

(1976) 06 PAT CK 0006
In the Patna High Court
Case No : M.A. No. 194 of 1967

The Union of India

APPELLANT

Vs

Shri Binod Behari Singh and Others

RESPONDENT

Date of Decision : 30-06-1976

Acts Referred:

Arbitration Act, 1940 — Section 10, 11, 12(2), 13, 13(1)
Civil Procedure Code, 1908 (CPC) — Section 24
Limitation Act, 1963 — Section 5

Citation : (1977) PLJR 309

Hon'ble Judges : Muneshwari Sahay, J;B.D. Singh, J

Bench : Division Bench

Advocate : K.D. Chatterjee and Chunni Lal Verma, for the Appellant; Kailash Roy, B.K. Roy and Nand Kishore Prasad, for the Respondent

Judgement

Muneshwari Sahay, J.—This appeal is directed against the order of the First Additional Subordinate Judge, Patna rejecting the appellant's prayer for setting aside an award and ordering that the award may be made a rule of the Court. The facts involved in this case are, shortly, these. Respondent Binod Bihari Singh had entered into a contract with the Union of India (appellant) on the 10th December, 1957, for loading, unloading and otherwise handling the goods at Gaya Goods shed of the Eastern Railway. The contract was to remain in force for three years. The appellant, however, terminated the contract with effect from the 2nd August, 1960, i.e. a few months before it was due to expire. The respondents claimed damage as a result of the premature termination of the contract. There was an arbitration clause in the agreement according to which the parties had agreed that if any dispute, difference or question should arise between the Railway Administration and the contracts as to their respective rights, duties and obligations of the parties or as to the construction or interpretation of the terms and conditions of the agreement or as to its application, the same would be referred to the sole arbitration of the General Manager of the Railway or if he would be unable or unwilling to act, then to the

sole arbitration of any person appointed by him in this behalf. Accordingly when the dispute arose between the parties to the contract, the General Manager of the Eastern Railway appointed Shri R. Gopal Krishnan, the Chief Commercial Superintendent, as an arbitrator in terms of the arbitration clause of the agreement.

2. On the 22nd August, 1961, however, the respondent filed an application under Sections 5 and 8 of the Arbitration Act, in the Court of the Second Subordinate Judge, Patna. He had prayed in his application to revoke the appointment of Shri R. Gopal Krishnan and to appoint some suitable person as the arbitrator in his place. The application was registered as miscellaneous case no. 38 of 1961. By the order of the District Judge Patna, dated the 5th June, 1962, the miscellaneous case was transferred to the court of the First Additional Subordinate Judge Patna. By his order dated the 25th August 1962 the learned Additional Subordinate Judge allowed the respondent's prayer for revocation of the authority of Shri R. Gopal Krishnan. On the 17th September, 1962, the learned Additional Subordinate Judge passed another order appointing Shri Ajodhya Prasad Sinha retired Subordinate Judge as the sole arbitrator in the dispute. The appellant moved this court in revision against the order revoking the authority of Shri R. Gopal Krishnan. The court dismissed the appellant's prayer in civil revision no. 4 of 1963 on the 8th January 1963. The appellant had also preferred M.A. no. 326 of 1962 against the order of the learned Additional Subordinate Judge, appointing Shri Ajodhya Prasad Sinha, the sole arbitrator. The miscellaneous appeal was disposed of on compromise in this court on the 30th March 1964. Under the terms of the compromise the General Manager appointed Shri J.C. Mehta, Deputy General Manager Eastern Railway as the Arbitrator in place of Shri Ajodhya Prasad Sinha. The arbitrator gave its award on the 26th February 1965, and had sent a copy of the signed award to the parties. On the 25th May 1965, the respondent filed the award sent to him by the arbitrator in the court of the First Additional Subordinate Judge, Patna along with an application in which he prayed that the arbitrator be directed to produce the original award in court and a decree be passed in terms of the award. In pursuance of the notice issued to the arbitrator he filed the award in the Court of the First Additional Subordinate Judge on the 12th June 1965. Information with regard to the filing of the award was given to the lawyers of the parties on the 28th June 1965. Thereupon the Union of India filed an objection on the 24th July 1965 in which it prayed that the award be set aside Subsequently, the appellant filed two applications, one on the 23rd September, 1965 and the other on the 6th November 1965 for amendment of its objection petition. Both the petitions were rejected by the Additional Subordinate Judge. Thereupon the appellant moved this court in Civil Revision no. 8 of 1966 against the order of the Additional Subordinate Judge, rejecting the prayer for amendment of the objection petition. The revision application was allowed and the court below was directed to deal with the two amendment petitions on its merits in the light of observations made by this court. Eventually the prayer for amendment was substantially allowed by

the Additional Subordinate Judge.

3. On the 18th March 1967, the appellant filed an application before the Additional Subordinate Judge in which it prayed that the postal receipt and the acknowledgement for the letter dated the 26th February, 1965 by which the arbitrator had sent a copy of the award to the respondent be called for from the arbitrator as those documents were very material to decide the question of limitation in this case. The prayer, however, was rejected by the Additional Subordinate Judge. The appellant had pleaded inter alia that the award should have been filed in this court and not in the court of the Subordinate Judge, that in any view of the matter the award should have been filed in the court of the Second Subordinate Judge, Patna and not in the court of the Additional Subordinate Judge, Patna and that the award was bad due to error apparent on the face of it. In its application dated the 18th March 1967 and also in course of the argument before the court below, the appellant had raised the plea that the application for filing of the award was barred by limitation. The learned Additional Subordinate Judge rejected all these pleas and dismissed the appellant's application for setting aside the award. It is against this order that the appellant has come in appeal before this court. The appeal was heard by their Lordships B.N. Jha and B.D. Singh, JJ. in February 1971 and by their order dated the 12th February 1971, their Lordships remitted the record to the court below for recording its findings on the following points:

(i). When did the petitioner respondent get notice of the making of the award from the arbitrator and

(ii). Whether on the findings arrived at by the court below, the application itself is barred by limitation? The court below submitted its findings to the effect that the respondent had received a copy of the award with a covering letter in the first week of March 1965. The award in the covering letter had been sent to him by the arbitrator. The court below also held that the application for filing of the award was not barred by limitation and in any view of the matter it was a fit case in which the prayer of the respondent u/s 5 of the Limitation Act for condonation of delay should be allowed.

4. Shri K.D. Chatterjee learned counsel for the appellant has raised the following questions for consideration in this appeal.

1). As the arbitrator had been appointed by this court in M.A. no. 326 of 1962, the award should have been filed before this court.

2). Even assuming that the award should not have been filed before this court, the same should have been filed before the court of the Second Subordinate Judge, Patna and not in the court of the Additional Subordinate Judge Patna as the latter court had jurisdiction to deal with only such matters as were transferred or assigned to him by the District Judge.

3). The award was bad due to an error apparent on the face of it.

4). That the application for filing the award in court was barred by limitation under Article 119(a) of the Limitation Act. I propose to examine these questions in the order in which they have been stated above.

