

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 8th January, 2014.

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RFA No.341/2013

**THE REGISTRAR, INDIAN COUNCIL
OF ARBITRATION**

..... Appellant

Through: Mr. Murari Kumar, Adv.

Versus

K.S. SIDHU

..... Respondent

Through: Dr. K.S. Sidhu, Sr. Adv. with Mr.
Sunil Mittal & Ms. Maldeep Sidhu,
Advs.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment and decree (dated 04.06.2013 of the Court of Additional District Judge (ADJ)-1, New Delhi District, Patiala House Courts, New Delhi in Suit No.11/2011 (ID No.02403C0004482011) filed by the respondent) in favour of the respondent / plaintiff and against the appellant / defendant for recovery of Rs.5,02,500/- together with costs and interest, *pendente lite* and future at 10% per annum.

2. Notice of the appeal was issued and the Trial Court record requisitioned. The respondent / plaintiff has filed cross objections. The

appeal and the cross objections were admitted for hearing and with the consent of the counsels heard finally and judgment reserved.

3. The respondent / plaintiff on 22.01.2011 instituted the suit from which this appeal arises for recovery of Rs.5,25,000/- from the appellant / defendant with interest at the rate of 12% per annum with effect from 23.03.2007 and till the date of payment, pleading:

- (i) that the respondent / plaintiff, a senior advocate was on 06.04.2005 appointed by the appellant / defendant as a Presiding Arbitrator in two arbitration matters registered with the appellant / defendant as AC No.1430/2005 and AC No.1435/2005;
- (ii) that the respondent / plaintiff performed his part as the Presiding Arbitrator and in which arbitration proceedings about 30 hearings spread over a period of nearly 30 months during the years 2005 to 2007 were held;
- (iii) that an interim award dated 23.03.2007 was made by the respondent / plaintiff in the said arbitration proceedings;

- (iv) that the then Registrar of the appellant / defendant felt offended by the said interim award;
- (v) that the respondent / plaintiff had vide the said interim award terminated the arbitration proceedings holding the claim as well as the counterclaim (being the two arbitration cases supra) to be vitiated by fraud and collusion;
- (vi) however the other two arbitrators did not accept the findings of the respondent / plaintiff in the interim award aforesaid and thus the arbitration proceedings had to be continued further for recording oral evidence preparatory to the making of the final award;
- (vii) that after 23.03.2007, the Registrar of the appellant / defendant began to obstruct the proceedings;
- (viii) that by the month of August, 2007 the entire evidence in the said arbitration cases had been recorded and the cases were ripe for final arguments;

- (ix) that when the arbitration proceedings were listed on 05.10.2007 for hearing final arguments, the respondent / plaintiff received a written communication from the Registrar of the appellant / defendant to the effect that the appointment of the respondent / plaintiff as Presiding Arbitrator was void *ab initio* and that the Arbitral Tribunal will have to be reconstituted;
- (x) the respondent / plaintiff vide his letter dated 07.10.2007 rejected the said communication of the Registrar of the appellant / defendant and called for listing the arbitration cases for hearing but which was not done;
- (xi) the respondent / plaintiff filed a petition in this Court under Article 226 of the Constitution of India being WP(C) No.8738/2007 for declaration that the mandate of the respondent / plaintiff as the Presiding Arbitrator continued; however the said writ petition was dismissed on 07.04.2010 on technical grounds;

- (xii) the respondent / plaintiff thereafter took the matter to Supreme Court by filing a Special Leave Petition but the same was also rejected on 19.11.2010;
- (xiii) that the respondent / plaintiff was entitled to recover travelling allowances under the Rules of the appellant / defendant of Rs.22,500/- at the prescribed rate of Rs.750/- per visit for attending 30 odd arbitration hearings;
- (xiv) that after the respondent / plaintiff had been unsuccessful in his challenge to termination of his appointment as Presiding Arbitrator, all that was left for him was to recover his arbitration fee and travelling expenses;
- (xv) that the respondent / plaintiff thus vide the plaint in the suit was terminating the contract of his appointment as the Presiding Arbitrator and which contract the appellant / defendant had refused to perform since October, 2007; and,
- (xvi) that the respondent / plaintiff was entitled to recover Rs.2,85,000/- and Rs.2,17,500/- totaling Rs.5,02,500/- by

way of arbitrator's fee and Rs.22,500/- by way of travelling allowance, in all Rs.5,25,000/- under the Rules of the appellant / defendant in the two arbitration cases aforesaid together with interests thereon at 10% per annum with effect from 23.03.2007 till the date of payment.

