(2007) 03 MAD CK 0013

In the Madras High Court

Case No : OP No. 756 of 2000 and Application No. 2402 of 2005

Vinitha Associates Ltd. and Another APPELLANT

Vs

Lakshna Holdings Pvt. Ltd. and Others RESPONDENT

Date of Decision : 26-03-2007

Acts Referred:

Arbitration Act, 1940 — Section 33
Arbitration and Conciliation Act, 1996 — Section 43
Limitation Act, 1963 — Article 137

Citation : (2007) 4 ARBLR 575

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : Arvind P. Datar, for Aruna Ganesh, for the Appellant; K. Meenakshi Sundaram, for the Respondent

Judgement

S. Rajeswaran, J.—This Original Petition No. 756 of 2000 has been filed u/s 34 of the Arbitration and Conciliation Act, 1996, hereinafter

called ''the Act'', to set aside the award dated 16.09.1998 of the 2nd respondent in AM No. 29 of 1997.

Application No. 2402 of 2005 has been filed by the applicant/1st respondent to dismiss the above OP No. 756 of 2000 with exemplary costs.

2. The brief facts as culled out from the above petitions are as under:

The petitioner is a trading member of the National Stock Exchange (NSE) and carries on business in the sale and purchase of shares and securities

on its own behalf and on behalf of clients and constituents. The petitioner is also a trading member of the Madras Stock Exchange Ltd. The 1st

respondent became a client of the petitioner and placed orders for sale and purchase of shares and securities on the NSE of India Ltd. through the

petitioner. The 1st respondent was represented in all its activities by UR. Lakshmi

Narasemhan, its Director. Apart from 1st respondent, its

associate company Uttathur Securities Pvt. Ltd. also entered into transactions on the NSE through the petitioner from 21.06.1996 onwards and

the associate company was also represented by the very same UR. Lakshmi Narasemhan.

3. Uttathur Securities Pvt. Ltd., the associate company of the 1st respondent, was required by the petitioner to place a deposit of Rs. 14,00,000

on account of the trades committed by them through the petitioner. The same was complied with by the associate company by issuing a cheque for

Rs. 14,00,000 dated 26.06.1996.

4. The petitioner executed and transacted the orders placed by the 1st respondent on NSE up to 17.10.1996 and the final statement of account

was also furnished to the 1st respondent. Insofar as the associate company of the 1st respondent is concerned, the trading operations were

discontinued on 01.08.1996 as there was a default in payment of a sum of Rs. 5,20,403.25 to the petitioner. The petitioner sent a letter dated

11.09.2006 calling upon the associate company of the 1st respondent to pay the outstanding amount of Rs. 5,20,403.25 by enclosing the

complete statement of accounts. It was received by them on 13.09.1996 and as there was no response even after a period of 6 months, the

petitioner sent a legal notice dated 16.02.1997 informing the associate company of the 1st respondent that legal action would be initiated for

recovery of the money due to the petitioner. The associate company of the 1st respondent by letter dated 25.02.1997 informed that they needed

15 days time to give a suitable reply and on 06.03.1997, a reply notice was sent by them denying the trades transacted on their account.

5. At that stage, the 1st respondent initiated arbitration proceedings against the petitioner by contending that the sum of Rs. 14,00,000 paid by the

cheque dated 26.06.1996 issued by the associate company of the 1st respondent was issued in favour of the petitioner with instructions to give

credit for the sum in the account of the 1st respondent and the associate company had no dealings on the NSE and the sum of Rs. 14,00,000 was

given to the petitioner to enable the petitioner to tide over a financial crunch. The petitioner besides contesting the matter on merits, put forward

three preliminary objections, i.e. (1) the claim is stale claim and barred by limitation, (2) the associate company of the 1st respondent is not a party

to the proceedings and hence the claim is to be dismissed for not adding necessary parties, and (3) the claim itself is beyond the jurisdiction of the

tribunal as it is the case of the 1st respondent that the sum of Rs. 14 lakhs was given by way of a loan and not relating to trading on NEAT System

and Securities. The petitioner also made a counterclaim for a sum of Rs. 5,35,147.10 due to them from the associate company of the 1st

respondent and for another sum of Rs. 13,743.85 due from the 1st respondent. The 2nd respondent/arbitrator by an award dated 16.09.1998

while dismissing the counter-claim of the petitioner, directed the petitioner to pay a sum of Rs. 16,28,541.95 with interest at 18% and aggrieved by

the same, the petitioner filed the above OP, u/s 34 of the Act.