5. Point no. 1--Shri K.D.-Chatterjee, learned counsel for the appellant had contended that it was this court that appointed Shri J.C. Mehta as the arbitrator in M.A. no. 326 of 1962 by the order dated the 30th March, 1964, and as there was nothing in that order to indicate that this court had divested itself of its jurisdiction to deal with the awards arising out of the award, this court and this court alone was competent to entertain the application for filing of the award. The fact that this court had retained its jurisdiction to deal with the award it is submitted becomes still more apparent when one finds that on 28th October, 1964 on an application made before it for that purpose this court had extended the time for submission of the award u/s 28 of the Arbitration Act and it directed the arbitrator should submit his award by the 28th February 1965. Admittedly the award was not made within the four months period prescribed under the Arbitration Act and therefore, it had become necessary to get the time for making the award extended. Shri Chatterjee has referred us in this connection to a decision of the Supreme court in the case of (1) State of Madhya Pradesh Vs. Saith and Skelton (P) Ltd., and has submitted that in similar circumstances the Supreme court had held that it had retained the jurisdiction to deal with the award for matters arising out of the award and, therefore, the award should have been filed before it. For a proper appreciation of the submission made by the learned counsel on this question, it will be necessary to refer to the decision in some details. A dispute had arisen in that case between the erstwhile state of Madhya Bharat and a contractor (first respondent) in connection with the contract to supply and erect penstocks for Gandhi Sugar Power Station, Chambal Hydel Works. There was an arbitration clause in that contract as well which provided for any question or dispute arising under the conditions of the contract or in connection therewith to be referred to arbitrators one to be nominated by the State and the other by the Firm. The said clause also provided for the matter being referred to an Umpire to be appointed by the Arbitrators in case of disagreement between them. When the dispute arose between the parties, the Firm intimated the State nominating one Shri T.R. Sharma, as an Arbitrator. The Directorates of Supplies and disposals who were acting as the agent of the Madhya Bharat Government nominated one Shri G.S. Gaitonde as the arbitrator on behalf of the State. As Shri Gaitonde resigned his appointment one Shri R.R. Desai was nominated as the Arbitrator on behalf of the State. The two arbitrators appointed Shri R.C. Soni as an umpire as the validity of the appointment of the arbitrators and the Umpire was questioned, the State of Madhya Pradesh filed an application u/s 5 of the Arbitration Act in the court of the Additional District Judge, Mandsaur for setting aside the nominations of the two arbitrators as well as of the Umpire. The Additional District Judge, held that the appointment of Shri R.R. Desai as an arbitrator and Shri R.C. Soni as an Umpire were both invalid and not binding on the appellant. The firm filed an appeal before the High Court

of Madhya Pradesh against the order of the Additional District Judge. The High Court by its order dated August 6, 1970 appointed Shri R.C. Soni, as the sole arbitrator u/s 12(2) of the Arbitration Act and, accordingly, modified the order of the Additional District Judge, Mandsaur. The appellant filed a SLP before the Supreme Court for grant of special leave to appeal against the order of the High Court. The order of the Supreme Court granting special leave is in the following terms:--

Special Leave is granted. The appeal is allowed. The appointment of Shri R.C. Soni as the sole arbitrator is set aside by consent of the parties.

Mr. V.S. Desai, Senior Advocate, is appointed Arbitrator by consent of the parties, to go into all the questions in this matter and make his award. The remuneration for the arbitrator would be Rupees 5,000/- which will be shared by the parties equally

The arbitrator will make his award within three months from today. The parties will be at liberty to mention for extension of time for making the award:

This order was passed on the 29th January 1971. On February 1, 1971 the Supreme Court gave directions in appeal in the presence of counsel for both the parties that the records of the arbitration be called for forthwith and sent to the sole arbitrator Mr. V.S. Desai appointed as per order dated the 29th January 1971. Again on April 30, 1971 the Supreme Court in the presence of both the parties extended the time for making the award by four months and also permitted the arbitrator to hold the arbitration proceedings at Bombay. The arbitrator eventually gave its award on the 28th August 1971 and filed the same in the Supreme Court the next day. One of the question raised on behalf of the appellant before the Supreme court was that the Supreme Court was not the court as contemplated by Section 14(2) read with Section 2(c) of the Arbitration Act. Hence it was said that the filing of the award before the Supreme Court was illegal and ineffective in law. The Supreme Court rejected this plea. The following observations of the Supreme Court in this connection would be relevant:--

According to Mr. Shroff the award should have been filed not in this court, but in the court of the Addl. District Judge, Mandsaur, as that is the court which will have jurisdiction to entertain the suit regarding the subject of the reference. We are not inclined to accept this contention of Mr. Shroff. It should be noted that the opening words of Section 2 are "In this Act unless there is anything repugnant in the subject or context." Therefore the expression "Court" will have to be understood as defined in Section 2(c) of the Act only if there is nothing repugnant in the subject or context. It is in that light that the expression "court" occurring in Section 14(2) of the Act will have to be understood and interpreted. It was the court that appointed Shri V.S. Desai on January 29, 1971 by consent of parties as an arbitrator and to make his award. It will be seen that no further directions were given in the said order which will indicate that this court had divested itself of its jurisdiction to deal with the award or matters arising out of

the award. In fact the indications are to the contrary. The direction in the order dated January 29, 1971 is that the arbitrator is "to make his award". Surely the law contemplates further steps to be taken after the award has been made, and quite naturally the forum for taking the further action is only this court. There was also direction to the effect that the parties are at liberty to apply for extension of time for making the award. In the absence of any other court having been invested with such jurisdiction by the order, the only conclusion that is possible is that such a request must be made only to the court which passed that order, namely this court.

That this court retained complete control over the arbitration proceedings is made clear by its order dated February 1, 1971 and April 30, 1971. On the former date, after hearing counsel for both the parties, this court gave direction that the record of the arbitration proceedings be called for and delivered to the sole arbitrator Mr. V.S. Desai. On the latter date, again, after hearing the counsel, this court extended the time for making the award by the four months and further permitted the arbitrator to hold the arbitration proceedings at Bombay. The nature of the order passed on January 29, 1971 and the subsequent proceedings, referred to above, clearly show that this court retained full control over the arbitration proceedings.

6. Shri Kailash Ray, learned counsel for the respondent has contended that the facts before the Supreme Court were so dissimilar to those before us that the appellant cannot take any advantage from the aforesaid decision in this case. He has referred to us to the order which was passed in miscellaneous appeal no. 326 of 1962 by this court which is as follows:--

30.3.64:--Both the parties in this case have compromised this appeal in the following terms:--

(1) The order of the 2nd subordinate judge of Patna, dated the 17th September, 1962 which is the subject matter of this appeal, is set aside.

(2) By virtue of the power granted under Clause 31 of the agreement, dated the 10th December, 1967, the General Manager appoints Shri J.C. Mehta Deputy General Manager, Eastern Railway as arbitrator in place of Sri Ayodhya Prasad Singh.

(3) The parties have agreed to bear their own costs of this appeal.

Let the above compromise be recorded and the appeal be disposed of in terms of the compromise which will form part of the decree.

Learned counsel submits that it would be wrong to say in face of this order that it was this court that had appointed Shri J.C. Mehta as the arbitrator in place of Shri Ayodhya Prasad Singh. In fact it was expressly mentioned under the terms of the compromise incorporated in the above order that Shri Mehta was appointed as the Arbitrator or by the General Manager by virtue of the power conferred under Clause 31 of the agreement. It is also submitted that there is

nothing in this order to indicate that after the disposal of the Miscellaneous appeal in terms of the compromise, this court had retained its control over the arbitration proceedings. The following distinguishing features are noticed in the case before the Supreme Court and this court:

- (1) The Supreme Court had expressly directed the arbitrator to make his award. No such direction was given by this court.
- (2) The Supreme Court had further directed that the arbitrator would make his award within three months from the date of the order. No such time limit or direction was given by this court.
- (3) The Supreme Court had fixed the remuneration of the Arbitration. No remuneration for the arbitrator was fixed by this court.
- (4) The Supreme Court had directed that the parties would be at liberty to mention for extension of time for making the award. No such direction was given by this court.
- (5) On February 1, 1971 the Supreme Court gave direction in the appeal in presence of counsel for both the parties that the records of the arbitration be called for forthwith and sent to the sole arbitrator Mr. V.S. Desai. No such order was made by this court for sending the records to Shri J.C. Mehta.
- (6) The Supreme Court had permitted the arbitrator to hold the arbitration proceedings at Bombay. No such direction of the venues of the arbitration proceedings was made by this court.

