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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.466 OF 2012

Mr.Milind P. Mane
Aged 39 years,
B-402, Marathon Cosmos,
L.B.S. Road, Mulund (West),
Mumbai – 400 080
Having alternate address at :
503, Shri Gayatri Darshan
C.H.S.Ltd. 90 Feet Road,
Mulund (East) Mumbai – 400 081.

...Petitioner

V/s.

1. Godrej Infotech Limited
Plant No.19-A, Pirojshanagar,
Vikhroli, Mumbai – 400 079.
2. Mr.Sachin Durugkar,
H 1, 403, Mayuresh Shrushti Park,
Bhandup (West), Mumbai - 400 078.
3. Mr.Mahesh Shetty,
B 102, Marathon Cosmos,
L.B.S. Road, Mulund (West)
Mumbai – 400 080.

...Respondents

WITH
ARBITRATION PETITION (LODGING) NO.1150 OF 2012

Manish Khemka,
32, Rameshwar Molia, First Byelane,
Hawrah, West Bengal – 711 101
Currently residing at :
295, G.T. Road, Arihant Tower
Block A, flat No.201, Belur Bazaar,

Howrah, West Bengal – 711 202

...Petitioner

V/s.

1. Godrej Infotech Limited
Plant No.19-A, Pirojshanagar,
Vikhroli, Mumbai – 400 079.
2. Mr.Purushottam Das Modi,
Libas Garment, Hanuman Chauk,
Raigarh
3. Mr.Ajay Khemka,
32, Rameshwar Molia,
First Byelane Howrah,
West Bengal – 711 101

...Respondents

WITH
ARBITRATION PETITION NO.842 OF 2012

1. Mr.Parambir Singh Bhatia,
C-1/100, Ashok Vihar Phase -2,
Delhi – 400 052.
Currently residing at :
Building No.1 Flat No.112,
Ambanagri Society, Vishrant Wadi,
Dhanori Road, Pune – 411 015.
2. Mr.B.S. Bhatia,
30, Belvedre Road,
Kolkata – 200 27.

...Petitioners

V/s.

1. Godrej Infotech Limited
Plant No.19-A, Pirojshanagar,
Vikhroli, Mumbai – 400 079.
2. Mr.Cholla Sivaji,
Qr.No.6, Block “D”,
Nizam Palace, Kolkata – 700 020.

...Respondents

Mr.Rakesh Singh for the Petitioner.

Mr.N.Y. Gupte for Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 16TH JANUARY, 2015.

JUDGMENT :-

1. By consent of the parties, all three petitions were heard together and are being disposed of by a common order.

2. The learned counsel for the parties do not dispute that the reasons to be rendered in Arbitration Petition No.466 of 2012 would also apply to the other companion matters bearing Arbitration Petition No.842 of 2012 and Arbitration Petition (Lodging) No.1150 of 2012.

3. By these three petitions filed under section 34 of the Arbitration & Conciliation Act, 1996, the petitioners have impugned three separate awards. I shall first summarize the facts of Arbitration Petition No.466 of 2012, which is argued by the learned counsel for the parties at length. Some of the relevant facts for the purpose of deciding the above petitions are as under :

4. It is the case of the petitioner that the petitioner had completed various diplomas in various courses such as Mechanical Engineering, Business Management, Materials Management and completed graduate in Industrial Engineering.

5. On 27.01.2007, the petitioner received an offer letter from respondent no.1 thereby appointing the petitioner on probation for a period of six months on total monthly salary inclusive of allowances approximately at Rs.34,450/- plus other benefits and perquisites. It was provided in the said letter that the total emolument inclusive of the allowances would be approximately Rs.4,70,200/- per annum. It was made clear that after a period of six months, the confirmation shall be subject to satisfactory confirmation of the probation.

6. On 08.03.2007, the petitioner and the respondents signed bond agreement. It is the case of respondent no.1 that respondent nos.2 and 3 signed on behalf of the petitioner as sureties.