The 1st respondent has filed Application No. 2402 of 2005 praying to dismiss the OP, as the 1st respondent is enabled to execute the award.

6. Heard Mr. Arvind P. Datar, the learned senior Counsel appearing for the petitioner and the learned Counsel for the 1st respondent. I have also

perused the documents filed and the judgments referred to by them in support of their submissions.

7. After going through the award, I found that the 2nd respondent/arbitrator considered all the relevant questions raised by the parties and passed

a well considered and detailed award. Therefore, on merits, the award under challenge could not be interfered with as this court is not an appellate

court to re-evaluate the entire evidence to come to a different conclusion, even if it is possible. The only ground that is available to the petitioner u/s

34 of the Act is the limitation issue.

8. The learned senior counsel appearing for the petitioner submitted that the question of limitation was not properly considered by the 2nd

respondent and the 2nd respondent''s interpretation of the Bye-laws and Regulations of the NSE is not in consonance with the sound legal

principles that evolved from the decisions of various High Courts. He relied on the following decisions to contend that the entire claim petition is

barred by limitation:

(1) Jagmohan Singh Gujral v. Satish Ashok Sabnis and Anr. 2004 (1) A.LR 212 (Bom.).

(2) Bharat M. N(sic) Vs. Mr. Satish Ashok Sabni(sic) and National Stock Exchange

of India Ltd., recognised Stock Exchange, within the

meaning of the Companies Act, 1956 and Securities and Exchange Board, 1992, .

(3) Poise Securities & Exchange Ltd. v. D.V. Lonkar and Ors. 2000 (3) ALR 79 (Bom.).

(4) Poise Securities & Exchange Ltd. v. Mansu Investment Pvt. Ltd. and Ors. 2000(2) ALR 479 (Bom.).

9. Per contra, the learned Counsel for the 1st respondent submitted that the 2nd respondent has correctly held that the claim is not hit by limitation

and even otherwise, the learned Counsel submitted that the claim, is well within time. He relied on the decision of the Supreme Court reported in

Hari Shankar Singhania and Others Vs. Gaur Hari Singhania and Others, : in this regard.

10. I have considered the rival submissions carefully with regard to facts and citations.

The only question that arises for consideration in the above OP, is whether the issue of limitation raised by the petitioner has been correctly

decided by the 2nd respondent or not?

11. The 1st respondent made their claim in May 1997 claiming a sum of Rs. 16,29,152.70 from the petitioner and a preliminary objection was

raised by the petitioner contending that the claim is barred by limitation in terms of Chapter 5 of the Capital Market Segment Regulations - Part A,

which provides for the procedure for arbitration. The petitioner stated that the limitation prescribed is 3 months from the date when the dispute

arises and according to the petitioner, the dispute arose on 13.09.1996 when the 1st respondent received the statement of account relating to the

transactions of its associate company, Uttathur Securities Private Ltd., and the dispute ought to have been referred to for arbitration within 3

months/but the reference was made on 09.05.1997 only.

12. This question of limitation was considered by the 2nd respondent who held that the time limit of three months prescribed in the Regulations for

constituents is inconsistent with the Bye-laws and must not be allowed to prevail over the Bye-laws. The relevant portion of the award is extracted

below:

33. The respondent has relied upon the provision of a limiting period of three months that occurs in the opening paragraph of Chapter 5 (title

ï¿½Arbitrationï¿½) of Capital Market Segment Regulations - Part A, in regard to all differences between trading members and constituents, as well

as between trading members. However, it has overlooked the further provision in the same paragraph that the procedure prescribed in the

Regulations is subject to the Bye-laws of the Exchange to the extent not provided in the same, and that, in case of inconsistency, the Bye-laws shall

prevail.