The only point of similarity in the two cases was that both the Supreme Court and this court had extended the time for making the award. Learned counsel for the respondent, therefore, contends that whereas the facts before the Supreme court show that the Supreme Court had retained its jurisdiction to deal with the award and complete control over the arbitration proceedings as if the reference had been made by it, no such inference can be drawn from the facts of this case that this court had retained jurisdiction and control over the arbitration proceedings. I am inclined to agree with the submissions made by Shri Roy. The concluding line of paragraph 20 of the report. The nature of the order passed on January 29, 1971 and the subsequent proceedings, referred to above, clearly show that this court retained full control over the arbitration proceedings clearly point out the considerations which should be relevant for a decision as to whether this court had retained control over the arbitration proceedings. On the facts to which a reference has been made above I feel no hesitation in holding that this court had not retained jurisdiction to deal with the award or control over the arbitration proceedings in this case.

7. Reference has also been made in this connection to Section 31 of the Arbitration Act, which is in the following terms:--

- (1) Subject to the provisions of this Act, an award may be filed in any court

having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the court in which the award under the agreement has been, or may be, filed and by no other court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the court where the award has been, or may be, filed, and to no other court.

(4). Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force where in any reference any application under this Act has been made in a court competent to entertain it, that court alone shall have jurisdiction over the arbitration proceeding and all subsequent application arising out of that reference and the arbitration proceedings shall be made in that court and no other court.

This Section came up for consideration before the Supreme Court in the case of (2) Kumbha Mawji Vs. Union of India (UOI), The following observations of the Supreme Court in that case may be usefully quoted.--

Thus it will be seen on a comprehensive view of Section 31 that while the first Sub section determines the jurisdiction of the court in which an award can be filed, Sub-sections (2), (3) and (4) are intended to make that jurisdiction effective in three different ways, (1) by vesting in one court the authority to deal with all questions regarding the validity effect or existence of an award or an arbitration agreement, (2) by casting on the persons concerned the obligation to file all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings in one court and (3) by vesting exclusive jurisdiction in the court in which the first application relating to the matter is filed.

It will be noticed from aforesaid observations that Sub-section (1) of the Section 31 really determines the jurisdiction of the court in which the award can be filed u/s 14 of the Arbitration Act. That is the position of course where arbitration is done in the dispute without intervention of the court. In cases where arbitration is done with the intervention of the court or arbitration in suits, the position is, certainly different but we are not concerned with the same. I have pointed out that the facts of the Madhya Pradesh case (State of Madhya Pradesh Vs. Saith and Skelton (P) Ltd.,) show that it was virtually a case of arbitration with the intervention of the court. I am satisfied that on the authority of that decision the appellants cannot successfully contend that the award in this case should also have been filed before this court.

8. Shri K.D. Chatterjee learned counsel for the appellant has contended that if it be held that this court was not competent to entertain the award, u/s 14(2) of

the Arbitration Act, then it was also not competent to extend the time for making of the award u/s 28 of the Arbitration Act. As this court did actually extend the time by four months on the 28th October, 1964 and as the award was made during the extended period, it is submitted that the award was made beyond the time prescribed under the law and as a consequence it was vitiated. Without entering into the controversy as to whether this court was competent to extend the time for making of the award when the application was made to it for the purpose, I will assume that this time could not have been extended by this court. That however, could not in any way affect the award. As far back as in the year 1919 a Bench of this court in the case of Patto Kumari V. Upendra Nath Ghosh (4 Patna Law Journal 265) held that under rule 8 of the Second schedule of the Code of Civil Procedure, it was primarily the court alone which had authority to extend the time for making an award, but there might be circumstances arising from the conduct of the parties which would justify the inference that the parties, intended and impliedly agreed that even though the time for making an award was not extended by the court, the arbitrators should make their award even though literally out of time. In such a case the court held that the parties would be estopped from impeaching the award upon the ground that it was made out of time. This decision was also considered by a Full Bench of this court in the case of (3) Bokaro and Ramgur Ltd. Vs. Dr. Prasun Kumar Banerjee, His Lordship Untwalia, J. (as he then was) who spoke for the court quoted the following observations from Patto Kumari's case (Supra):--

....There is a rule well recognised and established in the nature of estoppel that if the parties to an arbitration proceeding by their conduct lead arbitrators to think and believe, that even though the time for making their award has in fact expired, that they (the arbitrator) should continue the proceedings and to which course the parties must be deemed to have assented, by acquiescing in taking part in such proceedings, then though the time for making the award may have expired the jurisdiction of the arbitrators would be deemed to continue to validate and give effect to the award.

Reference to the Full Bench had been made due to an apparent conflict between the views taken in Patto Kumari's case and the case of (4) Lakhmir Singh Vs. Union of India (UOI) and Another, . The Full Bench held on the application of the principles of estoppel that Patto Kumari's case was rightly decided. Recently the Supreme Court as well in the case of of (5) Hari Krishna Wattal Vs. Vaikunth Nath Pandya (Dead) by Lrs. and Another, held that an arbitrator can enlarge time for making an award if after entering on the arbitration the parties mutually agree to such enlargement. I need hardly state that the inference of the mutual agreement between the parties regarding the extension of the time for making of the award can be legitimately drawn with reference to the conduct of the parties, namely, their active participation in the proceedings before the arbitrator during the extended period for making the award. In the instant case it is not disputed that the parties including the appellant had actively participated in the arbitration proceedings till the very last date on which such proceeding was held. Therefore

the contention of the appellant that if this court was held to be incompetent to entertain the award the award must be held to have been made beyond time cannot be accepted.

9....Point No. 2:--This takes us to the consideration of the next submission made on behalf of the appellant, namely, that in any view of the matter, the award should have been filed in the court of the Second Subordinate Judge, Patna and not in the court of the Additional Subordinate Judge as it actually had been filed there. The submissions of the appellant on this point are in two fold. Firstly, reference is made to Sub-section (4) of Section 31 of the Arbitration Act which is as follows:

Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a court competent to entertain it, that court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that court and in no other court.

It is contended that as the application under Sections 5 and 8 of the Arbitration Act had been filed in the court of the Second Subordinate Judge, Patna, that court and that court alone had the jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and that arbitration proceedings had to be made in that court and in no other court. Secondly, it is submitted that no proceeding could originate in the court of the Additional Subordinate Judge and that court had only jurisdiction to deal with matters in the cases actually assigned or transferred to it by the order of the District Judge. None of these submissions, can be upheld. Admittedly Miscellaneous case no. 38 of 1961 which arose on the application under Sections 5 and 8 of the Arbitration Act was transferred to the First Additional Subordinate Judge by the order of the District Judge dated the 5th June 1962 and thereafter the first Additional Subordinate Judge was in seisin of that case until it was finally disposed of. It is not disputed that after the proceeding under Sections 5 and 8 of the Arbitration Act had been transferred in the court of the Additional Subordinate Judge that court and not the court of the Second Subordinate Judge was competent to deal with that proceeding. Section 41 of the Arbitration Act expressly provides that subject to the provisions of the Act and all rules made thereunder the provisions of the CPC (1908) shall apply to all proceedings before the court and to all appeals under the Act. The transfer of the proceedings under Sections 5 and 8 of the Arbitration Act had evidently been made by the District Judge u/s 24 of the Code of Civil Procedure. Section 31 of the Arbitration Act in my view, does not exclude the operation of Section 24 of the CPC and I am inclined to think that if in any reference any application under the Arbitration Act had been validly transferred by the District Judge u/s 24 of the Code of Civil Procedure, the transferee court alone retained the jurisdiction in the arbitration proceedings and all subsequent applications arising out of the reference and the arbitration

proceedings should be made in that court and not in any other court. In this view of the matter, the Additional Subordinate Judge was competent to entertain the award.