7. Under the said bond, it was agreed that the employee i.e. the petitioner would be required to undergo specialized training during the course of his employment in order to able to perform his duties in the said capacity. It was recited that respondent no.1 had made arrangement for the provisions of specialized training for its employees including the petitioner at considerable cost and expenditure of the company. It was provided that respondent no.1 had decided to depute the petitioner for various appropriate training programmes from time to time during the course of his employment with respondent no.1 and the petitioner had agreed to undergo the training and to utilize the training skills so imparted at least for a

period of 24 months from the time the petitioner commenced his employment with respondent no.1. It was provided that the employee had agreed that in the event of his not keeping the promise and leaving the employment of the company before the expiry of the said period of 24 months from the date of employment commencing his employment with the company, he shall make good the loss that may be suffered by the company by paying it a sum of Rs.2.00 lakhs as reasonable compensation as aforesaid. The relevant part of the said bond reads as under :-

“AND WHEREAS the Employee has agreed, that in the event of his/her not keeping the promise and leaving the employment of the Company before the expiry of th said period of 24 months from the date of Employee commencing his/her employment with the company, he/she shall make good the loss that may be suffered by the Company by paying it a sum of Rs.2,00,000/- (Rupees Two Lakh Only), as reasonable compensation as aforesaid.”

8. On 12.03.2007, respondent no.1 issued an appointment letter to the petitioner, stating that he is appointed from 8th March, 2007 and he would be on probation for a period of 6 months. It was mentioned that if at the end of the probationary period, the petitioner was on his appointment, he would be advised of the same in writing. If no letter of confirmation was issued, the probationary period shall be deemed to have been extended till such time as the petitioner was confirmed in his appointment in writing. His monthly consolidated

salary basic would be Rs.15,100/-. Clause 8 of the said appointment letter which is relevant for the purpose of deciding this petition is extracted as under :-

“8. Your services may be terminated by the Company at any time by either giving you one month's notice or payment of one month's Consolidated Salary and other admissible allowances in lieu of notice. Similarly, it will be permissible for you to resign from our services subject to your giving the Company one month's notice in writing of your intention to do so. If you should leave the Company's service without notice, you will be liable to pay to the Company a sum equivalent to your one month's Consolidated Salary and other admissible allowances or you will be liable to be sued for damages. If at any time you are found guilty of misconduct, your services may be terminated without notice or payment in lieu of notice in accordance with law.”

9. The petitioner tendered his resignation informing respondent no.1 that the said letter was his formal notice of resignation with effect from 11th October, 2007. According to the petitioner, 3 weeks notice was sufficient for respondent no.1 to find replacement and he assured that he would do all assistance in the smooth transfer of his responsibilities before leaving the job.

10. There was no response to the said notice dated 11th October, 2007 from the respondents. It is the case of the petitioner that after expiry of 3 weeks from the date of the receipt of the said notice by respondent no.1, the petitioner handed over charge to respondent no.1 and did not continue the said job.

11. Respondent No.1 through its advocate's notice dated 24th March, 2008 to the petitioner and respondent nos.2 and 3 alleged that the petitioner was imparted specialized training by various seniors working in the company who gave the petitioner training. The petitioner was required to work with those seniors on some of the assignments handled by them so as to give him the experience to deal with the assignments. It was contended in the said notice that under the said bond executed by the petitioner and respondent nos.2 and 3 on 8th March, 2007, the petitioner was required to continue his employment for 24 months from the date of appointment and since the petitioner had left the job prior to the date of two years, the petitioner had committed violation of the said bond and accordingly called upon the petitioner and respondent nos.2 and 3 to pay a sum of Rs.2.00 lakh with effect from 16th November, 2007 till recovery. There was no response from the petitioner to the said notice of demand. The matter was referred to arbitration.

12. Respondent No.1 appointed the learned arbitrator who issued the notice of hearing to the petitioner. The petitioner in all the three petitions filed their respective written statements before the learned arbitrator. The petitioner in Arbitration Petition No.466 of 2012 appeared on few dates before the learned arbitrator, however, did not continue his appearance. The petitioner in other two

arbitration petitions also appeared on few occasions but did not continue their appearances.