34. In the Bye-laws, there are two separate sets of provisions for (a) arbitration between trading members and constituents, and (b) those between

two trading members, which are laid down in Part (A) and Part (B), respectively, of Chapter XI of the Bye-laws. The provisions in Part (B) are

explicit in barfing late claims. Bye-Law 53 appearing in that part reads ""The arbitrators shall not take cognizance of any claim, complaint,

difference, or dispute which shall not be referred within three months of the date when it arose"". There is not a similar Regulation in Part (A) which

applies to disputes between trading members and constituents. Now, the chapter must be read as a whole, and the provisions interpreted in a

harmonious manner. It is clear from a reading that the Bye-laws do not bar late claims in regard to disputes between trading members and

constituents, but do so in regard to disputes between trading members themselves. On the other hand, the Regulations prescribe a limiting period of

three months for all disputes without making a distinction between the two kinds of disputes, viz. (i) those between a trading member and a

constituent, and (ii) those between trading members themselves as recognised in between the Regulations and the Bye-laws, and, therefore, the

Bye-laws have to prevail.

35. The respondent''s advocate argued that this was not an inconsistency between the Regulations and the Bye-laws. In her opinion, this is merely

a case of there being an omission of provision in Byelaws and the existence of a specific provision in the Regulations. She argued that both the

Regulations and the Bye-laws are to be read together and harmoniously and the express provision in the Regulations must be given effect to.

36. In my view this is splitting of straws. One would not like to go into the specific intention of the framers of the Bye-laws and Regulations, but

can say that it stands to reason that the constituents who are certainly at a disadvantage against the trading members, being not so closely involved

in the working of the Exchange, should not be fettered with a narrow time limit for seeking settlement of their disputes with trading members. It

would not be in order, therefore, to treat the absence of a provision for barring late claims in Part (A) of Chapter XI of Bye-laws as an omission.

Reading both the parts of that chapter together and harmoniously, one has to conclude that the Bye-laws do not bar the constituents from filing

their references, and the arbitration from entertaining him, after a prescribed short period.

37. I, therefore, hold that the provision in the Regulations prescribing a time limit of three months, also for constituents is inconsistent with the Bye-

laws and must not be allowed to prevail over the Bye-laws.

38. Thus, I hold that the reference is not barred by limitation.

13. Thus, the 2nd respondent has held that the 3 months period prescribed in the Regulations will not apply to an arbitration between a trading

member and a constituent and the time limit of 3 months prescribed by the Regulations will apply to an arbitration between two trading members

only.

14. Chapter XI of the Bye-laws of the NSE of India Ltd. deals with the procedure for referring a dispute to arbitration. In Chapter XI, Part A

deals with arbitration between trading members and constituents. Clause (1)(a) and (b) which is relevant reads as under:

''Chapter XI--Arbitration

(A) Arbitration Between Trading Members and Constituents

Reference to Arbitration

(1)(a) All differences and disputes between a trading member and constituent arising out of or in relation to dealings on the Exchange made subject

to the Bye-Laws, Rules and Regulations of the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their

construction, fulfilment or validity or rights, obligations and liabilities shall be referred to and decided by arbitration as provided in the Bye-Laws,

Rules and Regulations of the Exchange.

(b) An acceptance, whether express or implied, of a contract subject to arbitration as provided in Sub-clause (a) and with this provision for arbitration incorporated therein shall constitute and shall be deemed to constitute an agreement between the trading member and constituent

concerned that all claims, differences and disputes of the nature referred to in Sub-clause (a) in respect of all dealings, transactions and contracts,

of a date prior or subsequent to the date of the contract, shall be submitted to and decided by arbitration as provided in the Bye-Laws, Rules and

Regulations of the Exchange and that in respect thereof any question of whether such dealings, transactions and contracts have been entered into or

not shall also be submitted to and decided by arbitration as provided in the Bye-Laws, Rules and Regulations of the Exchange.

15. Part B of Chapter XI deals with arbitration between trading members. Clauses 31, 53 and 54 of Part B read as follows:

(B) Arbitration Between Trading Members

Reference to Arbitration

31. All claims, complaints, differences and disputes between trading members arising out of or in relation to any bargains, dealings, transactions or

contracts made subject to. Bye-Laws, Rules and Regulations of the Exchange or with reference to anything incidental thereto or anything to be

done in pursuance thereof and any question or dispute whether such bargains, dealings, transactions or contracts have been entered into or not

shall be subject to arbitration and referred to arbitration as provided in these Bye-Laws, Rules and Regulations.