10. Even assuming that it was not so competent by reason of the transfer of the application under Sections 5 and 8 of the Arbitration Act its jurisdiction to entertain the award and deal with the arbitration proceedings will still not be affected. In this connection both the parties placed reliance on two Bench decisions of this court, one in the case of (6) Chandmal Marwari and Others Vs. Raja Shib Prasad Singh and Another, and the other in the case of (7) Mango Lall Sah V. Jog Sah (ILR XIII Patna 5). Learned counsel for the appellant referred us to Section 3 of the Bengal, Agra and Assam Civil Courts Act. (1887) (Act XII of 1887) and pointed out that although the Act recognised the court of the Subordinate Judge, it did not contemplate any court of Additional Subordinate Judge. Learned counsel conceded that even though there might be a court of the Subordinate Judge at one Station, civil officers designated as Additional Subordinate Judges could be posted there to assist the work of the Subordinate Judge. The work of the court of the Subordinate Judge, is distributed between different officers designated as Additional Subordinate Judges and until such distribution takes place, the Additional Subordinate Judge has no jurisdiction over any particular case. Therefore, the argument is that the Additional Subordinate Judge was not competent to entertain the application for filing of the award u/s 14(2) of the Arbitration Act and that he could deal with only such application when it was transferred to him by the District Judge after it had been filed before the court of the Subordinate Judge which was the filing court. Reference is made on behalf of the appellant to the following observations of this court in the Chandmal Marwari's case (Supra):--

Now it is clear that the various classes of courts are established by Section 3 of Act XII of 1887 and no such court at that of the "Additional Subordinate Judge of Dhanbad" exists. When there is too much work for a single Subordinate Judge to do an additional subordinate judge is appointed to assist him. The division of work between the Subordinate Judge and his assistant may be settled in one of two ways. Either the Government u/s 13(1) may prescribe territorial limits as was done in this particular case or the matter may be left to the discretion of the District Judge who may divide the work either according to territorial limits or according to the magnitude or class of cases as he may think fit. In either case there is but one court of the Subordinate Judge though two or more individuals may exercise the jurisdiction of that court within the district. Suits are not instituted "in the court of the Additional Subordinate Judge" but in the court of the Subordinate Judge, the question of the individual before whom the case is ultimately heard depending upon the orders which may be passed in pursuance of the Sub-sections (1) and (2) of Section 13 above quoted.

Manogi Lal Sah Vs. Jog Sah, dealt with the court of an Additional Munsif and it was observed there that "from time to time an extra Munsif is deputed to a

district to try such suits as may be made over to him by the District Judge by general or special order."

11. Learned counsel for the appellant contends that as suits could not be instituted in the court of the Additional Subordinate Judge, the application u/s 14(2) could not also have been filed there and the Additional Subordinate Judge could have been competent to deal with such an application if and when the same was transferred to his file by the District Judge after it had been filed in the court of the Subordinate Judge. In my view, the argument proceeds on a misconception of the jurisdiction of the Additional Subordinate Judge to deal with such matters. In *Manogl Lall Sah's* case (Supra) this court observed that the court of an additional Munsif is the court of a Munsif. Similarly the court of the Additional Subordinate Judge is the court of a Subordinate Judge. As was pointed out by this court in the case of (8) *Baldeo Choubey V. Saiyed Abdul Wahab* (1965 B.L.J.R. 628) properly speaking Additional Subordinate Judges are additional Courts of a Subordinate Judge. The court observed, that "it is further clear that there can be more than one Subordinate Judge posted at the same place and the local limits of jurisdiction may be divided between them by the State Government. If such a division is not made then all of them, will have the same territorial jurisdiction over the judgship to which they are posted, Even in cases where the same local limits of the jurisdiction is held by more than one Subordinate Judge, the District Judge can effect a practical division by assigning to each of them such civil business as he may think fit but that will not rob the Subordinate Judge of his jurisdiction over the whole area which the State Government may have assigned to him along with another or more Subordinate Judge." In *Chand Mal Marwari's* case (Supra) this court observed that the mere fact that for administrative purposes the court of the Subordinate Judge is now divided between the Subordinate Judge and an additional Subordinate Judge and that a certain class of business or an area has been allotted to the Additional Subordinate Judge does not make the court of the Subordinate Judge sitting at Purulia any the less the court of the Subordinate Judge of Manbhum. As has been pointed out earlier, in *Kumbha Mawji's* case (Supra) the Supreme Court observed that the first Sub-section (1) of Section 31 determines the jurisdiction of the Court in which an award could be filed. If according to that sub-section the court of the Subordinate Judge, Patna was competent to entertain the award, I find no reason why the Additional court of the Subordinate Judge could not be found competent to do so. The division of business between the two courts for administrative reasons could not affect the jurisdiction.

12. There is another aspect of the matter which also in my opinion cannot be ignored. It may be recalled that when the respondent had filed an application in the court of the Additional Subordinate Judge on the 25th May 1965, the appellant filed an objection petition in that court on the 24th July 1965. Thereafter he filed two petitions for amendment of his objection petition one on 23.9.1965 and the other on 26.11.1965. When his amendment petitions were rejected by the Additional Subordinate Judge he moved this court in revision in

civil Revision no. 8 of 1966, Although in his objection petition dated 24.7.1965, the appellant had pleaded that the award should have been filed in this court, it never raised any plea that in any view of the matter the court of the Additional Subordinate Judge was not competent to entertain the award and that if this court was not found competent to entertain the award the same should have been filed in the court of the Subordinate Judge, Patna. The appellant having filed to raise this plea in its objection petition and in its memorandum of civil revision no. 8 of 1966 I am inclined to hold that it is no longer open to him to raise this plea now. Be that as it may I am satisfied for the reasons given above that the Additional court of the Subordinate Judge where the application u/s 14(2) of the Arbitration Act was filed was competent to entertain the application and had complete jurisdiction to deal with the arbitration proceedings.

13. The other point raised on behalf of the appellant that the award is bad due to an error on the face of it is equally untenable. For a proper appreciation of the submission made on this question, it will be necessary to state certain relevant facts. The respondent had claimed a sum of Rs. 471,362.68 paise from the appellant on account of the premature termination of his contract. It is not necessary to indicate the break up of the same. The appellant in its counter statement filed before the Arbitrator denied its liability to pay any sum to the respondent. The Arbitrator awarded a lump sum amount of Rs. 82,100/- to the respondent without assigning any reason for the same in his award. The argument of the appellant on this question is two fold. Firstly, it is contended that in terms of the contract between the parties no damage could be claimed for the termination of the contract after due notice. As the contract in this case had been terminated after giving due notice to the respondent, the arbitrator had no jurisdiction to award damages to the respondent. The second submission is that the amount awarded exceeded the total of all the claims which in law could possibly be allowed to the respondent and thus there was an apparent error of law in the award. Learned counsel for the appellant has referred us to the following passage in the award:--

And whereas I examined and considered the said statements, counter statements, petitions, applications etc. and also the evidence and documents produced before me from time to time by the respective parties and considered all points raised by the parties from time to time before me And whereas the points of limitation as well as the point for jurisdiction in relation to the claims for black listing by the Eastern Rly inter alia was specially urged before me And whereas I have given my due consideration to these points, I, Jhevar Chand Mehta, Arbitrator do hereby make my award as follows. Learned counsel submits that as the arbitrator has referred to the disputes, differences and claims contained in the statements, counter statements etc. it was permissible to examine those claims. In my opinion the argument is entirely misconceived. It is not disputed that it was competent for the Arbitrator to give a lump sum award and that he was not bound to give a separate award for each claim. The point is concluded by the decision of the Supreme Court in the case of Firm Madanlal

Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, . A complete answer to the submission made on behalf of the appellant on this question is provided by the decision of the Judicial Committee in the case of (9) Champsey Bhare and Company V. Jivraj Balleo Spinning and Weaving Company Ltd. (50 Indian Appeals 324). Their Lordships of the Judicial Committee stated thus in this case--

An error in law on the fact of the award means, in their Lordships view, that you can find in the award of a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party, that opens the door to seeing first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound.