13. Respondent No.1 examined one witness viz. K.P. Vinod, who filed the affidavit in lieu of examination in chief before the learned arbitrator. In the affidavit in lieu of examination in chief, it was deposed by the said witness that the petitioner had no experience and was required to undergo training to be imparted by respondent no.1 company as ERP Consultant which was necessary to handle specialized projects. In paragraph 9 of the affidavit in lieu of examination in chief, the witness deposed that there were expenses incurred by the company in respect of the said training. In paragraph 10 of the affidavit, it was deposed that the company had computed total costs of training programme and salary paid at the time of training to the petitioner at Rs.2.00 lakh which included the costs of infrastructure, books, literature, tools, equipment's, computers, cost of meetings, the supervisory and guidance cost, time and energy dedicated by the superiors for enhancing the knowledge and teaching him. There was cross-examination of the said witness to some extent by the petitioner, who appeared in person before the learned arbitrator in Arbitration Petition No.466 of 2012.

14. The witness was asked in the cross-examination by the petitioner to produce the time sheets. The witness deposed that it

was not necessary to produce the time sheets as the seniors were sitting with him and giving support for understanding the product. When the witness was asked whether introductory course which was imparted to the petitioner was after two months and why, the witness answered that there was no such concept like introductory training. Respondent no.1 started training to the petitioner immediately after the appointment. When the witness was asked that if the petitioner was given training and logistic, why he was asked to work on the modules like purchase, sales, stores, production, projects, dispatch, quality and maintenance, the witness deposed that even that was part of the training as these were the modules of ERP. Then the witness was asked why he was given confirmation letter after six months appointment, the witness deposed that it was not relevant for the subject which was under arbitration.

15. When witness was asked, had he made any progress report and discussed with the petitioner as per CMM-4 Level company for his confirmation, the witness bluntly replied that the same was not relevant for the subject under arbitration.

16. The learned arbitrator by the impugned award dated 19th March, 2011 directed the petitioner and respondent nos.2 and 3 jointly and severally to pay a sum of Rs.2.00 lakh together with interest at 18% p.a. with effect from 16th November, 2007 till payment

and also costs of Rs.30,000/-. The said award is impugned by the petitioner in Arbitration Petition No.466 of 2012.

Relevant facts in Arbitration Petition (Lodging) No.1150 of 2012 :

17. In the month of December, 2006, the petitioner got a call from respondent no.1 calling upon him to forward his resume as respondent no.1 was looking for Associate ERP Consultant. It is the case of the petitioner that respondent no. 1 informed that the petitioner was already trained in ERP and was using ERP in the then current organization. It is the case of the petitioner that respondent no.1 thereafter sent the petitioner for over view training for a period of five days, which was not at all a specialized training as contemplated under the bond agreement, which was furnished by the petitioner and respondent nos.2 and 3 in the sum of Rs.2.00 lakhs.

18. Respondent No.1 stopped paying salary to the petitioner for April, 2007, May, 2007 and June, 2007 and forced him to sign the anti dated bond before releasing his salary. Respondent No.1 released the salary of the petitioner for the months of April, May and June, 2007 only on 3rd July,2007 and 7th July, 2007.

19. By a letter dated 13th August, 2007 addressed to respondent no.1, the petitioner informed that he would not be able to continue his service due to personal reasons and requested

respondent no.1 to accept his resignation with immediate effect and relieve him from 20th August, 2007.

20. The dispute arose between the parties. The matter was referred to arbitration of the learned arbitrator appointed by respondent no.1. The petitioner opposed the claims made by respondent no.1 by filing a written statement.

21. By an award dated 7th April, 2012, the learned arbitrator directed the petitioner, respondent nos.2 and 3 to pay a sum of Rs.2.00 lakhs to respondent no.1 and Rs.30,000/- towards the costs of the arbitration proceedings within two months from the date of the said award. Respondent Nos.2 and 3 did not challenge the said award. The petitioner has impugned the said award dated 7th April, 2012 in this Arbitration Petition (Lodging) No.1150 of 2012.

22. The learned counsel for the petitioner in this petition would submit that insofar as the question of grounds of challenge in this petition are concerned, the petitioner would adopt the grounds and submissions made by the petitioner in Arbitration Petition No.466 of 2012.