Late Claims Barred

53. The arbitrators shall not take cognizance of any claim, complaint difference or dispute which shall not be referred to it within three months of

the date when it arose.

Extension of Time

54. The relevant authority may extend the time within which a reference to arbitration or appeal against any award of the arbitrator may be made

whether the time for making the same has expired or not.

16. Regulation No. 5 of the Trading Regulations also deals with arbitration and it reads as under:

5. Arbitration--In case of any claim, complaint, dispute or difference between trading members or between trading member and constituent related

to trading on NEAT System and Securities admitted to dealing on NSE Capital Market Segment, the party/parties thereto shall resolve such claim,

complaint, dispute or difference only by arbitration as per the procedure prescribed in this chapter within 3 months of the date when it arose. The

party/parties shall not have recourse to any other legal avenues except and to the extent specifically stated herein. The procedure prescribed herein

is subject to the Bye-laws of the Exchange to the extent not provided herein and in case of any inconsistency the Bye-laws shall prevail.

17. After going through the Part (A) and Part (B) of Chapter XI of the Bye-laws and Regulation No. 5 of the Trading Regulations, 2nd respondent

held that Regulation No. 5 prescribing a time limit of 3 months even for an arbitration between a trading member and a constituent is inconsistent

with Part A of the Bye-laws and, therefore, the Bye-laws will prevail over the Regulations. According to the 2nd respondent, there is no time limit

prescribed in Part A, Chapter XI of the Bye-laws for an arbitration between trading member and a constituent and, therefore, there is bar for the

constituent filing their references after the prescribed period of 3 months.

Before deciding the correctness of the above findings of the 2nd respondent, let me consider the decisions cited by the parties in this regard.

18. In Poise Securities & Exchange Ltd. v. Mansu Investment Pvt. Ltd. (supra) the Bombay High Court had an occasion to go through identical

Bye-laws and Regulations and after considering the Bye-laws and Regulations, held that Part A does not have a provision which can be said to be

inconsistent with the provisions of Regulation No. 5 and Regulation No. 5 will govern the period of limitation. The relevant portion of the judgment

is extracted below (para 2):

The arbitrator however, has held that the period of limitation is not applicable. That finding is erroneous. Regulation No. 5 of the Regulations

framed by the respondent No. 2 provides for arbitration of the disputes between the member and constituent as also between the members and

provides a period of three months from the date on which the dispute arises. It however lays down that the provisions of Bye-laws will prevail in

case the provisions of the Bye-laws are not consistent with provision for the Regulation No. 5. The Bye-laws framed by the respondent no. 2

show that the subject of arbitration is dealt with by Chapter XI which is divided into two parts, Part A deals with arbitration between members and

constituents and Part B deals with arbitration between the members. Part A does not have any provision which can be said to be inconsistent with

the provisions of Regulation No. 5 and Part B has a provision which is consistent with the provisions of Regulation No. 5. Therefore, as there is no

provision in the Bye-laws which can be said to be inconsistent with the provisions of Regulation No. 5 dealing with the aspect of limitation, it is

Regulation No. 5 quoted above which will govern the period of limitation. The dispute, therefore, had to be referred to arbitration within three

months from the accrual of cause of action. The cause of action would arose in September and October 1996 or at best, in June 1997 or

July/August 1997 when the cheques were issued or in the month of July/August 1997 when the cheques were dishonoured and the respondent

took various steps for recovery of the amount from the petitioner. By no stretch of imagination, the date of accrual of the cause of action can be

extended to December The award is of a subject matter which was not clearly arbitrable since it was barred by limitation and, therefore, the award

is liable to be set aside. It is accordingly set aside.