4. The appellant / defendant failed to appear in response to the summons of the suit and was on 28.02.2011 proceeded against *ex parte*. The respondent / plaintiff led *ex parte* evidence.

5. The learned ADJ vide judgment and decree dated 05.08.2011 dismissed the suit for two reasons; firstly, of the suit claim being barred by time and secondly, on the ground that the deposition of the respondent / plaintiff was silent about the basis of his claim and there was no evidence corroborating his claim and no dates had been given on which the respondent / plaintiff conducted the arbitration proceedings and there was no evidence of the agreed rate of fee.

6. The respondent / plaintiff challenged the dismissal of his suit by filing RFA No.526/2011 in this Court. The said appeal came up first before this Court on 24.10.2011 when the counsel for the respondent /

plaintiff made an oral prayer for leading of additional evidence to show the number of hearings attended by the respondent / plaintiff as the Arbitrator and schedule of fee payable to the Arbitrator for a sitting. This Court, without issuing any notice to the appellant / defendant for the reason of the appellant / defendant being *ex parte* in the suit, allowed the said request of the respondent / plaintiff and granted to the respondent / plaintiff three opportunities to lead evidence with respect to the dates of hearing on which he attended the proceedings as Arbitrator and also the schedule of fee so as to crystallize the amount which the respondent / plaintiff claimed to be payable. As far as the issue of limitation was concerned, though it was held that the cause of action for the suit for recovery would arise only on the refusal of the appellant / defendant to make the payment but while allowing the appeal and remanding the matter to the Trial Court to enable the respondent / plaintiff to avail three opportunities to lead additional evidence, it was observed that the Trial Court will hear and dispose of the suit in accordance with law, including on the issue of limitation. It was further directed that the Trial Court will issue a fresh notice to the appellant / defendant before proceeding further in the suit.

7. On remand, the Trial court issued notice to the appellant / defendant and in response where to the counsel for the appellant / defendant appeared on 12.12.2011 before the Trial Court. The counsel for the respondent / plaintiff, though before the High Court in appeal had sought opportunity to lead additional evidence, on 12.12.2011 stated that no further evidence was required to be adduced and only the arguments with reappraisal of evidence already on record were required to be heard. On such submission, the suit was posted for arguments. Arguments were heard on 27.01.2012 and the suit adjourned to 02.02.2012 for clarification. On 02.02.2012, the counsel for the respondent / plaintiff filed an application for leading additional evidence and notice thereof was issued to the appellant / defendant. The appellant / defendant filed reply to the said application which was on 03.07.2012 allowed. The appellant / defendant on the same date also filed an application under Order 9 Rule 7 of the CPC.

8. The Trial Court, vide order dated 15.01.2013 dismissed the application of the appellant / defendant under Order 9 Rule 7 of the CPC on the ground of the same being barred by laches inasmuch as though the appellant / defendant pursuant to notice issued to it on remand of the suit

had appeared on 12.12.2011 but the application was filed only on 03.07.2012 and without any application for condonation of delay.

9. The suit was thereafter adjourned for cross-examination of the respondent / plaintiff by the counsel for the appellant / defendant qua additional evidence led by the respondent / plaintiff and thereafter for final arguments.

10. The learned ADJ has vide the impugned judgment decreed the suit, finding / observing / holding:

(I) “the matter having been remanded back, there was no requirement for any further evidence apart from what already existed. The matter has therefore been argued out by both the parties.”;

(II) that the counsel for the respondent / plaintiff had “pointed out” that no separate fee was payable for every date and it was a composite amount payable on the claim; accordingly a fixed amount of Rs.2,85,000/- and

Rs.2,75,000/- was the fee recoverable by the respondent / plaintiff in both the cases;

- (III) that the counsel for the appellant / defendant had opposed the claim on the ground of limitation;
- (IV) that there was no categorical refusal by the appellant / defendant of the demand of the respondent / plaintiff; in such circumstances and in the light of the observations of the High Court in the judgment in RFA, the right to claim damages and compensation would arise on acceptance of the termination of the contract which as per the respondent / plaintiff was by filing of the suit.