The same view has been expressed by the Supreme Court in a number of cases. The case of (10) the Union of India (UOI) Vs. A.L. Rallia Ram, is one of such cases in which the aforesaid observations of the Judicial Committee have been quoted. In the case before us no legal proposition is incorporated in the award or any document incorporated thereto much less that any such legal proposition was erroneous. There was, therefore no question of the award being bad due to an error in law on the face of it. I need hardly state that the error in law must be visible in the award itself. It would not be permissible for a party to say that the validity of each claim should be investigated and on such investigation it should be held that the amount awarded by the arbitrator was in excess of the amount which in law was admissible to the party. That is precisely what the appellant expects us to do in the present case. I have no hesitation in saying that there is absolutely no substance in the point raised by learned counsel for the appellant on this matter.

14. Point no. 4:--This brings us to the question of limitation which perhaps is the most important question in this case. Admittedly the award (Exhibit c) was made on the 26th February 1965. The appellant's case is that on the same date the arbitrator sent a copy of the signed award to both the parties with a covering letter. Ext. 4 is the covering letter which was received by the appellant. The award and the covering letter had been sent under registered cover with acknowledgement due to the respondent. The respondent did not produce the covering letter which was sent to him. Some controversy was sought to be raised on the question as to whether the covering letter was sent to the respondent. As the respondent, however, had himself admitted in his application u/s 5 of the Limitation Act for the condonation of the delay in making the application u/s 14 of the Arbitration Act that he had received the award with a covering letter, this matter was not pressed on his behalf. The postal receipt and the acknowledgement receipt according to the evidence of P.K. Das Stenographer of Shri J.C. Mehta, Arbitrator had also been sent to the court of the Additional Subordinate Judge along with the award. No such paper however, was found on

the record of the court below although some papers of the record were found missing. The Additional Subordinate Judge has not been able to fix the responsibility for the loss of those papers and each party accused the other before him of being guilty for the loss of those papers. Be that as it may the question of limitation has to be decided in absence of those papers. The evidence of P.K. Das shows that the signed copy of the award and the covering letter had been dispatched to the respondent on the 27th February 1965. The respondent made his application for filing of the award u/s 14(2) of the Arbitration Act on the 25th May 1965. The appellant therefore contended that the application was filed long after the period of thirty days prescribed for making such an application under Article 119(a) of the Limitation Act. Article 119(a) of the Limitation Act reads thus:--

The submission on behalf of the appellant is that when the award and the covering letter had been dispatched to the respondent on the 27th February, 1965, the conclusion was inevitable that it was received by him latest by the end of the first week of March 1965 and as the application u/s 14(2) of the Arbitration Act had been filed on the 25th May 1965, it is submitted that the application was barred by time.

15. The respondent pleaded that he had received the signed, copy of the award in the second week of May 1965 and he filed his application u/s 14(2) of the Arbitration Act within a few days from the same, i.e. on the 25th May 1965. A controversy therefore, arose between the parties as to when really the respondent had received the signed copy of the award from the arbitrator. It may be mentioned in this connection that the question as to whether a covering letter was sent along with the award was relevant only to fix the time of despatch of the award to the respondent and that of its receipt by him. Even if no covering letter had been sent, the receipt of a signed copy of the award sent by the Arbitrator would give sufficient notice to the respondent regarding the making of the award within the meaning of Article 119(a) of the Limitation Act. In the case of Parasramka Commercial Company Vs. Union of India (UOI), Hidayatullah, C.J. observed:--

It seems to be that we cannot limit the words "notice in writing" to only a letter. Notice may take several forms. It must, to be sufficient, be in writing and must intimate quite clearly that the award has been made and signed. In the present case, a copy of the award signed by the arbitrator was sent to the company. It appears to us that the company had sufficient ice (Sic) that the award had been made and signed..

In this view of the matter we are in agreement with the decision of the learned single Judge who had endorsed the opinion of the Subordinate Judge that limitation began to run from the receipt of copy of the award which was signed by the Arbitrator and which gave due notice to the party concerned that the award had been made and signed....

16. It may be recalled that when the appeal was first heard by this court in 1971. It remitted the record to the court below to record its finding on the question as to when did the respondent get notice of the making of the award from the arbitrator. The parties, accordingly adduced their evidence before the court below in support of their respective assertions. Four witnesses were examined on behalf of the respondent. One of them, A.W. 3 was the respondent himself and A.Ws. 1 and 2 were the Lecturers in the College at Jamalpur. They claimed to be present when the postman (A.W. 4) had tendered the registered cover to the respondent, which contained the award. The appellant examined the arbitrator Shri J.C. Mehta (O.W. 2) and his stenographer Prabhat Kumar Das (O.W. 1). The learned Subordinate Judge on an examination of the evidence produced before him has come to the conclusion that the registered packet containing the forwarding letter and the award must have reached the respondent sometime in the first week of March 1965. On this finding the application u/s 14(2) of the Arbitration Act dated 25.5.1965 was obviously barred by time u/s 119(a) of the Limitation Act. The Subordinate Judge however held further that Article 119(a) of the Limitation Act had no application to the facts before him and in any view of the matter it was a fit case in which the delay in making the application should be condoned. I will deal with this aspect of the matter a little later. I would first like to deal with the controversy on the question of fact, namely, as to whether the signed copy of the award had been received by the respondent from the Arbitrator in the first week of March 1965.

17. Suryakant Sharma (A.W. 1) for the respondent stated that the Respondent was his neighbor. In the second week of May 1965, the witness was present at the residence of the respondent where about 2-3 postmen went there and handed over a registered packet to the respondents. The respondent opened the packet and on enquiry by the witness he told him that it contained the award. To the same effect more or less was the evidence of Ram Awtar Singh the second witness for the respondent before the court below. The postman (A.W. 4) deposed that in May 1965 he had delivered a registered packet to the respondent in presence of two other persons. When the witness wanted to go away after delivering the packet to the respondent, the latter asked him to wait in order that he might pay some amount to him for sweets. The respondent actually paid him Rs. 25/- on that account. The respondent had told the postman that he had received about 82,000/- by way of "Inam".

18. Apart from the fact that the evidence of these witnesses is far from convincing and appears to be inspired, they are disproved by the evidence of the arbitrator and his stenographer P.K. Das. These witnesses (A. Ws.) were deposing in the year 1971; although according to them, the registered packet had been delivered to the respondent in May 1965. It is difficult to believe that they would remember the exact month of the delivery of the registered packet after such a long time. It is also not understandable that the respondent would himself offer a sum of Rs. 25/- to the postman for delivering to him the registered cover containing the award. On their own statements A.Ws. 1 and 2

were friends and neighbours of the respondent and it appears that they extended their helping hands to him in this case in utter disregard for truth. The evidence of the postman appears to be clearly inspired.