19. In Poise Securities & Exchange Ltd. v. D.V. Lonkar and Ors. (supra) the Bombay High Court had another occasion to consider identical

Bye-laws and Regulations and after going through them, reiterated that Regulation No. 5 will govern the period of limitation and any reference of

the dispute has to be made within a period of 3 months from the date of accrual of the cause of action. The relevant para of the judgment reads as

under:

2. Now, if in the light of these rival submissions the record of the case is perused, it becomes clear that Regulation No. 5 of the Regulations framed

by the respondent No. 2 clearly lays down limitation of three months for referring a matter to an arbitrator from the date on which the cause of

action accrues. Regulation No. 5 however, lays down that the provisions of that Regulations are subject to the Bye-laws of Stock Exchange to the

extent that there are no provisions made in the Regulations and in case of any inconsistency, Regulation No. 5 reads as under:

5. Arbitration-In case of any claim, complaint, dispute or difference between trading members or between trading member and constituent related

to trading on NSE Capital Market Segment, the party/parties thereto shall resolve such claim, complaint, dispute or difference only by arbitration

as per the procedure prescribed in this chapter within 3 months of the date when it arose. The party/parties shall not have recourse to any other

legal avenues except and to the extent specifically stated herein. The procedure prescribed herein is subject to the Bye-laws of the Exchange to the

extent not provided herein and in case of any inconsistency the Bye-laws shall prevail.

The respondent no. 2 has also framed Bye-laws. Chapter IX of the Bye-laws lays down rules governing arbitration between trading members and

constituents. The petitioners are a trading member, the respondents are a constituent. Chapter XIA does not have any provision laying down any

period of limitation for referring any dispute to arbitration. Thus, in Chapter XIA there is no provision which can be said to be inconsistent with the

provisions of Regulation No. 5. Chapter XIB deals with arbitration between trading members. It has a provision regarding limitation contained in

Bye-Law No. 53 but that is in consonance with the provisions of Regulation No. 5. Thus, it is clear that it is Regulation No. 5 which will govern the

period of limitation and, therefore, reference of the dispute has to be made within a period of three months from the date of accrual of the cause of

action. There does not appear any dispute between the parties that the date of accrual of the cause of action is 23.09.1996. The respondents

themselves have also stated in paragraph 19 of their affidavit that the dispute between the parties arose on 23.09.1996. In terms of the provisions

of Regulation No. 5, therefore, the dispute ought to have been referred within three months from 23.09.1996. Admittedly, no dispute has been

referred within that period. The learned Counsel for the respondents also did not show me any letter or document which came into existence within

a period of three months from 23.09.1996 which can be considered as acknowledgement of liability by the petitioners so that it can be said that

the period of limitation gets extended. The letter dated 05.12.1997 referred to by the learned Counsel for the respondents firstly is beyond the

period of three months from 23.07.1996 and secondly, its contents do not show that it can operate as an acknowledgement. Thus, it is clear to my

mind that the reference of the dispute in February 1998 was clearly beyond the period of three months from the date of accrual of the cause of action. The learned Counsel for the petitioners also relied on a judgment of this court in Arbitration Petition No. 365 of 1999 decided on

28.10.1999. In the result, therefore, the petition succeeds and is allowed.

20. In Bharat M. Nagori v. Satish Ashok Sabnis and Anr. (supra) the Bombay High Court held that limitation plea being a plea of public policy

considering stale claims it will be difficult to examine the matter by the High Court if the question of limitation was not raised before the arbitral

tribunal.

21. In Jagmohan Singh Gujral v. Satish Ashok Sabnis (supra) the Bombay High Court held that insofar as the limitation for claims or transactions

of NSE is concerned, that would be governed by the Bye-laws framed by NSE. The relevant portion of the judgment is given below:

10. We may now deal with the first point of limitation. A plea that the suit is barred by law of limitation, ex facie, does not constitute a ground u/s

34 of the Act of 1996 unless read into the expression ''public policy''. If that be so, can it be contended that the claim barred by limitation can be

the subject matter of an award by the arbitral tribunal. u/s 43 of the Act, the Limitation Act, 1963 shall apply to arbitrations as it applies to

proceedings in court. In other words, the claims which are barred by limitation before the courts cannot also be entertained by arbitral tribunal. It is

now settled law that the law of limitation is grounded on the plea of public policy, viz. the stale claim cannot be entertained. Once that be the case,

a plea of limitation would be a ground based on the public policy and, consequently, Section 34(2)(b)(i) would be attracted. That issue cannot be

said to be an issue merely within the jurisdiction. That issue is the basis of a tribunal exercising or assuming jurisdiction. The jurisdiction to entertain

the claim is, therefore, decided. The claim is based on the fact that the claim is arbitrable and not barred by law of limitation either special or

general. Apart from the judgments earlier referred to, under the Act of 1996, this court has been interfering with the awards which were barred by

limitation. See Poise Securities and Exchange Ltd. Vs. Mansu Investment Pvt. Ltd. and Others, , as also Geetashree Securities Pvt. Ltd. v. Option