Accordingly, the suit was decreed.

11. The counsel for the appellant / defendant has argued:

- (a) that the termination by the appellant / defendant of the appointment of the respondent / plaintiff as Presiding Arbitrator, though was challenged by the respondent /

plaintiff but without any success; the termination by the appellant / defendant was thus held to be valid;

- (b) that the contract of appointment of the respondent / plaintiff as Presiding Arbitrator was void *ab initio* being contrary to the rules of the appellant / defendant.

12. The respondent / plaintiff appearing in person has argued:

- (aa) that the appointment of Arbitrators including the Presiding Arbitrator is under the Agreement of the parties and the appellant / defendant is only a facilitator / an agent of the parties to the Agreement. Attention is invited to the cross-objections preferred by the respondent / plaintiff where it is *inter alia* stated that the loss suffered by the respondent / plaintiff as a consequence of the tortuous and fraudulent conduct of the appellant / defendant arose from the special circumstances relating to the respondent / plaintiff being the Presiding Arbitrator in a three member quasi-judicial Tribunal; the appellant / defendant had full knowledge of the circumstances; that the appellant / defendant knew that

the respondent / plaintiff would be fighting shy from taking recourse to a demeaning action of suing for recovery of money;

- (bb) that the respondent / plaintiff has been treated shabbily by the Registrar of the appellant / defendant;
- (cc) that though the respondent / plaintiff had preferred the SLP against the dismissal of his writ petition by this Court but withdrew the same on the advice of the Supreme Court and for this special reason limitation should not be allowed to come in the way;
- (dd) that the suit claim is within time under Section 39 of the Indian Contract Act, 1872 read with Article 55 of the Limitation Act, 1963;
- (ee) that the limitation would commence from the date when the respondent / plaintiff accepted the breach of the contract by the appellant / defendant and which was only on institution of the suit;

- (ff) however the respondent / plaintiff is entitled to interest on the amounts claimed from the date of the interim award and which has not been granted by the learned Trial Court;
- (gg) that this Court in judgment dated 24.10.2011 in RFA No.526/2011 earlier preferred by the respondent / plaintiff, after setting aside the finding of the Trial Court in the judgment dated 05.08.2011 of the suit claim being barred by limitation, ought to have decreed the suit and erred in remanding the suit for adjudication and in keeping the issue of limitation also open;
- (hh) that the Trial Court in the impugned judgment has not considered the arguments contained in the written submissions filed by the respondent / plaintiff before the Trial Court and a copy of which was handed over in this Court during the course of hearing.

13. The counsel for the appellant / defendant in rejoinder has argued:

- (i) that the present is not a case of breach;

- (ii) that the contract of appointment of the respondent / plaintiff as Presiding Arbitrator came to an end as per the rules of the appellant / defendant;
- (iii) Reliance is placed on *Ahmadsahab Abdul Mulla Vs. Bibijan* (2009) 5 SCC 462 (Paras No.11&12), *J.P. Bansal Vs. State of Rajasthan* (2003) 5 SCC 134, *Sukhmander Singh Vs. State of Punjab* (1999) 9 SCC 55 and on *Food Corporation of India Vs. Babulal Agarwal* (2004) 2 SCC 712.

14. I have considered the rival submissions.

15. I may at the outset state that this Court in this proceeding is not sitting in appeal, neither over the judgment dated 07.04.2010 of this Court of dismissal of W.P.(C) No.8738/2007 supra filed by the respondent / plaintiff nor over the judgment dated 24.10.2011 in RFA No.526/2011 earlier preferred by the respondent / plaintiff and both of which judgments have been severally criticized by the respondent / plaintiff during his arguments and both the said judgments have admittedly attained finality and being inter parties bind the respondent / plaintiff.