19. Prabhat Kumar Das the Stenographer of the Deputy General Manager of Sri J.C. Mehta, Arbitrator stated in his evidence that as Steno of Shri Mehta his duty was to look after the arbitration case and he maintained the record of that case. He went on to say that at the conclusion of the arbitration proceeding he dispatched the award together with the forwarding letter to both the parties and he proved the forwarding letter (Ext. A) which was sent to the appellant. He stated that the award and the forwarding letter were handed over to the appellant by hand and they had been sent to the respondent by registered post. The witness also proved the account of the postage expenses incurred in connection with the arbitration proceeding (Ext. B). The document showed that on the 27th February, 1965, i.e. the date on which the award was sent and dispatched to the respondent under registered cover a sum of Rs. 80 paise was spent towards the postage. The witness stated further that he received the acknowledgement of the registered letter from the respondent within about ten days and he handed over the same to the Arbitrator. In his cross examination he stated that the entire record of the arbitration proceeding which was with the arbitrator had been sent to the court and that he himself had packed the record for that purpose. He had examined the record of the arbitration proceeding which was before the court below before he had entered the witness box and he stated that few pages of the record were missing and he did not find the postal receipt or the acknowledgement in that record. Sri J.C. Mehta also stated in his evidence that the award was dispatched to the respondent on 27.2.1965.

20. The evidence of the arbitrator and his steno received support from the documentary evidence and the circumstances of the case. The appellant as stated earlier, had produced the forwarding letter (Ext. A) which he had received from the Arbitrator along with the award. The letter is reproduced below for easy reference:--

No. PF/J. CM/260265 Calcutta 26.2.1965.

From

J.C. Mehta, Arbitrator, Dy, General Manager (G) Eastern Railway, Calcutta.

To

The General Manager, Eastern Railway, Calcutta.

(2) Shri Binod Bihari Singh, Bari Dariapur, P.O. Jamalpur, Dt. Monghyr

Dear Sir,

This is to inform you that in connection with the Arbitration in the matter of disputes and differences arising out of agreement dated 10.12.57 for loading, unloading and otherwise handling of goods at Gaya junction between Shri Binod

Bihari Singh and the Union of India, I have signed and published my award on this day; the twenty sixth day of February, One thousand nine hundred and sixty five.

I am attaching herewith a signed copy of the award for your information.

Yours faithfully,

Calcutta 26.2.65

Sd. J.C. Mehta, Arbitrator.

It may be noticed that it was addressed to both the parties, that is the General Manager, Eastern Railway, Calcutta as also to the respondent. The letter is dated 26.2.1965. The genuineness of this letter has not been challenged before us. If really signed copy of the award was ready along with the forwarding letter on the 26th February, 1965, it does not stand to reason that it would be dispatched to the respondent as late as in May 1965. The account of the postal expends true (Ext. B) shows that a sum of Rs. 80 was actually spent in connection with the arbitration proceeding on the 27th February 1965. Learned counsel for the respondent has submitted that Ext. B, should not be relied upon as it was a loose sheet of paper and that it was fabricated. I am unable to agree with the submission. Ext. B, it must be borne in mind, was the account of the postage expenditure in connection with the arbitration proceeding only and it accordingly did not contain so many entries which could necessitate the maintenance of an account book for that purpose. I also find no reason to hold that the document was fabricated. If really the document had been fabricated for the purpose of raising a plea of limitation, it was expected that the appellant could not have raised such a plea in the objection petition which it had filed before the court below on 24.6.1965 or in the amendment petitions dated 23.9.1965 and 6.11.1965. Admittedly no such plea was raised there and, therefore, I do not agree with the respondents' submission that Ext. B had been fabricated. Learned counsel for the respondent also submitted before us that the evidence of the arbitrator and the stenographer should not be accepted as they were employees of the appellant, Shri J.C. Mehta was the Deputy General Manager of the Eastern Railway when he was appointed arbitrator with the consent of the parties. The respondent had never alleged that the arbitrator had misconducted himself by showing any favours to the appellants because he was its employee. I am satisfied that the identity of Shri J.C. Mehta as an arbitrator must be kept separate from his identity as an employee of the appellant and I find no indication in the entire record of the arbitration proceeding that Shri Mehta had shown any weakness, for his employer in that proceeding. I am inclined to think that his evidence and that of his steno are much more reliable in this case than the oral evidence produced on behalf of the respondent.

21. Learned counsel for the respondent also asked us to draw adverse inference against the appellants' case due to the non production of the postal receipt and the acknowledgement receipt which evidenced the despatch of the award to and

its receipt by the respondent. It was no body's case that the postal receipt and the acknowledgement were in the custody of the appellant and for obvious reasons, therefore no adverse inference can be drawn against the appellant due to their non production. One is tempted in this connection to refer to the explanation offered by respondent (A.W. 3) for the non production of the covering letter and the registered cover under which the award had been sent to him. The witness stated in his cross examination that he kept the registered cover with him for sometime, but when he found that it was not necessary for him to maintain the same, he tore it and threw it away. Less said the better about such an explanation and I am inclined to think that if any one is guilty in this case for non production of material documents it was the respondent who had failed to produce the covering letter and the registered cover before the court below to show that he had actually received the award in the second week of May 1965, as stated by him.

22. Learned counsel for the respondent also submitted that it was possible that due to a disturbed state at Calcutta the despatch of the registered cover might have been delayed. The simple answer to the submission is that there is absolutely no evidence in this case to show that Calcutta was in any way disturbed during that period. From the evidence and circumstances therefore, I find myself in agreement with the court below that the award along with the covering letter had been received by the respondent from the Arbitrator in the first week of March 1965. As the application for filing of the award u/s 14(2) of the Arbitration Act had been filed beyond thirty days after that it was clearly barred by time.

23. The respondent tried to avoid the bar of limitation by contending firstly that it was not open to the appellant to raise the question of limitation as it had not raised this plea in its objection petition dated 24-7-1965. It is also submitted that in any view of the matter, the onus to prove that the application is barred by time was on the appellant and it had not been able to discharge that onus. In my opinion, none of these submissions can prevail. It is true that the appellant had not raised the question of limitation in the objection petition dated 24-7-1965. Nevertheless, as pointed out earlier in his application dated the 18th March 1967, it has expressly raised this plea before the court below. The evidence before the court below of course had been concluded by then and arguments were going on. The fact, however, remains that the bar of limitation was raised by the appellant before the court below. When the appeal was first heard by this court in the year 1971, this question was then expressly raised by the appellant and it may be recalled that this court had remitted the record to the court below to record a finding as to whether the respondent's application was barred by time. This court pointed out in that connection that a finding as to when the respondent had notice of making of the award was an important issue to be decided in this case. Thus, the question of limitation was raised by the appellant both before the court below and before this court. In my opinion it is no longer open to the respondent to challenge the remand order passed by this court on 12-2-1971. The question

of onus as well has not much relevance in this case when the parties had produced their evidence on the question of limitation before the court below. This court had expressly directed that an opportunity would be given to the parties by the court below to produce all materials and evidence as they might be advised to produce on the question of limitation. Such an opportunity was, in fact, given and as seen earlier, the parties adduced both oral and documentary evidence before the court below in support of their respective assertions. In this state of the case the question of onus loses all its significance.

24. Shri Kailash Ray learned counsel for the respondent has contended further that Article 119(a) of the Limitation Act has no application to the facts of this case in as much as the respondent himself had produced the signed copy of the award before the court below and Article 119(a) contemplates an application for the filing in court of an award. It is submitted that when the award was already before the court, there was no question of making an application for filing of the award in court. The prayer which the respondent himself had made in his application dated the 25th May 1965, does not support this contention. The respondent has stated in his prayer as follows:

It is prayed that the arbitrator be directed to produce the original award in court and a decree be passed in terms of the award as well as for interest and cost or pass Such order or orders as deemed fit and proper.

Learned counsel submits that the prayer for directing the Arbitrator to produce the original award was redundant and superfluous in as much as in paragraph 4 of the same application, the respondent had stated that he was filing the award in original.

