses, in the absence of the defendant who was proceeded ex parte and finally gave his award on 21.5.1984.

(40) It is apparent that vide his letter dated 22.10.1982 the arbitrator had accepted to act as arbitrator when he called upon the parties to file their claim and replies etc. Pleadings were completed by 16.12.1983. Though some dates were fixed for the appearance of the parties but the same were adjourned for one reason or the other till 5.4.1984 when the application of the defendant objecting to the jurisdiction of the arbitrator was taken up and disposed of. Thus, the dates fixed prior to 5.4.1984 were ministerial steps and effective hearing had taken place on 5.4.1984 when the arbitrator proceeded to decide objections raised by the defendant and in my view, it is on that day when the arbitrator had entered upon the reference. The award made on 21.5.1984 is within limitation. This objection, thus has no merit. Regarding Misconduct of the Arbitrator:

(41) An objection was taken that discussions were being held and the documents were being shown to the arbitrator without the knowledge thereof to the defendant showing collusion between the plaintiff and the arbitrator and thereby the arbitrator had miscondacted the proceedings. This plea is not supported in evidence filed on behalf of the defendant nor any arguments were addressed on this plea. This plea also thus has no merit and is rejected. Regarding Plea of Fraud :

(42) An objection had been taken before the arbitrator that the agreement was obtained by practicing fraud and the arbitrator had no jurisdiction to go into the question of the fraud and now in the objections also objection has been taken to this effect on the ground that the know how in respect of manufacture of spice Oleoresins had already been invented by Central Food Technical Research Institute, Mysore and this was not a new invention of the plaintiff but an already known one and the license agreement was got executed fraudulently and by misrepresentation and concealment of this fact by the plaintiff having knowledge of the same. The parties have filed their respective affidavit. The plaintiff has denied this allegation. No material has been placed on record by the defendant in support of his objection. The agreement was entered on 21.2.1973 and has been acted upon, remained in operation for a decade and in pursuance thereof the defendant has been submitting half-yearly royalty returns and they have also made payments of royalty amounts till 31.3.1977 and part payment of Rs. 50,000.00 thereafter. This plea is highly belated and in the circumstances is

neither bonafide nor is proved on record. If this was a fraudulent representation made by the plaintiff, as alleged, the true facts must have been known to the defendant from the very beginning or soon thereafter but no steps were taken to challenge the validity of the agreement earlier. In reply to notice of demand it is stated that the demand was ignored as it was not payable because the agreement was fraudulently made. This plea could be challenged either by filing a suit or if available, in application u/s 33 of the Act. The Supreme Court in The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, has held that under the new Limitation Act, 1963, Article 137 applies to all the applications under any Act made before the Court. The period for such application is three years when the cause of action arises. The defendant's invocation of Section 33 now in objections after more than three years is thus time barred also. This objection was also not raised during oral arguments. This objection also thus, has, no merits and is rejected. Regarding Fees of the Arbitrator :

(43) The parties had not fixed the fees to be paid to the arbitrator in the agreement. The arbitrator has fixed his fees and costs while making the award which is payable by both the parties in equal share. The arbitrator could fix such fees. It is not the case of the defendant that the fees fixed is excessive. The challenge is that the arbitrator was not competent to act as arbitrator and as such could not fix his fees. I have already held that the arbitrator was competent to proceed with the arbitration and give his award. This argument was also not raised during oral arguments and has thus no merits and is rejected.

(44) The Issue No. 2 is, accordingly, decided against the defendant. Issue No. 3 :

(45) In view of my findings on Issue Nos. 1 and 2, the award dated 21.5.1984 has to be upheld. This issue does not survive and is decided against the defendant.

(46) No other objections regarding the validity of the award were taken in the objection petition is No. 7082/84. Issue No. 4 :

(47) The arbitrator while awarding arrears of royalty for the period 1st April, 1980 to 30th November, 1983 appears to have awarded interest twice, one up to date i.e. till 21.5.1984 and again from 1st May, 1984 onwards which is erroneous. This error can be corrected by the court u/s 15 of the Act. The arbitrator shall be deemed to have awarded such interest only once for the said period of 1.5.84 to 21.5.84 and the award is modified to this extent.

(48) The arbitrator has also awarded future interest till the date of realisation. He could award interest up to the date of realisation or till the award is made Rule of the Court whichever is earlier which is also so modified. I do not find any other error apparent on the face of the award nor is any raised in the objections.

(49) In the result, the award dated 21.5.1984 of Dr. G.S. Sidhu, arbitrator, as modified above is made Rule of the Court. The plaintiff shall also get future interest @ 12% per annum from the date of the decree till realisation on the

amounts of Rs. 2,87,550.12 and Rs. 3,18,000.00 awarded as arrears of royalty. The plaintiff shall also get costs of these proceedings. The award shall form part of the decree. is No. 4347/84:

(50) is No. 4347/84 which is another objection application of the defendant was filed earlier before the filing of the award in the court and the notice of the filing of award was served on the parties. These objections are premature and as fresh objections have been filed later on being is No. 7082/84, this application is dismissed as not maintainable. Suit No. 1142A/84 and is No. 7082/84

(51) In view of the aforesaid discussion, this application is dismissed and Suit No. 1142A/84 is allowed and disposed of accordingly.