Relevant facts in Arbitration Petition No.842 of 2012 :

23. In the month of January, 2007, petitioner no.1 received a call from respondent no.1 and requested petitioner no.1 to forward his resume to respondent no.1, as the respondent was looking for

Associate ERP Consultant. The petitioner was thereafter selected after personal interview and after consulting the organization of petitioner no.1. It is the case of the petitioner that he had clearly stated that he was already trained in ERP and was using ERP in the then current organization. Respondent no.1 however, informed the petitioner that the petitioner's training was not sufficient and therefore, respondent no.1 would give him specialized training to enhance his ERP skills and for that purpose, the petitioner was required to sign a bond of Rs.2.00 lakhs for the said purpose. Accordingly, the petitioner signed a bond along with respondent nos.2 and 3 in favour of respondent no.1. It is the case of the petitioner that respondent no.1 though had sent the petitioner to Chennai for five days for the purpose of training, there was nothing specialized or intensive about it and the same did not deal with the ERP software.

24. On 10th June, 2008, the petitioner resigned from his post effective from 11th June,2008. The petitioner made it clear that the said notice period was effective two weeks from the date of the said notice.

25. It is the petitioner's case that respondent no.1 however, insisted for one month's notice to which the petitioner agreed. At that stage there was no demand for payment of Rs.2.00 lakhs as bond money under the said bond agreement.

26. The dispute arose between the parties. Respondent no.1 invoked arbitration agreement. The matter was referred to arbitration of the learned arbitrator appointed by respondent no.1. Respondent no.1 examined a witness. He was cross-examined by the petitioner. The petitioner denied the claim made by respondent no.1 by filing the written statement. It is the case of the petitioner that the witness examined by respondent no.1 did not produce any document in support of the pleading that any training was provided to the petitioner by respondent no.1. Respondent No.1 also did not produce any proof in support of the claim for damages in the sum of Rs.2.00 lakhs. Though respondent no.1 had referred to and relied upon the alleged expenses incurred on the training alleged to have been provided to the petitioner, no such documents were produced before the arbitral tribunal.

27. On 11th February, 2012, the learned arbitrator made an award directing petitioner no.1 and respondent Nos.2 and 3 to pay a sum of Rs.2.00 lakhs together with interest at 18% p.a. with effect from 10th July, 2008 and costs of the arbitration proceedings to the tune of Rs.50,000/-. This award of 11th February, 2012 has been impugned by the petitioner in Arbitration Petition No.842 of 2012 on various grounds, which petition has been heard along with Arbitration Petition No.466 of 2012.

28. The learned counsel for the petitioner in this petition would submit that insofar as the question of grounds of challenge in this petition are concerned, the petitioner would adopt the grounds and submissions made by the petitioner in Arbitration Petition No.466 of 2012.

29. Mr.Singh, the learned counsel for the petitioner in all three petitions submits that the facts of all three matters are almost identical. Mr.Gupte, the learned counsel for respondent No.1 does not dispute that the legal position in all the three matters are the same. It is submitted by the learned counsel for the petitioner that the letter of appointment having been issued on 12th March, 2007, it is after execution of the bond agreement on 8th March, 2007 and thus the terms and conditions of the appointment letter dated 12th March, 2007 would prevail. It is submitted that in terms of clause 8 of the letter of appointment dated 12th March,2007, the petitioner as well as respondent No.1 were permitted to terminate the services after giving one month notice to other party. It is submitted by the learned counsel that even if the notice of resignation dated 11th October, 2007 was not treated as notice of one month as provided in clause 8 of the letter of appointment, respondent no.1 could have recovered at the most an amount equivalent to the one month consolidated salary and other admissible allowances from the petitioner. Respondent no.1

could sue the petitioner for the same.