Pratibhuti and Vinimay Co. Ltd., decided on 28.10.1999 in Arbitration Petition No. 365 of 1999, as also the judgment of the Division Bench

dated 27.06.2000 in Option Pratibhuti and Vinimay Co. Ltd. v. Geetashree

Securities Pvt. Ltd. in Appeal No. 301 of 2000 in Arbitration Petition

No. 365 of 1999. It may be clarified that insofar as the limitation for claims or transactions, on NSE is concerned, that would be governed by the

Bye-laws framed by NSE and considering Section 2(4) of the Act, 1996, therefore, a plea of limitation under the Indian Limitation Act, 1963 or as

a special limitation protected by Section 2(4) of the Act, 1996, would give rise to a challenge u/s 34(2)(b)(ii) on the ground of violation of public

policy....

22. In Hari Shankar Singhania v. Gaur Hari Singhania (supra) the Hon''ble Supreme Court held that when the negotiations were taking place

between the parties by way of various letters exchanged by both parties, the right to apply can be said to accrue when it becomes necessary to

apply, that is to say when dispute in fact arose. The relevant portion of the judgment reads as under (paras 29 to 41 of Arb. LR):

12. The period of three years prescribed in Article 137 of the Limitation Act, 1963 is applicable to file an application u/s 20 of the Arbitration Act,

1940 as decided by this court in the case of The Vulcan Insurance Co. Ltd. Vs. Maharaj Singh and Another, . The limitation period starts running

from the right to apply accrue. An application filed u/s 20 of the Arbitration Act has to be filed within three years from the date when the right to

apply accrues. In the case of State of Orissa and another etc. Vs. Sri Damodar Das, , this court held that the right to apply accrues u/s 20 of

Arbitration Act, 1940, as soon as dispute or difference arises on unequivocal denial of claim by one party to the other party as a result of which the

claimant acquires a right to refer the dispute to arbitration. In the case of S. Rajan Vs. State of Kerala and another, , the right to apply accrues

when the difference arises or differences arise between the parties involved. It is thus a question of fact, not a question of law as urged by the

respondents, and should be determined in each case having regard to the facts of the case. In Major (Retd.) Inder Singh Rekhi Vs. Delhi

Development Authority, , this court holding that the application u/s 20 was filed within time examined that:...a party cannot postpone the accrual of

cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by the claimant is the

accrual of cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. There should be a dispute and there

can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not

lead to the inference of the existence of dispute. Dispute entails a positive element and assertion of denying, not merely inaction to accede to a

claim or request. Whether in a particular case dispute has arisen or not has to be found out from the facts and circumstances of the case''.

13. In the instant case, correspondence was not merely in the nature of reminders but also instruments to resolve the matter and amicably

negotiate. Therefore, when the negotiations were taking place between the parties by way of various letters written by both parties the right to

apply can be said to accrue when it becomes necessary to apply, that is to say when a dispute in fact arose. Furthermore, the respondent did not

ever dispute the claim of the appellants. Learned counsel appearing for the appellants placed reliance on Oriental Building and Furnishing Co. Ltd.

v. Union of India AIR 1981 Delhi 293, where the material question was--what is the starting point of limitation for moving a petition u/s 20 of the

Arbitration Act, 1940. It was held that ''Neither party can move the court without the existence of a difference between them. So, the material

question is, when the difference arose between the parties and not when the lease expired, nor when it was entered into''. The court further

observed ''a difference can arise long after some work has been done under a contract. There can be negotiations between the parties and all sorts

of correspondence. But it is only when they come to the conclusion that they cannot resolve the dispute between them, it can be said that a

difference arises. A difference under the arbitration agreement is a claim made by one party, which is refuted by the other party. At that stage, it is

open to the parties or anyone of them to go for arbitration to get this difference or differences settled and it is only at this stage it is possible to say

that a difference has arisen between the parties''.