16. I may further clarify that though Rule 1A of Order 43 of the CPC permits challenge to non-appealable orders, as an order of dismissal of the application under Order 9 Rule 7 of the CPC is, in appeal against the decree but the appellant / defendant has neither in the memorandum of appeal challenged the order dated 15.01.2013 supra of the Trial Court of dismissal of the application of the appellant / defendant under Order 9 Rule 7 of the CPC nor raised any argument with respect thereto.

17. The only questions thus to be considered are, whether the finding of the learned ADJ in the impugned judgment of the suit claim being within time is correct or not and if the suit claim is found to be within time, whether the appellant / plaintiff has proved his entitlement thereto.

18. The learned ADJ in the earlier judgment dated 05.08.2011 held the suit claim to be barred by time observing as under:

“13. Notwithstanding the above, the claim pertains to the fees to be paid for hearings up to March 2007 when the plaintiff's appointment was sought to be terminated. The present suit has been filed on 24.01.2011. The claim of the plaintiff is clearly beyond the period of limitation. The plaintiff's demand for reimbursement of his TA bill had been rejected in May 2007 itself. The plaintiff had some meetings till October 2007, though there is nothing to show that they were in respect of arbitration hearings. Even then the claim is time barred. I am

unable to appreciate the arguments advanced by the plaintiff that the limitation would continue to run as it was the defendant who had terminated the contract. The present suit is a simple money suit claiming recovery of professional fees for each and every hearing. Under such circumstances, the claim, if any, had to be made against the defendant within the period prescribed under law. This is apart from the fact that there is no cogent evidence on record testifying in respect of the actual dates of hearing or the fees applicable for each arbitration proceedings for this Court to adjudicate upon the quantum of amount to which the plaintiff may have been entitled to, had his claim been within time.”

19. This Court, vide judgment dated 24.10.2011 in RFA No.526/2011 preferred against the aforesaid judgment observed as under on the aspect of limitation:

“3. So far as the issue of limitation is concerned, in my opinion, the impugned judgment is incorrect and liable to be set aside because the hearings were admittedly held upto March, 2007 and the suit was filed on 24.1.2011. The cause of action in a suit for recovery such as the present only arises on the refusal of the respondent/defendant to make the payment. I do not find that the impugned judgment refers to a date as per which the cause of action will begin so as to claim the amount in terms of Article 113 of the Limitation Act, 1963. Thus the finding that the suit was barred by limitation is set aside with the direction to the Trial Court to re-examine the issue.

4. Accordingly, the appeal is allowed. The appellant is allowed three opportunities to lead additional evidence as stated above. The Trial Court will hear and dispose of the suit in accordance with law, including on the issue of limitation.”

20. It would thus be seen that though this Court set aside the finding aforesaid of the learned ADJ of the suit claim being barred by time but nevertheless directed the Trial Court to re-examine the issue and decide the suit afresh including on the issue of limitation. Thus the observations of this Court on the aspect of limitation in the judgment dated 24.10.2011 were not intended to be final and conclusive. Rather, it appears that since the respondent / plaintiff sought time to lead additional evidence in the suit and which request was acceded to by this Court, the findings of the Trial Court on the aspect of limitation were set aside only to enable reconsideration of the matter.

21. The Trial Court in the impugned judgment in the second round has not given any finding of its own to hold the claim to be within time though the same learned ADJ on an earlier occasion in the judgment dated 05.08.2011 had held the suit claim to be barred by time. Notwithstanding the directions to the Trial Court while remanding the matter, to re-examine the issue of limitation, the Trial Court has been influenced solely by the observations in the remand order and which observations as aforesaid were not conclusive.

22. I am unable to find on the Trial Court record the letter of termination of appointment of the respondent / plaintiff as Presiding Arbitrator. No reference thereto is to be found in the examination-in-chief of the respondent / plaintiff also. However a perusal of the judgment dated 07.04.2010 of dismissal of W.P.(C) No.8738/2007 preferred by the respondent / plaintiff discloses the said communication to be dated 04.10.2007 and stating that the appointment of the respondent / plaintiff as Presiding Arbitrator was void *ab initio*, perhaps owing to the respondent / plaintiff being overage on the date of appointment [Rule 13 of the Rules of Arbitration (as amended on 1st January, 2005) of the appellant / defendant provides that persons who have attained the age of more than 80 years would automatically cease to be members of Panel of Arbitrators. This Court while dismissing the writ petition, held the same to be wholly misconceived. It was held that the respondent / plaintiff was one of the members of a Arbitral Tribunal and could not be an aggrieved party, if on account of operation of law he ceased to function as a member of the Arbitral Tribunal and particularly when neither of the parties to the arbitration were aggrieved from the respondent / plaintiff so ceasing to be the Presiding Arbitrator was upheld by this Court.