30. It is submitted by the learned counsel that in any event since there was no specialized training imparted to the petitioner, the question of invocation of agreement did not arise. It is submitted that even if any training was provided to the petitioner by respondent no.1, respondent No.1 could not make any claim under the said bond for a sum of Rs.2.00 lacs since respondent no.1 had failed to prove any damages suffered because of the petitioner leaving the job before expiry of two years. In support of this submission, the learned counsel invited my attention to the affidavit in lieu of examination in chief filed by the witness examined by respondent no.1 and cross-examination. It is submitted that no documents in support of this claim for damages has been produced by the witness examined by respondent no.1, though there was deposition to that effect in the affidavit in lieu of examination in chief.

31. It is submitted by the learned counsel that the effect of clause 8, which was most crucial clause in the letter of appointment, has not been considered at all by the learned arbitrator in the impugned award. It is therefore, prayed that the entire award is vitiated. Award is based on no evidence and thus deserved to be set-aside on this ground alone.

32. Mr.Gupte, learned counsel for respondent no.1 at the

outset raised an issue that the petition itself was pre-mature in view of the fact that on the date of lodging of the petition, a signed copy of the award was not served upon the petitioner. It is submitted that in the affidavit in reply, initially filed in the proceedings, respondent no.1 had erroneously raised a plea of limitation contending that the petition was barred by law of limitation. The learned counsel invited my attention to the averments made in the second affidavit in reply i.e. dated 9th October, 2012 stating on record that during the pendency of this arbitration petition, the petitioner was served with the signed copy of the award. It is submitted that thus the petitioner ought to have carried out appropriate amendment to the petition or ought to have withdrawn the petition being pre-mature.

33. it is submitted by the learned counsel that though the letter of appointment is of 12th March, 2007, which is subsequent in point of time, the date of the bond agreement i.e. 8th March, 2007, the period of employment mentioned as two years in the bond agreement would prevail. It is submitted that the petitioner had executed the said document in favour of respondent no.1, the petitioner could not have left the employment of respondent no.1 for a period of two years. Since the petitioner had tendered resignation before expiry of two years, respondent no.1 having imparted the training to the petitioner, respondent no.1 was entitled to recover a sum of Rs.2.00 lakh from

the petitioner being in the nature of liquidated damages. It is submitted by the learned counsel that since the said amount was pre-estimated loss by both the parties in the bond agreement, respondent no.1 was not required to prove any actual loss suffered by respondent no.1 before the learned arbitrator for making such claim.

34. It is submitted by the learned counsel that the nature of the training imparted to the petitioner by respondent no.1 was part of the evidence deposed by the witness examined by respondent no.1. In support of the submission that the claim made by respondent no.1 was not in the nature of uncrystallized damages under section 73 of the Contract Act, the learned counsel invited my attention to the judgment of the Supreme Court in the case of *Chunilal V. Mehta & Sons Ltd. vs. Century Spinning & Manufacturing Co. Ltd.*, 1962 Supp (3) SCR 549 = AIR 1962 SC 1314 and in particular paragraph 11 thereof which reads as under :-

“11. A perusal of clause 14 clearly shows that the parties have themselves provided for the precise amount of damages that would be payable by the Company to the managing agents if the Managing Agency agreement was terminated before the expiry of the period for which it was made. The clause clearly states that the Managing Agent shall receive from the Company as compensation or liquidated damages for the loss of appointment a sum equal to the aggregate amount of the monthly salary of not less than Rs 6000 for and during the whole of the unexpired portion of the term of agency. Now, when parties name a sum of money to be paid as liquidated damages they must be deemed to exclude the right to claim an unascertained

sum of money as damages. The contention of learned counsel is that the words “not less than” appearing before “Rs 6000” in clause 14 clearly bring in clause 10 and, therefore, entitle the appellant to claim 10% of the estimated profits for the unexpired period by way of damages. But if we accept the interpretation, it would mean that the parties intended to confer on the managing agents what is in fact a right conferred by Section 73 of the Contract Act and the entire clause would be rendered otiose. Again the right to claim liquidated damages is enforceable under Section 74 of the Contract Act and where such a right is found to exist no question of ascertaining damages really arises. Where the parties have deliberately specified the amount of liquidated damages there can be no presumption that they, at the same time, intended to allow the party who has suffered by the breach to give a go-by to the sum specified and claim instead a sum of money which was not ascertained or ascertainable at the date of the breach. Learned counsel contends that upon this view the words “not less than” would be rendered otiose. In our opinion these words, as rightly pointed out by the High Court, were intended only to emphasise the fact that compensation will be computable at an amount not less than Rs 6000 p.m. Apparently, they thought it desirable to emphasise the point that the amount of Rs 6000 p.m. was regarded by them as reasonable and intended that it should not be reduced by the court in its discretion.”