14. This decision of the Delhi High Court squarely covers the case on hand as a close perusal of the letters exchanged between the parties show

clearly that there was intention to arrive at an amicable settlement between the family members with regard to the division of assets in question. It

cannot be said that merely because nominees were appointed for working out an arrangement, which could not ultimately be arrived at, a dispute

or difference arose way back in February 1988. In fact, even immediately after this, the correspondence exchanged between the parties reveals a

forthcoming attitude and amiable efforts made towards implementing the deed of dissolution. An examination of the correspondence can give us

valuable insight as to the ""differences"" if any among the parties. The first such communication was made on 16.09.1988 from Shri Hari Shankar

Singhania (appellant no. 1) to Gaur Hari Singhania (respondent) requesting the respondent to make all attempts to expedite distribution of the

immovable properties. In reply to this was the communication relied on by the respondents from Dr. Gaur Hari Singhania (respondent) to Shri Hari

Shankar Singhania (appellant no. 1) dated 04.10.1988. This communication also does not reveal either hostility or dispute and only exposes an

effort ""to expedite the distribution."" The last sentence of the above mentioned communication reads-""I am equally anxious that this matter should be

amicably sorted out as early as possible"". Therefore, we observe that the right to apply u/s 20 of the Arbitration Act, 1940 accrued to the

appellants only on the date of the last correspondence between the parties and the period of limitation commences from the date of the last

communication between the parties.

15. Therefore, the finding of the High Court that the application u/s 20 of the Arbitration Act, 1940, is beyond the period of limitation is erroneous.

Further, in an English decision rendered by the court of appeal in Hughes v. Metropolitan Rly. Co., it was held that, where negotiations for

settlement are pending, the strict rights of the parties do not come into play. It is also pertinent to note that under the new Act, namely, the

Arbitration and Conciliation Act, 1996 that came into force in 1996, the intervention of the court in the matter of arbitration proceedings has been

minimized to a great extent. Further, there is no provision in the Arbitration and Conciliation Act, 1996 that is similar to Section 8 (power of court

to appoint arbitrator), Section 20 (application to file in court the arbitration agreement) and Section 33 (arbitration agreement or award to be

contested by application), which were present in the Arbitration Act of 1940. Another tiling that should not miss the attention of the court is that,

the assets in question are with the contesting respondent nos. 1 to 9 and an amicable settlement for the division of the assets have not been arrived

at since last 18 years as is clear from the facts. Hence, it is observed that the contesting respondents are the ones who are enjoying the assets in

question and, therefore, we observe that, the respondents are merely trying to drag the proceedings endlessly forever and for another period of

uninterrupted enjoyment of the assets.

Now in the light of the legal principles involved in the above decisions relied on by the parties, let me consider the facts of the present case.

23. It is now settled law that stale claims should not be entertained by the arbitral tribunal and the limitation question is a ground that could be

agitated before the High Court u/s 34 of the Act, 1996. It is also not settled that the question of limitation should be raised, before the arbitral

tribunal itself.

24. It is not in dispute that the petitioner raised the question of limitation before the 2nd respondent quoting the Bye-laws and Regulations of the

NSE. The 2nd respondent pointing out the inconsistency between Part A of Chapter XI of the Bye-laws and Regulation No. 5 held that the period

of three months prescribed in Regulation No. 5 will not apply to arbitration between a trading member (the petitioner) and constituent (1st

respondent).

25. But the Bombay High Court has consistently taken stand, after going through the identical Bye-laws, Regulations, that there is no inconsistency

as such and Regulation No. 5 prescribing a period of 3 months will apply to all arbitrations arising out of trading in NSE. I have also already

extended the relevant Bye-laws and Regulations and I am in entire agreement with the decisions of the Bombay High Court reported in Poise

Securities & Exchange Ltd. v. Mansu Investment Pvt. Ltd. (supra) and Poise Securities & Exchange Ltd. v. D.V. Lonkar and Ors. (supra). I am

of the considered view that Regulation No. 5 will govern the period of limitation and the period of 3 months prescribed therein will apply to all

arbitrations arising out of trading in NSE. Therefore, to that extent, the findings of the 2nd respondent/arbitrator are erroneous and the same are set

aside.

26. It is not the decision of the 2nd respondent/arbitrator that the claim has been filed within 3 months by the 1st respondent. He only held that the

3 months period prescribed in Regulation No. 5 will not apply to the facts of the present case. Therefore, it is to be seen/whether the claim has

been raised within 3 months in accordance with Regulation No. 5?

27. The main dispute between the petitioner and the 1st respondent is the amount of Rs. 14 lakhs paid by the associate company of the 1st

respondent to the petitioner. According to the petitioner, this amount was paid by the associate company of the 1st respondent as required by the

petitioner on account of the trades committed through the petitioner. According to the 1st respondent, the amount of Rs. 14 lakhs was paid to the

petitioner by the associate company on behalf of the 1st respondent with instructions to give credit for the sum of Rs. 14 lakhs in the account of the

1st respondent company and the same was paid to the petitioner to help the petitioner to tide over a financial crunch.

28. It is not in dispute that the amount of Rs. 14 lakhs was paid by Cheque No. 38743 dated 26.06.1996 issued by the associate company of the

1st respondent. Thiru UR. Lakshmi Narasemhan, who represented the 1st respondent before the arbitrator is one of the 3 Directors of the 1st

respondent and his wife is the Managing Director of the 1st respondent. The very same UR. Lakshmi Narasemhan is the Managing Director of the

associate company of the 1st respondent, i.e. Uttathur Securities Pvt. Ltd. 29. The statement of accounts for the period from 21.06.1996 to

01.08.1996 of the associate company of the 1st respondent was sent by the petitioner in which it was clearly shown that the Cheque No. 38743

dated 26.06.1996 was credited in the account of the associate company of the 1st respondent.

29. This statement of account for the period from 21.06.1996 to 01.08.1996 was enclosed in the petitioner''s letter dated 11.09.1996 calling upon

the associate company of the 1st respondent to pay a sum of Rs. 5,20,403.25 failing which, they would take recourse to appropriate recovery

proceedings. This letter dated 11.09.1996 was sent by RPAD and the same was received by the associate company of the 1st respondent on

13.09.1996 (according to the petitioner) and the same was not disputed by the 1st respondent. As nothing happened, the petitioner sent a legal

notice dated 16.02.1997 (after 6 months) to the associate company of the 1st respondent. On 12.02.1997 only, the 1st respondent sent a letter to the petitioner informing them that the amount of Rs. 14 lakhs was not reflected in the statement of account dated 26.06.1996 of the 1st

respondent''s account and asking the petitioner to send a reconciliation statement. This letter dated 12.02.1997 was signed by the above said UR.

Lakshmi Narasemhan. From this it is very clear that the 1st respondent by this letter dated 12.02.1997 feigned ignorance of the crediting of Rs. 14

lakhs in the account of the 1st respondent''s associate and the letter dated 11.09.1996 sent by the petitioner to the associate of the 1st respondent

enclosing the statement of accounts and asking them to clear a sum of Rs. 5,20,403.25. This letter dated 12.02.1997 is obviously an attempt on

the part of the 1st respondent to bring the dispute within time, when the dispute very much arose when the letter dated 11.09.1996 was sent by the

petitioner enclosing the statement to the associate of the 1st respondent. In such circumstances, as rightly contended by the learned senior counsel

for the petitioner, the dispute was not referred to arbitration within 3 months as per Regulation No. 5 and, therefore, the entire claim of the 1st

respondent before the 2nd respondent is barred by limitation. The decision reported in Hari Shankar Singhania v. Gaur Hari Singhania (supra) is

not helpful to the 1st respondent to submit that the claim is within time in the light of the letters exchanged between the parties. The facts of the case

reported in the above judgment of the Supreme Court are entirely different and are easily distinguishable.

30. In the result, the claim of the 1st respondent before the 2nd respondent is barred by limitation as prescribed by Regulation No. 5 of the NSE

and the award under challenge is to be set aside and accordingly it is set aside and the OP is allowed. No costs.

In view of the order passed in OP No. 756 of 2000, Application No. 2402 of 2005 is dismissed. No costs.

