

\$~54

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 26.05.2015

+ **FAO(OS) 290/2015**

**NATIONAL RESEARCH DEVELOPMENT
CORPORATION (NRDC)**

... Appellant

versus

**M/S ENJAYES SPICES & CHEMICAL OIL
LTD & ANR**

... Respondents

Advocates who appeared in this case:

For the Appellant : Mr R.V. Sinha and Mr R.N. Singh

For the Respondents : Nemo

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No. 9975/2015

The exemption is allowed subject to all just exceptions.

FAO(OS) 290/2015 and CM No. 9976/2015 (Delay in filing)

1. This appeal, which has been filed belatedly, is directed against the judgment dated 21.01.2015 delivered by a learned Single Judge of this

court in OMP No. 103/2013 which was a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act') in respect of the Award dated 29.09.2012 whereby the respondents had been asked to pay a sum of Rs 4,16,13,361/- together with interest @ 12 % per annum from the date of the award.

2. The learned Single Judge has set aside the award on the ground that the claim preferred by the appellant was clearly time barred. Since the issue of time bar went to the root of the matter, the provisions of Section 34 of the said Act were clearly applicable and the award has, accordingly, been set aside by the learned Single Judge.

3. It transpires that the appellant had acquired from the Council for Scientific and Industrial Research the absolute ownership of the knowhow of manufacture of "Spices Oleo Resins" developed by the Central Food Technology Research Institute, Karnataka (CFTRI). Mr N.S. John (respondent No. 2 herein) applied to the appellant (NRDC) on 31.01.1979 for the grant of licence to use the said technology and also for the right to use, exploit and practice the knowhow and the processes of manufacture of the Articles developed by CFTRI and to sell commercially, the articles so manufactured. As noted in the impugned judgment, after negotiations,

NRDC by an agreement of licence dated 17.03.1980 agreed to give a non-exclusive licence to Mr John for use of the knowhow to manufacture “Spices Oleo Resins”. In return Mr John had to pay premium and royalty which was to operate for a period of 14 years from the date of commencement of manufacture. The royalty was to be paid @ 1½ % on the net ex-factory sale price of the material manufactured by Mr John in accordance with the invention and marketed by him.

4. It appears that there was some correspondence exchanged between Mr John and NRDC during 1989-1990 with regard to the payment of royalty. In a response to NRDC, Mr John sent a letter on 21.07.1989 stating categorically as follows:-

"In this connection we may inform you that M/s Enjayes Spices and Chemical Oils Pvt. Ltd. have not received any technical know-how either from NRDC or from CFTRI and as such this company have not manufactured or marketed any product using that technical know-how."

Over 9 months later, on 08.02.1990, NRDC responded to that letter in the following manner:-

"Now we understand that you are manufacturing and marketing the above product successfully in the country and abroad. We would, therefore, request you to pay us the due royalty @ 1½ % on the net ex-factory sale value from the date of starting the production.

We hope, you will co-operate with us to avoid litigation in the matter.

Thanking you and looking forward for your cooperation."

To this, Mr John replied on 16.04.1990 as under:-

"Dear Sirs,

I am in receipt of your letter No. Royalty/NRDC/N-82 dated 8th February 1990 along with its enclosures.

As correctly pointed out by you, the agreement with you had been signed by me carrying on business under my own name and style as the sole proprietor thereof. Subsequently I had requested you either to change my address in the agreement as that of the company or transfer the agreement in the name of the company, but this was not done by you.

Further as is evident from the half-yearly royalty return for the period ending 30th September 1980, a photocopy of which has been enclosed with your letter under reference, the technology had not been completely transferred to me and as such the terms of the agreement with me have not been fulfilled by you.

Under the circumstances you will please appreciate that I have not manufactured or marketed any product using your technology and as such I am not liable to pay any royalty to you."

From the above correspondence, it is clear that Mr John had categorically stated that the technology had not been transferred to him completely and that as such the terms of the agreement with him had not been fulfilled by NRDC. It was also stated in clear terms that he had not manufactured or

marketed any product using NRDC's technology and, therefore, he was not liable to pay any royalty whatsoever.

5. For 14 years thereafter nothing was done by NRDC and it is for the first time in 2004 that the claim was preferred before the arbitral Tribunal. The case of NRDC, to counter the plea of limitation, was that a 'fraud' had been played by Mr John which was only discovered when the Spices Board in 2001 furnished to the NRDC the details of manufacture of "Spices Oleo Resins" by respondent No. 2. The learned Arbitrator in the said Award was impressed by this and came to the conclusion that NRDC discovered this "fraud" only in 2001 and, therefore, granted the benefit of the provisions of Section 17 (1)(b) of the Limitation Act, 1963 to NRDC.

6. On this aspect of the matter, the learned Single Judge held that the learned Arbitrator was completely wrong in holding that there was a 'fraud' when, in fact, NRDC had not even pleaded 'fraud'. We are in full agreement with the learned Single Judge on this aspect of the matter that unless and until fraud is specifically pleaded, no case of 'fraud' founded on vague allegations can be set up. In fact, there is not even any evidence to substantiate the plea of 'fraud'.

7. Another important aspect on the point of limitation is that the appellant claimed royalty for 14 years under the said licence agreement. Even as per the claim submitted by the appellant before the Arbitrator, the period of royalty was 1982 to 1996. In other words, the case as pleaded by the appellant was that royalty payments ought to have begun in 1982 and continued for a period of 14 years ending in 1996. Therefore, the limitation for preferring a claim based on this understanding could, if at all, have been filed within three years of 1996. The claim was filed much later in 2004. It was, therefore, patently barred by limitation.

8. We need not examine the other aspects of the matter because the claim itself, as has rightly been held by the learned Single Judge, is barred by limitation.

9. The appeal is dismissed on merits without even going into the question of whether there was any sufficient cause for condoning the delay in filing the appeal.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

MAY 26, 2015 / SU