35. In support of the submission that the petitioner was also imparted training, the learned counsel placed reliance on the certificate of participation awarded to the petitioner in attending Microsoft Dynamics TM AX 4.0 Trade of Logistics, training organized by Microsoft Gold Certified Partner during the period 30th April, 2007 till 5th May, 2007.

36. The learned counsel submits that it does not warrant any

interference under section 34 of the said Act with the arbitral award.

37. A perusal of record indicates that in the offer letter dated 27th January, 2007 the petitioner was offered the said job on probation for a period of six months and on his confirmation, subject to satisfactory completion of the probation. The petitioner and respondent Nos.2 and 3 executed a bond thereafter on 8th March, 2007 in favour of respondent no.1. A perusal of the said bond indicates that the petitioner was required to undergo specialized training course of his employment in order to enable him to perform his duties in the capacity as Associate ERP Consultant. It was recited in the said appointment letter that respondent no.1 had made all arrangements for provision of specialized training for its employees, including the petitioners at the considerable cost and expenditure to company. In this context the petitioners agreed that in the event of their not keeping the promise and leaving the employment of the company before the expiry of the said period of 24 months from the date of the petitioners commencing their employment with the company, they would make good the loss that may be suffered by the company by paying a sum of Rs.2.00 lakhs as a reasonable compensation.

38. A perusal of the letter of appointment which is subsequent in point of time, issued on 12th March,2007 however, indicates that if

after the expiry of six months, the petitioner was not issued any letter of confirmation, the petitioner would be continued on probation. Clause 8 of the said letter of appointment *inter-alia* indicates that both the parties were entitled to terminate the services by giving one month notice to another. Respondent No.1 could terminate the services of the petitioner on payment of one month consolidated salary and other admissible allowances in lieu of notice and vice versa the petitioner could resign from the service subject to giving one months notice in writing of his intention to do so. If the petitioner wanted to leave the service without notice, the petitioner had agreed to pay to the company the sum equivalent to one month consolidated salary and other admissible allowances to respondent no.1 or respondent no.1 was permitted to sue the petitioner for damages .

39. A conjoint reading of the appointment letter and the bond agreement indicates that there is inconsistency in the provision under the bond agreement and the appointment letter in respect of the period of service. Be that as it may, even if the bond agreement is allowed to be enforced, the terms and conditions of such bond are required to be satisfied before invocation of the said bond.

40. A perusal of the bond agreement clearly indicates that respondent no.1 had agreed to provide the specialized training to the petitioner at considerable costs and expenditure of the company. A

perusal of the record and more particularly the examination in chief filed by the witness examined by respondent no.1, clearly indicates that there was no provision made by respondent no.1 for specialized training for the petitioner. The petitioner was kept under the supervision of some of the superiors. According to respondent no.1, even the same would amount to specialized training. I am not inclined to accept this submission on behalf of respondent no.1.

41. A perusal of the cross-examination of the witness examined by respondent no.1 indicates that respondent no.1 when called upon to produce the time sheets to show that the seniors were sitting with the petitioner and giving support for understanding with the product, respondent no.1 did not produce such time sheets. In my view, respondent no.1 has failed to prove that any specialized training was given to the petitioner as prescribed under the said bond agreement.

42. Insofar as the compensation of Rs.2.00 lakhs claimed by respondent no.1 from the petitioner under the said bond agreement is concerned, in my view since respondent no.1 did not prove the compliance of the terms and conditions for invocation of the bond agreement, respondent no.1 could not have invoked the said bond.