25. Learned counsel for the appellant, on the other hand, contends that mere physical production of the award by a party was ineffective as before the award could be acted upon u/s 14 of the Arbitration Act, it must be filed before the court either by the arbitrator himself or under his authority. Learned counsel has referred us in this connection to a decision of the Supreme Court in the case of Kumbha Mawji Vs. Union of India (UOI), Jagannadha Das, J. who spoke for the court, stated in firm and clear words "where, as in this case the originals are said to have been handed over to both the parties, it cannot be assumed that the mere handing over of the awards to the parties necessarily implies the authority of the umpire to file the same into court on his behalf. That authority has to be specifically alleged and proved". His Lordship went on to observe further as follows:--

Because, apart from the question of mere want of proof of authority, it is clear that in a case of this kind and on the facts above stated, it was incumbent on the appellant to allege categorically that in terms of Sub-section (2) of S. 14 he had the requisite authority of the umpire. That allegation is wanting not only in the affidavit dated 19-11-1949 but what is more important is that when the awards were filed into court on 17-8-1949 by the solicitors on behalf of the appellant

with a letter which might be treated as the initial application to the court, there is not a word to suggest that the awards were being filed under the authority of the umpire. The letter contained only a bald statement that the two original awards duly signed by the umpire were enclosed therewith for filing, with a request to direct the office to file the two awards and to issue notices in respect thereof expeditiously. In those circumstances there; has been clearly no sufficient compliance with the terms of Section 14 Sub-section (2) of the Act to constitute the filing of the awards by the appellants solicitors (Sic) the filing thereof by the umpire." Faced with this decision of the Supreme Court, the respondent tried to prove that he had filed the award before the court below under the authority of the arbitrator. A faint suggestion was made that such an authority was implied when the arbitrator sent a signed copy of the award to the parties. The decision of the Supreme Court in Kumbha Mawji's case (Supra) clearly negatives the said suggestion. A perusal of the forwarding letter sent by the arbitrator along with the award makes the position still more clear. The arbitrator had stated in the letter that he was attaching a signed copy of the award, for the information of the appellant and the respondent. This letter negatives the case of any authority expressed or implied having been given to the parties for filing of the award in court on behalf of the arbitrator.

26. As is the case before the Supreme Court so in this case as well the respondent had not stated in his petition dated the 25th May 1965 that he was filing the award before the court below with the authority of the arbitrator on the letter's behalf. For the first time the case of authority from the arbitrator to file the award was made out by the respondent on 20.9.1965 in his application before the court below in which he had prayed that eleven issues listed by him at the foot of the application he framed in this case. In paragraph 9 of the said application, the respondent stated, "the petitioner asserts thru the petitioner had authority from the arbitrator to file the award in this court." In his evidence before the court below after remand, the respondent stated that after he had received the award he went to the arbitrator at Calcutta with the award and demanded from him the sum awarded to him. The arbitrator then advised him to file the award in court. Therefore, the respondent contends that he had received oral authority from the Arbitrator to file the award in court when he had met him at Calcutta after he had received the award. The arbitrator Shri J.C. Mehta gave a lie to this assertion of the respondent in this evidence before the court below. He categorically stated that he had not given any authority to the respondent to file the award in court and nor had he advised him to do so. I have absolutely no reason to doubt the truth of the statement made by Shri Mehta before the court below.

27. Learned counsel for the respondent referred us to the evidence of Shri Mehta in his cross examination where he sated that he had sent a copy of the award to the respondent so that he might take proper steps. This statement was interpreted by the respondent as suggesting that the arbitrator had given authority to file the award in court. Nothing can be farther from truth than this.

Shri Mehta was not speaking about the talks between him and the respondent when he had said that he had sent a copy of the award to the respondent so that he might take proper steps. The proper steps contemplated by the witness was evidently an application u/s 14(2) of the Arbitration Act after notice had been given to the parties regarding the making of the award. Thus there is hardly any evidence worth the name which could prove that the arbitrator had given any authority to the respondent to file the award in court on his behalf.

28. Another fact of significance which may be noticed in this connection, is that not only the respondent had made a prayer in his application dated 25-5-1965 that the arbitrator should be directed to file the award, but in pursuance of his prayer notice was actually issued to the arbitrator to produce the award in court. The respondent had applied for notice to the arbitrator in desti(cover). The respondent in response to the notice actually produced the award before the court below on 12-6-1965. Thereafter the counsel for the parties were informed about the filing of the award and the court below proceeded to act on the award filed before it by the arbitrator and not by the respondent. It is too late in the day for the respondent to contend that the prayer which he had made in his application dated the 25th May 1965 for direction to the arbitrator to file the award in court was redundant and superfluous.

29. The respondent's attempt therefore, to take this case out of the mischief of Article 119(a) of the Limitation Act ended in dismal failure. Learned counsel for the respondent referred us to two decisions, one of this very court and the other of the Allahabad High Court in this connection. Both these decisions were also relied upon by the court below. In the case of (11) Makeshwar Misra Vs. Laliteshwar Prasad Singh and Others, this court observed as follows:--

.....In the instant case, the applicant before the court was himself in the possession of the registered award (Ext. 6) and all that he asked for was that a judgment and a decree may be passed on the basis of the said award. Limitation under Art. 178 of the Limitation Act begins to run from the date of service of the notice of the making of the award. Quite clearly, this article will not apply if the award is filed by one of the parties in the court along with an application with a request that it be made a rule of the court, that is, with a prayer that a judgment and decree may be passed on the basis of the award under the provisions of Section 17 of the Act. This Article is attracted only when the applicant desires the court to cause the award to be filed in court by the arbitrators or if the award is in possession of the opposite party by such party....Sub-section (2) of Section 14 of the Act, in my opinion applies only to a case where the help of the court is sought for getting the award filed into the court by calling upon the arbitrators to do it. Where, however, the only relief, asked for, is the passing of a decree in terms of the award, already filed in court, the case falls u/s 17 of the Act.....

This decision can be of no help to the respondent firstly because the decision of the Supreme Court in Kumbha Mawji's case (Supra) was not noticed in it. Secondly, as pointed out above, the only prayer which had been made by the

party in that case was that the judgment and decree be pronounced in terms of the award and there was no prayer for directing the arbitrator to file the award in court as was the prayer in the case before us. The Allahabad case as well (A.I.R. 1963 Allahabad Hazi Rahmatulla V. Chaudhari Vidya Bhusan) is of no help to the respondent as in that case the finding was that the award had been filed with the authority of the arbitrator.

30. The submission of the learned counsel for the respondent that the respondent's application dated 25-5-1965 should be treated as one u/s 17 of the Arbitration Act and not as one u/s 14 of the same, does not impress me. In my opinion Section 17 of the Act cannot be read in isolation from the preceding sections. An examination of the scheme of the Arbitration Act (1940) should make the position clear. Chapter II of the Act deals with arbitration without intervention of a court. Chapter III which consisted of only one section (Section 20) deals with the arbitration with intervention of a court where there is no suit pending and Chapter IV deals with arbitration in suits. Chapter V. contains general provisions and the very first section (Section 26) lays down that the provisions of this chapter shall apply to all arbitration. We are concerned with arbitration without intervention of a court as dealt in Chapter II Section 3 of this chapter refers to the provisions implied in arbitration agreement. Sections 4 to 11 speaking generally refer to the appointment and removal of an arbitrator as also revocation of the authority of the appointed arbitrator or umpire. Section 13 lays down the powers of an arbitrator, Section 14 provides inter alia that when an award is made it shall be signed by the arbitrator or umpire as the case may be and notice in writing of the making and signing of the award shall be given to the parties. Sub-section (2) provides for the filing of the award in court either by the arbitrator himself or under his authority. Sub-section (3) refers to a special case stated by arbitrators or umpire. After the award is so filed in court, Section 15 provides that the court may by its order modify or correct the award for reasons stated therein. Section 16 empowers the courts to remit the award or any matter referred to arbitration to the arbitrator or umpire for reconsideration. Then comes Section 17 which says that where the court sees no cause to remit the award or any of the matters referred to arbitration or to set aside the award, the court shall, after the time for making an application for setting aside the award has expired or such application having been made, after refusing it, proceed to pronounce the judgment according to the award, and upon Judgment so pronounced, a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess or not otherwise in accordance with the award. It is apparent that the following conditions must be satisfied before the court may pronounce a judgment upon the award:--