23. Once the appointment of respondent / plaintiff as Presiding Arbitrator has been held to be void *ab initio*, the claim of the respondent / plaintiff cannot be for contractual arbitration fee but can only be for compensation within the meaning of Section 65 of the Contract Act, 1872 which provides that when a contract is discovered to be void, the person who has received advantage thereunder is bound to restore it or to make compensation to the person from whom he received it. The respondent / plaintiff undoubtedly was made to work as a Presiding Arbitrator and to render the 'interim award' and is thus entitled to be compensated therefor. The claim of the respondent / plaintiff can also be considered under Section 70 of the Contract Act, 1872 which provides that where a person lawfully does anything for another person, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of the things so done.

24. The next question which arises is as to what would be the period of limitation for claiming such compensation under Sections 65 or 70 of the Contract Act.

25. The Schedule to the Limitation Act, 1963, under Article 7 provides limitation of three years for a suit for wages, commencing from the date when the wages accrued due; under Article 18 provides limitation of three years for a suit for the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment, commencing from the date when the work is done; under Article 27 provides limitation of three years for a suit for compensation for breach of a promise to do anything upon the happening of a specified contingency commencing from the date when the time specified arrives or the contingency happens.

26. The aforesaid are some of the Articles of the Schedule which may throw some light, though neither of the said Articles nor any other Article in the Schedule provides specifically for a suit for compensation under Sections 65 or 70 supra of the Contract Act. The only purport of citing the aforesaid Articles is to show that limitation for claims akin to the claim of the respondent / plaintiff is of three years commencing from the date when the payment became due or when the contract becomes void and not from the date when the payment pursuant to demand is refused. In the absence of any specific Article dealing with a suit for the claim as

under Sections 65 and 70 of the Contract Act, the limitation thereof will be governed by the residuary Article 113, also providing for a limitation of three years commencing from the date when the right to sue accrues.

27. The right to sue according to the respondent / plaintiff also accrued on the date of termination by the appellant / defendant of the appointment of the respondent / plaintiff as Presiding Arbitrator i.e. on 04.10.2007. This is evident from the respondent / plaintiff making a claim for interest from the said date and in fact from prior thereto i.e. from the date of the interim award. If the respondent / plaintiff was correct in his contention, that the cause of action accrued only when payment was refused, the question of demanding any interest on the amount claimed, for the period prior thereto would not arise. The suit admittedly has been filed beyond three years therefrom.

28. The respondent / plaintiff however seeks to bring the suit within limitation, by referring to Section 39 of the Contract Act and to Article 55 of the Schedule to the Limitation Act. Section 39 of the Contract Act provides that when a party to a contract has refused to perform his promise in its entirety, the promisee may put an end to the contract,

unless he has signified his acquiescence in its continuance. I fail to see as to how the said provision can be attracted. The present is not a case of the appellant / defendant refusing to perform its contract in its entirety but rather of terminating the contract as void *ab initio*. The question of the contract of appointment as Presiding Arbitrator continuing thereafter thus does not arise. As far as Article 55 is concerned, the same provides limitation of three years for a suit for compensation for breach of any contract commencing from the date when the contract is broken or where there are successive breaches, when the breach in respect of which the suit is instituted occurs or where the breach is continuing when it ceases. The argument of the respondent / plaintiff is that in the present case the breach continued till the time the respondent / plaintiff was challenging the termination and till he filed the suit for recovery of his dues, accepting such termination. The said argument suffers from a fallacy. The compensation to which the respondent / plaintiff is entitled under Sections 65 or 70 supra, is not for breach by the appellant / defendant of the contract of appointment of respondent / plaintiff as Presiding Arbitrator but for the advantage received by the appellant / defendant from the appointment of the respondent / plaintiff as the Presiding

Arbitrator and which appointment was subsequently discovered to be void *ab initio* for the reason of being in violation of the Rules of the appellant / defendant. Moreover, the breach even if assumed on the part of the appellant / defendant by terminating the contract was not such as can be said to be continuing till the time respondent / plaintiff chose to accept the same.

