

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No.105 of 1996

1. Food Corporation of India, through its Managing Director, 16/20, Bara Khamba Road, New Delhi
2. Regional Manager, Food Corporation of India, Chetak Building, Maharana Pratap Nagar, Bhopal
3. District Manager, Food Corporation of India, Madina Building, Jail Road, Raipur, Madhya Pradesh (now State of Chhattisgarh)

---- Appellants

versus

M/s Raza & Company, Mominpura, Raipur, Madhya Pradesh (now State of Chhattisgarh) through M.H. Raza, aged about 30 years, son of Late M.B. Raza, Contractor, Mominpura, Raipur

---- Respondent

Miscellaneous Appeal No.106 of 1996

1. Food Corporation of India, through its Managing Director, 16/20, Bara Khamba Road, New Delhi
2. Regional Manager, Food Corporation of India, Chetak Building, Maharana Pratap Nagar, Bhopal
3. District Manager, Food Corporation of India, Madina Building, Jail Road, Raipur, Madhya Pradesh (now State of Chhattisgarh)

---- Appellants

versus

M/s Raza & Company through S.H. Raza, 30 years, son of S.M. Raza, Mominpura, Raipur, Madhya Pradesh (now State of Chhattisgarh)

---- Respondent

Miscellaneous Appeal No.1029 of 1995

1. Food Corporation of India, through the Managing Director, New Delhi
2. The Food Corporation of India, through the Regional Manager, Bhopal
3. The Food Corporation of India, through the District Manager, Raipur

---- Appellants

versus

Raza & Co., Registered Firm, Mominpara, Raipur, Madhya Pradesh (now State of Chhattisgarh)

---- Respondent

and

Miscellaneous Appeal No.1030 of 1995

1. The Food Corporation of India, through the Managing Director, New Delhi
2. The Food Corporation of India, through the Regional Manager, Bhopal

3. The Food Corporation of India, through the District Manager, Raipur

---- Appellants

versus

Raza & Co., Registered Firm, Mominpara, Raipur, Madhya Pradesh
(now State of Chhattisgarh)

---- Respondent

For Appellants/FCI	:	Shri B.P. Gupta and Ms. Richa Jain, Advocates
For Respondent/Company:		Shri Anurag Verma, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

12.7.2016

1. At the outset, I am constrained to observe that it is indeed shocking that the arbitration proceedings, which commenced sometime in the year 1981 in two of the cases, have still to attain finality though 35 years have elapsed.
2. Since the factual matrix background of all the four appeals is same, they are being disposed of by this common order.
3. The Appellants/Food Corporation of India floated tenders in different years for transportation of food-grains, sugar, fertilizers, pulses etc. from its storages/godowns to other places/godowns within a distance of 300 Kms. Four contracts were entered into between the parties. The first contract was valid for the period from 15.10.1976 to 14.10.1978. The second contract was valid for the period from 19.9.1977 to 18.9.1979. The third contract was valid for the period from 19.9.1979 to 18.9.1981 and the fourth contract was valid for the period from 1.12.1979 to 30.11.1981. These contracts are being referred to as the first, second, third and fourth contracts, respectively. Claimant M/s Raza & Company, which is the Respondent herein in all the four appeals, was granted the contracts by the Food Corporation of India for handling and transportation of the food-grains etc. M/s Raza & Company filed two petitions under Section 20 of the Arbitration Act, 1940 (henceforth 'the Act of 1940')

raising disputes with regard to the third and fourth contracts. The petitions under Section 20 of the Act of 1940 were registered as Civil Suit No.24-B of 1989 and 23-B of 1989, respectively. In both the suits, on the prayer of the claimant, an Arbitrator was appointed, but the terms of reference clearly provided that the reference was in relation to the particular contracts, i.e., third and fourth contracts.

4. After reference was made to the Arbitrator to adjudicate the disputes arising out of the third and fourth contracts, claimant M/s Raza & Company filed claim petition before the Arbitrator. In the case filed before the Arbitrator relating to the third contract, the claimant also included some claim in respect of the first contract. Similarly, in the case filed before the Arbitrator relating to the fourth contract, the claimant also raised disputes which arose out of the second contract. The Arbitrator rightly held that he had no jurisdiction to entertain the disputes relating to the first and second contracts, since those disputes had not been referred to him by the District Judge and consequently, the Arbitrator held that he had no jurisdiction to adjudicate upon the dispute. He left it upon the claimant to file petition(s) under Section 20 of the Act of 1940 for adjudication of the said dispute(s). It was only after the Arbitrator had passed this order on 11.11.1991 that claimant M/s Raza & Company filed the petition under Section 20 of the Act of 1940 before the Learned District Judge on 8.1.1992. These applications were registered as Civil Suits No.77-B of 1995 and 78-B of 1995, which are the subject matter of Miscellaneous Appeals No.106 of 1996 and 105 of 1996, respectively. Before the Learned District Judge, an objection was raised by the Food Corporation of India that the disputes with regard to the first two contracts were wholly time-barred as the said contracts had come to an end in the years 1978 and 1979, respectively. It was urged that as per the terms and conditions of the contracts, an application for appointment of an Arbitrator had to be filed within one year. It was alternatively argued that the case

would be covered under Section 113 or 137 of the Limitation Act, 1963 and the maximum period of limitation would be three years. The Learned District Judge rejected the objection of the Food Corporation of India on two grounds, firstly, that it was a continuous cause of action and secondly, the cause of action arose out on 30.11.1981 when the Arbitrator refused to adjudicate upon the disputes.