43. Insofar as the submission of Mr.Gupte, the learned counsel for respondent no.1 that the claim made by respondent no.1

under the said bond agreement was in the nature of liquidated damages and thus respondent no.1 though had referred to some expenditure incurred in providing training to the petitioner, respondent no.1 was not required to prove any such loss / damages alleged to have been suffered by respondent no.1 is concerned, in my view, there is no merit in the submission of the learned counsel. In my view, if the loss is capable of calculation and being proved, it cannot be construed as liquidated damages.

44. A perusal of the affidavit in lieu of examination in chief, filed by the witness examined by respondent no.1, clearly indicates that it was the deposition of the witness that respondent no.1 had actually incurred expenditure of about Rs.2.00 lakhs in imparting the training to the petitioner. Though in the affidavit of evidence, the witness has categorically deposed that he was producing copies to show the expenses incurred by respondent no.1 in respect of the training, it is common ground that no such details were produced by the witness. In paragraphs 9 and 10 of the affidavit of evidence, the witness has referred to various heads under which respondent no.1 had alleged to have incurred the expenditure on the training of the petitioner. Since no documents were produced in support of such expenditure alleged to have been incurred, the learned arbitrator could not have awarded any amount of compensation, the same

having not been proved. A perusal of such deposition itself indicates that the alleged loss was capable of calculation and proof. Since respondent no.1 itself has proceeded on the premise and has agreed to produce the details of such expenditure and the proof and having failed to produce the same, it cannot be allowed to urge that the said claim was in the nature of the liquidated damages and thus no loss actually suffered was required to be proved.

45. Insofar as the judgment of the Supreme Court in *Chunilal V. Mehta & Sons Ltd. vs. Century Spinning & Manufacturing Co. Ltd.*, (supra) referred to and relied upon by Mr.Gupte is concerned, a perusal of the said judgment clearly indicates that the issue before the Supreme Court was whether a party who had agreed to recover the liquidated damages under section 74 of the Contract Act, could apply for unliquidated damages in spite of provision for liquidated damages in the contract. In that context, the Supreme Court held that if there was a provision for liquidated damages, a party could not apply for damages under section 73 of the Contract Act. In my view the said judgment is of no assistance to respondent No.1.

46. Insofar as the submission of learned counsel for respondent no.1 that Arbitration Petition No.466 of 2012 is premature in view of the copy of the signed award from the arbitrator had not been served upon the petitioner before filing of this petition is

concerned, a perusal of the affidavit in reply filed by respondent no.1 indicates that the stand taken by respondent no.1 was that the petition was barred by law of limitation and not that the petition was pre-mature. During the course of the argument, the learned counsel submits that the petition is not barred by law of limitation since a copy of the signed award from the arbitrator had admittedly not been served upon the petitioner. The learned counsel submits that though respondent no.1 filed additional affidavit in reply, no plea has been raised in the additional affidavit in reply that the petition was pre-mature. In my view this ground cannot be allowed to be urged at this stage. The said submission of the learned counsel is thus rejected.

47. Insofar as reliance placed by the learned counsel on the certificate of participation awarded to the petitioner by Microsoft Gold Certified Partner for attending Microsoft Dynamics TM AX 4.0 Trade of Logistics is concerned, a perusal of the said certificate does not indicate that the said so called training alleged to have been attended by the petitioner in Arbitration Petition No.466 of 2012 was in the nature of a specialized training as contemplated under the agreement bond. In my view, there is thus no merit in this submission of the learned counsel for respondent no.1.

48. In my view, the learned arbitrator has also overlooked the relevance and the effect of clause 8 of the letter of appointment which

if would have being considered by the learned arbitrator, he would have come to a different conclusion. The entire award is contrary to the terms of the contract and thus is in conflict with the public policy. I therefore, pass the following order :-

- i). Arbitration Petition No.466 of 2012 is allowed in terms of prayer clause (a). The impugned award dated 19th March, 2011 is set aside.
- ii). Arbitration Petition (Lodging) No.1150 of 2012 is allowed in terms of prayer clause (a). The impugned award dated 7th April, 2012 is set aside.
- iii). Arbitration Petition No.842 of 2012 is allowed in terms of prayer clause (a). The impugned award dated 11th February, 2012 is set aside.
- iv). There shall be no order as to costs.

(R.D. DHANUKA, J.)