29. The cause of action for recovering compensation under Sections 65 or 70 of the Contract Act undoubtedly accrued to the respondent / plaintiff when the contract of appointment of the respondent / plaintiff as Presiding Arbitrator was discovered to be *ab initio* void for the reason of the respondent / plaintiff on the date of appointment being overage. The mere fact that the respondent / plaintiff unsuccessfully challenged such termination would not extend the period of limitation which has begun to run on the date of termination. The respondent / plaintiff in his written submissions supra has referred to *S.V. Harihara Iyer Vs. Mathew George* AIR 1965 Ker. 187 and to *State of Kerala Vs. Cochin Chemical Refineries Ltd.* AIR 1968 SC 1361 but I am, in view taken above, unable to find the same applicable.

30. Thus, whichever way one looks at, the suit claim of the respondent / plaintiff cannot be said to be within time.

31. Though the observations in the judgment dated 24.10.2011 in earlier RFA No.526/2011 suggests that the cause of action would arise only on the refusal of the appellant / defendant to make payment but the same were as aforesaid not final and concluding and I am unable to find any support therefor in law. A person entitled to recovery of money cannot set at naught the limitation provided therefor by not making a demand. If it were to be held that the starting point of limitation provided of three years is the refusal pursuant to demand, it would give a handle to the claimant to govern the limitation and the defendant can never be certain of the time after which no claim can be made against it, defeating the purpose of the law of limitation. None of the Articles aforesaid of the Schedule to the Limitation Act provide for the date of commencement of the period of limitation from the date of refusal of demand. Wherever the legislature felt that limitation should commence from the date of refusal, it has provided so. Reference in this regard can be made to Articles 22,39,40 and 45 of the Schedule to the Limitation Act.

32. I am also at loss as to how the learned ADJ has arrived at a finding of the respondent / plaintiff having proved entitlement to the arbitration fee. There is no basis disclosed therefor except the contention of the respondent / plaintiff which has been accepted. The learned ADJ lost sight of the fact that on an earlier occasion the claim had been dismissed for this reason also and the respondent / plaintiff in the RFA No. 526/2011 earlier preferred by him conceded so and sought an opportunity to lead additional evidence to prove the basis of his claim; though such additional evidence was permitted, albeit in the absence of the appellant / defendant (though the decree of dismissal of suit against whom in my view could not have been set aside without notice) but the respondent / plaintiff on remand made a statement that no additional evidence was required to be led. On such submission, the suit should immediately have been dismissed again. Subsequently, permission for adducing additional evidence was applied for and granted but a perusal of the affidavit dated 09.02.2012 by way of additional evidence also does not show the respondent / plaintiff to have proved the basis for his claim for arbitration fee of Rs.2,85,000/- and Rs.2,17,500/- for the two cases. The learned ADJ, in the impugned judgment has in fact not referred thereto. The

respondent / plaintiff also on 26.07.2013 when the appeal first came up before this Court, could not even tell whether the additional evidence had been led or not, as is evident from the order of that day.

33. A perusal of the Rules of Arbitration (as amended on 01.01.2005) on Trial Court record shows Rule 31 to be providing for the Arbitrators fee to be fixed on the basis of amount in dispute. The respondent / plaintiff in the plaint has mentioned claim in one of the cases was for recovery of Rs.1,30,57,783.44. There is no pleading in the plaint of the value of the claim in the other case. Similarly in the evidence led by the respondent / plaintiff in the first round, there was no mention thereof. In the additional evidence led by the respondent / plaintiff however the respondent / plaintiff has stated that one of the claims was for recovery of Rs.7,78,90,281.87 and the other was for recovery of Rs.3,85,64,405/-. There is thus an apparent inconsistency in the pleading and evidence. Not only so, the respondent / plaintiff has nowhere deposed as to how much fee he was entitled to as per the Rules.