5. It is contended by Shri B.P. Gupta, Learned Counsel appearing for the Appellants/Food Corporation of India that the judgment under challenge passed by the Learned District Judge is totally illegal.

Miscellaneous Appeals No.105 of 1996 and 106 of 1996:

6. As far as Miscellaneous Appeals No.105 of 1996 and 106 of 1996 are concerned, I have no hesitation in holding that the judgment of the Learned District Judge referring the dispute to Arbitrator is totally illegal and liable to be set aside.

7. Assuming for the sake of argument that the parties by agreement cannot abridge the period of limitation granted by law, then also an application for which no limitation has been prescribed must be filed within three years from the date of arising out of cause of action. The first two contracts ended in the years 1978 and 1979, respectively. Limitation expired in 1981 and 1982, respectively. Each contract gave rise to a separate cause of action. This fact was known to claimant M/s Raza & Company also because with regard to the other two contracts, i.e., the third and fourth contracts, it had filed two separate petitions. In fact, in the petitions filed under Section 20 of the Act of 1940 in respect of the third and fourth contracts, the claimant has clearly stated that the previous contracts had come to an end. Therefore, disputes, if any, should have been raised within three years of the contracts ending at the maximum. There is no concept of continuing cause of action in such a case. The

rights of the parties were determined when the contract came to an end and the parties should have been aware what was due from the other party. The Learned Trial Court totally misdirected itself in the eyes of law in a case like the present.

8. Furthermore, I am of the clear view that mere fact that the Arbitrator appointed in respect of the third and fourth contracts refused to entertain the claims in respect of the third and fourth contracts will not give rise to a fresh cause of action. The finding of the Arbitrator cannot give rise to a cause of action. The only finding of the Arbitrator is that he did not have jurisdiction to decide the disputes in question. Cause of action is a bundle of facts which gives right to a party to claim a legal right from the other party. The denial by the Arbitrator to exercise his jurisdiction on the ground that the matter was not referred to him does not constitute a fresh cause of action. Therefore, I have no hesitation in holding that the Learned District Judge totally misdirected himself in referring the disputes arising out of the first two contracts. These disputes have become belated by the time and should have been rejected on this ground.

Miscellaneous Appeals No.1029 of 1995 and 1030 of 1995:

9. As far as Miscellaneous Appeals No.1029 of 1995 and 1030 of 1995 are concerned, they are directed against the judgment of the Learned District Judge dated 17.11.1995 passed in Civil Suit No.69-B of 1995 and Civil Suit No.76-B of 1995, respectively, whereby the Learned District Judge has rejected the objections filed under Section 20 of the Act of 1940 on two grounds, firstly, that the objections had been filed beyond the period of limitation and secondly, that the Food Corporation of India had failed to show that the Arbitrator misdirected himself.

10. In Miscellaneous Appeal No.1029 of 1995, the Arbitrator, vide his award dated 21.10.1992, held the Food Corporation of India liable to pay

a sum of Rs.1,66,204.18 to claimant M/s Raza & Company and further held that the Food Corporation of India shall also pay interest @ 12% per annum from the date of the award to the claimant on the amount of award till full payment of the amount of award.

11. In Miscellaneous Appeal No.1030 of 1995, the Arbitrator, vide his award dated 21.10.1992, held the Food Corporation of India liable to pay a sum of Rs.1,91,741.25 to claimant M/s Raza & Company and further held that the Food Corporation of India shall also pay interest @ 12% per annum from the date of the award to the claimant on the amount of award till full payment of the amount of award.

12. The main ground raised by Learned Counsel for the Appellants/Food Corporation of India to challenge the judgment of the Learned District Judge and validity of the award passed by the Arbitrator is that the Arbitrator did not properly consider the counter-claim of the Food Corporation of India and thereby misconducted himself. It is secondly urged that the Learned District Judge erred in dismissing the objections on the ground of limitation.

13. I have gone through the award passed by the Arbitrator. It is a speaking award. The Arbitrator on the basis of the material available before him came to the conclusion that even when the claimant/contractor was doing his work, the Food Corporation of India did not pay him the running bills and, therefore, the claimant/contractor was forced to stop the work and it was found that the Food Corporation of India is at fault and as such liability to pay the amount of claim was fastened on the Food Corporation of India. Once the Food Corporation of India is found at fault, then obviously there could be no merit in its counter-claim. The finding that the fault lay with the Food Corporation of India is a pure finding of fact. This finding cannot be said to be an illegal finding. In this view of the matter, I am of the clear view that Miscellaneous Appeals No.1029 of

1995 and 1030 of 1995 preferred by the Food Corporation of India deserve to be and are accordingly dismissed.

14. In view of the above discussions, Miscellaneous Appeals No.105 of 1996 and 106 of 1996 filed by the Food Corporation of India are allowed. The impugned judgment dated 23.11.1995 and dated 23.11.1995 passed by the Learned District Judge in Civil Suit No.78-B of 1995 and in Civil Suit No.77-B of 1995, respectively are set aside. It is held that the petitions filed under Section 20 of the Act of 1940 were totally belated and are accordingly rejected. Miscellaneous Appeals No.1029 of 1995 and 1030 of 1995 are dismissed. No order as to costs.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE