



V.P.Shah awarding Rs.2,12,49,336.00 (Rupees two crore twelve lakh forty nine

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thousand three hundred thirty six only) with future interest @ 18%. The

Minority Award was passed by Co-Arbitrator Shri A.Sankaran who awarded a

sum of Rs.1,23,08,104/- and interest of Rs.43,57,066/- upto 10.10.2003 and cost of

arbitration of Rs.4 lacs and further interest on the aggregate of all these amounts

@ 15% from the date of Award till the date of payment of decree whichever is

earlier.

Aggrieved by both the Awards, the appellant filed Arbitration Petition

under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the

Act') in the High Court of Judicature at Bombay. The petition was listed before

a learned Single Judge of the High Court who after hearing the parties dismissed

the petition for want of jurisdiction. The appellant-Insurance Company

thereafter filed a fresh petition under Section 34 of the Act before the District

Court, Nagpur along with application under Section 14 of the Limitation Act on

17.01.2005. The District Court, Nagpur dismissed the application filed by the

appellant-Insurance Company under Section 14 of the Limitation Act and

consequently, the application filed under Section 34 of the Act also stood

dismissed. Aggrieved against the order passed by the District Court, the

appellant filed again a Writ Petition before the High Court of Bombay at

Nagpur Bench which was also dismissed on 21.12.2005. Aggrieved by the said

Judgment dt.21.12.2005, the appellant preferred the above appeal.

The High Court by the impugned judgment dismissed the Writ Petition

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No.5454 of 2005 following the earlier judgment of the Bombay High Court in

H.M.P.Engineers Ltd. and Ors. vs. Ralies India Ltd. and Ors., reported in 2003

(4) MH.L.J.931. Learned counsel for the appellant submitted that in view of the

recent judgment of this Court in State of Goa vs. M/s.Western Builders, reported

in JT 2006 (6) SC 125, the view taken by the Bombay High Court in

H.M.P.Engineers Ltd. and Ors. vs. Ralies India Ltd. and Ors. (supra) and

followed by the High Court in the impugned judgment is not correct.

This Court in the Judgment in State of Goa vs. M/s.Western Builders

(supra) was considering the question as to what extent Section 14 of the

Limitation Act, 1963 which deals with exclusion of time spent in prosecuting the

remedy before wrong forum is applicable to the Arbitration and Conciliation

Act, 1996 or not. Section 14 of the Limitation Act reads thus :-

"14.Exclusion of time of proceeding bona fide in court without jurisdiction -

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligences another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time

during which the applicant has been prosecuting with due diligence

another civil proceeding, whether in a court of first instance or appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of s

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section (1) shall apply in relation to a fresh suit instituted on permission granted on the ground that the first suit must fail by reasons of a defect in the jurisdiction of the court of other cause of a like nature."

This Court also in para 13 of the said Judgment has observed that Section

14 of the Limitation Act has been excluded by this special enactment i.e.

Arbitration and Conciliation Act, 1996 and that Section 43 of the Arbitration and

Conciliation Act, 1996 clearly says that the Limitation Act, 1963 shall apply to

arbitration as it applies to the proceedings in court. This Court has also followed

few other Judgments of this Court in support of the view taken by them. In the

concluding portion this Court has observed that in the present context, there is

no two opinion in the matter that the Arbitration and Conciliation Act, 1996

does not expressly excluded the applicability of Section 14 of the Limitation Act

and that the prohibitory provision has to be construed strictly.

In the result, this Court was of the opinion that the view taken by the

court below excluding the applicability of Section 14 in the said proceeding was

not correct. This Court held that Section 14 of the Limitation Act, 1963 was

applicable in the Arbitration and Conciliation Act, 1996 and accordingly this

Court set aside the judgments and order and remanded the matters back to the

District Court for deciding the application under Section 14 of the Limitation Act

on merit. In view of the Judgment in State of Goa vs. M/s. Western Builders

(supra), the counsel for the respondent has not seriously opposed to the

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applicability of Section 14 of the Limitation Act which deals with exclusion of

time spent in prosecuting the remedy before the wrong forum bona fide.

Therefore, we set aside the order passed by the High Court and remit the matter

back to the District Court, Nagpur to decide the objections raised by the

appellant-Insurance Company under Section 34(3) of the Arbitration and

Conciliation Act, 1996 and decide the same on merit after affording opportunity

to the respondent herein.

Since the matter is pending for very long time before one forum or the

other, we direct the District Court, Nagpur to dispose of the matter within six

months from today.

We make it clear that we have not decided the objections and other issues

raised on merits.

The Civil Appeal stands disposed of accordingly with the above

observation. However, pending disposal of the matter by the District Court, we direct the appellant-Insurance Company to deposit the amount awarded by the Arbitrator Shri A.Sankaran to the credit of Arbitration Petition No.164/2005 on the file of the District Court, Nagpur. The Appellant-Insurance Company shall now deposit Rs.1,70,65,170/- (Rupees one crore seventy lakhs sixty five thousands, one hundred seventy only) to the credit of Arbitration Petition No.164/2005 within one month from today. On such deposit, the District Court shall invest the same in a nationalised bank in a short term deposit.

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We also reserve liberty to the respondent to move an application for

withdrawal of the said amount before the said court and if such an application is

filed, the District Court is directed to dispose of the same on merits and in

accordance with law.

.....J.

( Dr. AR. LAKSHMANAN )

.....J.

( TARUN CHATTERJEE )

NEW DELHI;

AUGUST 30, 2006.

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).6470/2006

(From the judgement and order dated 21/12/2005 in WP No. 5454/2005 of The  
HIGH COURT OF BOMBAY AT NAGPUR)

UNITED INDIA INSURANCE CO. LTD.

Petitioner(s)

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VERSUS

J.A.INFRA STRUCTURE PVT.LTD.

Respondent(s)

(With office report )

(For final disposal)

Date: 30/08/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Petitioner(s)

Mr.A.K.De,Adv.

Mr. Ashok K. Mahajan,Adv.

For Respondent(s)

Mr. Rameshwar Prasad Goyal,Adv.

Mr. Jay Savla,Adv.

Ms.Reena Bagga, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is disposed of in terms of the signed Judgment.

( Satish K. Yadav )

Court Master

( Phoolan Wati Arora )

Court Master

( Signed reportable Judgment is placed on the file )