34. However even if the same were to be ignored, the fee provided for claims between Rs.1,00,00,000/- and Rs.5,00,00,000/- is Rs.1,50,000/-

plus Rs.22,500/- per crore or part thereof subject to a ceiling of Rs.2,40,000/-. The fee for the claim of Rs.3,85,64,405/- would thus be Rs.2,40,000/-. Similarly, the fee provided for claims between Rs.5,00,00,000/- and Rs.10,00,00,000/- is Rs.2,40,000/- plus Rs.15,000/- per crore or part thereof subject to a ceiling of Rs.3,15,000/-. The fee for the claim of Rs.7,78,90,281.87 would thus be Rs.3,15,000/-. The same does not tally with the claims made by the respondent / plaintiff and there is no explanation whatsoever.

35. I am therefore of the view that the respondent / plaintiff has also failed to prove the basis of his claim.

36. As far as the claim of the respondent / plaintiff for travelling allowance is concerned, the respondent / plaintiff himself has proved as Ex.PW1/9 his bill dated 09.05.2007 therefor and as Ex.PW1/10, the letter dated 31.05.2007 of the appellant / defendant intimating the respondent / plaintiff that the claimant had not deposited the costs of arbitration on the basis of the revised rules effective from 01.01.2005 and therefore it is not possible to pay the conveyance allowance on the basis of Rs.750/- per hearing. It is thus clear that not only was the said claim rejected more

than three years prior to the institution of the suit but also that there is no basis therefor. Though Rule 32 deals with “other expenses” but the language thereof is “The arbitrator may be paid.....”

37. There is another interesting aspect of the matter. The rules provide for the fee of arbitration to be borne by the parties to the arbitration and not by the appellant / defendant. The respondent / plaintiff himself in his plaint has argued that the appellant / defendant is merely a facilitator and an agent of the parties to the arbitration agreement. The appellant / defendant cannot be made liable for any fee of the arbitrators unless the same has been paid to the appellant / defendant by the parties to the arbitration.

38. Interestingly, it is not the case of the respondent / plaintiff that the fee has been so received by the appellant / defendant. The respondent / plaintiff also did not chose to implead the parties to the arbitration as defendants to the suit. Rule 78 of the appellant / defendant provides that the appellant / defendant and its officers shall not be liable for any act or omission in whatsoever capacity they may have acted in connection or in relation to arbitration under the Rules. In my opinion, the claim of the

respondent / plaintiff against the appellant / defendant is in any case for this reason misconceived.

39. Resultantly, the appeal succeeds and the cross-objections are dismissed. The impugned judgment and decree is set aside and the suit filed by the respondent / plaintiff is dismissed. No costs.

Decree sheet be drawn up.

40. Having held so, I must observe that though the claim of the respondent / plaintiff has been dismissed for reasons aforesaid, there can be no denying the fact that the respondent / plaintiff has been wronged and despite being a senior respectable member of the legal fraternity, has indeed been treated shabbily. The blame therefor squarely rests on the appellant / defendant. The appellant / defendant, by appointing the respondent / plaintiff as the Presiding Arbitrator, made him conduct the arbitration proceedings. The respondent / plaintiff was not conducting the said proceedings gratuitously. The appellant / defendant, even if an agent of the parties to arbitration, was responsible for collecting the arbitration fee from parties to arbitration and to pay the same to the respondent / plaintiff. It appears that the respondent / plaintiff has not

been paid anything for his services. Such conduct is not expected from a body as the appellant / defendant, which is itself closely linked to the legal fraternity and associated with the Chamber of Industry. I therefore implore upon the appellant / defendant to, notwithstanding the verdict aforesaid, compensate the respondent / plaintiff for his services, admittedly rendered. For this purpose, a copy of this judgment be sent to the Governing Body of the appellant / defendant who are requested to within one month, taking note of the fact that their own goodwill and reputation and fairness is at stake, take a decision to suitably compensate the respondent / plaintiff. A copy of this judgment be also sent to the President of Federation of Indian Chamber of Commerce & Industry (FICCI) for appropriate action.

RAJIV SAHAI ENDLAW, J

JANUARY 08, 2014

‘gsr’