(i) Notice of the filing of the award has been given to the parties (ii) the time for making an application to set aside the award has expired or if that such application has been made and it has been refused and (iii) the court sees no reason to remit the award. It follows, therefore, that before Section 17 of the Arbitration Act comes into effect the award must be processed through the

preceding sections. I am unable to agree that even if an award has not properly been filed before the court, it would be competent for the court to act upon it u/s 17 of the Act and to pronounce a judgment upon the same. I, therefore, feel no hesitation in holding that Article 119(a) of the Limitation Act applies to the facts of this case and the application made by the respondent on 25.5.1965 was barred by limitation.

31. The respondent also made an application on 12.2.1971 i.e. the date on which the remand order was passed by this court u/s 5 of the Limitation Act for the condonation of delay in making the application on the 25th May 1965. Surprisingly enough in this application as well the respondent maintained that he has filed his application within three weeks after receipt by him of the award from the Arbitrator. In paragraph 6 of his application, however, he pleaded that he was not aware of the change of the law of limitation as contained under Article 178 of the old Limitation Act by the new Limitation Act which replaced Article 178 by Article 119(a). The Limitation Act 1963 came into force with effect from January 1, 1964. He stated further that the ignorance on his part of the recent change in the law of limitation misled him into believing that he was filing the application suit in time. Learned counsel for the appellant, therefore, has rightly submitted that it was not open to the respondent to make two contradictory assertions of the fact. He could not assert that he received the award from the arbitrator in May 1965 and in the same breath could state that he received it in March 1965 but he believed bonafide that he could make an application u/s 14 of the Act within ninety days of the receipt of the notice by him of the making of the award. Learned counsel for the appellant has pointed that even in his evidence before the court below after remand the respondent had tried to show that he had received the copy of the award from the arbitrator in May 1965. If he had received the award in May 1965 and he had filed the application on the 25th of May 1965 then there was no question of his believing that he was entitled to make that application within ninety days of the receipt of the notice by him regarding the making of the award.

32. Learned counsel for the appellant has taken serious exception to the findings of the court below on this question and he has submitted that the learned Subordinate Judge has allowed the condonation application of the respondent on grounds which had not even been pleaded by the respondent himself. I have pointed out that the only ground on which the respondent sought the condonation of the delay was his ignorance of the change in the law of limitation which had reduced the period for making the application from ninety days to thirty days. The learned Subordinate Judge gave two reasons why in his opinion the condonation application should be allowed. He firstly observed that as the respondent himself was in custody of the original award he must be held to be misled bonafide on account of the decisions of the Allahabad High Court and of this court that Article 119(a) of the Limitation Act had no application to his case. The second ground which he gave was that the miscellaneous case which gave rise to the arbitration proceeding was filed as far back as in the year 1961. He

was obviously referring to the application under Sections 5 and 8 of the Arbitration Act which had been filed by the appellant and which was registered as Miscellaneous case no. 38 of 1961. The learned Subordinate Judge observed that a litigant public may bonafide think that since the miscellaneous case was filed in the year 1961 and since the same was still pending on the date when the new Limitation Act was in force, the case should be governed by the principles of the old Limitation Act where the period of limitation was ninety days and not by the provisions of the new Limitation Act where the period of limitation was reduced to thirty days.

33. I am inclined to think that it was not competent for the Subordinate Judge to have found reasons for condoning the delay which the respondent had not contemplated in his application. It will be noticed that the learned Subordinate Judge does not say that the respondent was not aware about the change of the law of limitation on this point. His finding is that as the miscellaneous case was started in the year 1961 the respondent believed that the old law of limitation would apply in his case. This presupposes that the respondent was aware of the change of the law of limitation but he was misled only on the point as to which law would be applicable to his case. The learned Subordinate Judge was in error in supposing that the miscellaneous case under Sections 5 and 8 of the Arbitration Act was pending when the arbitrator had made this award. The arbitrator, it may be recalled, had made his award on 26-2-1965, i.e. long after the new Limitation Act came into force. In my opinion the respondent had not made out any case for the condonation of the delay in making his application u/s 14 of the Arbitration Act. The law is well settled that it is the duty of the litigant to know the last date on which he can present his application and if for any reason there is delay in making his application the burden is upon him to prove that he was prevented by sufficient cause from presenting his application in time. The only ground which the respondent had made out in his application u/s 5 of the Limitation Act for condonation of delay was that he was not aware of the change in the law of limitation. He does not allege either in his application or in his evidence before the court below that he had consulted any lawyer after he had received a copy of the award from the Arbitrator. If he says that he was ignorant about the change in the law of limitation for more than a year after the change was brought about he must thank himself for such ignorance and the court cannot pardon such an ignorance. I am satisfied that the respondent has failed to prove that he had any sufficient cause for not making his application within the period allowed by the law for the purpose and as such his application u/s 5 of the Limitation Act must be dismissed.

34. Learned counsel for the respondent finally contended before us that the application dated 24-7-1965 for setting aside the award was itself barred by time. It may be recalled that the notice of the filing of the award was given to the parties. The appellant had filed objection on 24-7-1965 in which it claimed that the award should be set aside. The respondent submits that the appellant's application should have been filed under Article 119(b) of the Limitation Act

within thirty days from the date on which the notice to the filing of the award was served on the appellant. It is pointed out that a copy of the application of the respondent which was filed on 25-5-1965 had been served on the counsel for the appellant and that should be held as sufficient notice regarding the filing of the award as a signed copy of the award had been filed in court along with the respondent's application. As the objection petition of the appellant was filed more than thirty days there after on 24-7-1965, it is said that the application is barred by time. The submission is entirely misconceived. Firstly, I have held that the filing of the award by the respondent on 25-5-1965 cannot be said in compliance of Section 14(2) of the Arbitration Act. Secondly, serving a copy of the application dated 25-5-1965 on a counsel for the appellant, who might have worked for the appellant in the proceeding under Sections 5 and 8 of the Arbitration Act, cannot amount to service of notice of filing of the award as contemplated by Article 119(b) of the Limitation Act and finally by mere serving a copy of the application on the appellant's counsel, it cannot be held that the appellant or its counsel had notice of the actual filing of the award in court. The award was actually filed in the court by the arbitrator on the 12th June, 1965. On the 28th June 1965, the court below ordered that the opposite party, namely, the appellant be informed about the filing of the award. The appellant's objection petition was filed within thirty days on 24-7-1965 and therefore it was well within time. There was thus no question of the appellant's application for setting aside the award being barred by time.

35. The respondent has also filed cross objection in which he has claimed future and pendente lite interest on the sum awarded to him by the arbitrator. In my opinion as no judgment can be pronounced according to the award, the question of awarding interest to the respondent does not arise. In the result, therefore, the appeal is allowed and the order of the learned Additional Subordinate Judge confirming the award and directing that a decree in terms of the same be prepared is hereby set aside. The petition of the respondent dated 25th May 1965 praying for making the award a rule of the court is hereby dismissed. The cross objection of the respondent also stands dismissed. In the circumstances of the present case there shall be no order as to costs.

B.D. Singh, J.

I agree.