

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No.833 of 1997

A) (i) Smt. Meera Tamrakar, W/o Late Rajkumar Tamrakar, aged about 45 years,

(ii) Abhishek Tamrakar, S/o Late Rajkumar Tamrakar, aged about 21 years,

All are R/o Kankalipara, Raipur, Tehsil and Distt. Raipur (C.G.)

B) Ashok Kumar Tamrakar, S/o Laxmi Prasad, age 40 years.

C) Dilip Kumar Tamrakar, S/o Laxmi Prasad, age 37 years.

D) Kishore Kumar Tamrakar, S/o Laxmi Prasad, age 30 years.

E) Smt. Sushila Bai Tamrakar, Wd/o Late Laxmi Prasad, age 60 years.

All R/o Kankalipara, Raipur, Distt. Raipur (C.G.)

F) Smt. Sandhya Tamrakar, W/o Sharad Tamrakar, D/o Late Laxmi Prasad, age 32 years, R/o Khairagarh, Distt. Rajnandgaon (C.G.)

G) Smt. Anju Tamrakar, W/o Kanhailal Tamrakar, S/o Late Laxmi Prasad, age 28 years, R/o Bada Bazar, Mungeli, Distt. Bilaspur

---- Appellants/
(Plaintiffs)

Versus

1. Lakhan Lal, S/o Har Prasad, aged about 60 years, Sub Division 1 Engineer, Bhilai Steel Plant, R/o Kankalipara, Raipur (C.G.)

2. Sanatram Dhruv, S/o Shri Khordehra Dhruv, R/o Gandhi Nagar, Lakhe Nagar, Raipur, Tah. & Distt. Raipur (C.G.)

---- Respondents/
(Defendants)

For Appellants No.A to E:	Mr. B.P. Sharma and Mr. Hari Agrawal, Advocates.
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For Appellants No.F & G:	Mr. Y.C. Sharma, Advocate.
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For Respondent No.1:	Mr. G.D. Vaswani, Advocate.
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For Respondent No.2:	Mr. Manish Upadhyay, Advocate.
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Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. ORDER

12/05/2016

1. Invoking the appellate jurisdiction of this Court under Section 39 (1)(vi) of the Arbitration Act, 1940 (for short 'the A. Act, 1940'), the appellants herein (legal representatives of original appellant Laxmi Prasad who died during the pendency of appeal) had preferred this appeal questioning the legality, validity and correctness of the impugned order dated 31-3-1997 passed by the District Judge, Raipur in Civil Suit No.2-B/1983 refusing to set aside the award thereby rejecting the application under Section 30 of the A. Act, 1940.
2. The aforesaid challenge has been made in the following factual background. Since the case has checkered history and this is the third round of litigation before this Court, facts necessary for adjudication of dispute are being noticed herein-below: --

Brief Facts

3. Original appellant Laxmi Prasad and respondent No.1, both are real brothers. On 30-8-1981, they entered into agreement to refer the dispute to the Arbitrators as per agreement Ex.A-1. Under this reference, certain properties were given in the jurisdiction of the Arbitrators and a note was appended to Ex.A-1 which states that the properties which are recorded as ancestral properties in revenue record or municipal record would only be

the subject-matter of reference. It appears from the record that another agreement was also executed between the parties on 30-8-1981 and a note was appended to this agreement also which states that apart from the above referred properties, if any property recorded in revenue record or municipal record is found to be ancestral property, same can be partitioned by the Arbitrators, as such by Ex.A-1 only ancestral property was to be partitioned while Ex.A-3 – properties which were found to be ancestral properties were also to be partitioned. On 22-3-1982, the Arbitrators passed award and supplied copies to the parties. On 31-1-1983, original appellant Laxmi Prasad filed an application under Section 14(2) of the A. Act, 1940 seeking a direction that the Arbitrators be directed to file the award dated 22-3-1982 before the Court. Respondent No.1 Lakhan Lal filed reply to the aforesaid application stating the same to be not maintainable and barred by limitation. The trial Court by its order dated 27-6-1983, rejected that application and held that the preliminary objection regarding limitation was not tenable which was challenged in civil revision before the High Court of Madhya Pradesh. The High Court of Madhya Pradesh by its order dated 10-1-1984, set aside that order and directed the original appellant to make an application under Section 5 of the Limitation Act, if so advised, and directed the Court below to consider the application on merits in accordance with law. By order dated 2-11-1985, the trial Court held that the application

under Section 14(2) of the A. Act, 1940 was hopelessly barred by time, but further held that since the award has already been filed in the Court, the case must proceed. Ultimately, the trial Court by its final order dated 30-7-1986 held that the award being in relation to immovable property worth more than Rs.100/- was required to be registered but the same continued to be unregistered and the award ought to have been passed within four months from the date of entering into reference as the same was not delivered within four months and no application under Section 28 of the A. Act, 1940 was filed for extension of time, the award is invalid. It was further held that the award was not written on a requisite stamp paper and the Arbitrators have misconducted during the arbitration proceeding and have gone beyond the scope of reference, the award suffers from uncertainty and shows misconduct of the Arbitrators. The above-stated order of the trial Court dated 30-7-1986 was challenged in Miscellaneous Appeal No.358/1986 before the High Court of Madhya Pradesh by respondent No.1. The High Court of Madhya Pradesh by its order dated 3-2-1995 set aside the said order of the trial Court and remanded the matter back to the trial Court for its fresh disposal in accordance with law giving liberty to respondent No.1 to file an application under Section 28 of the A. Act, 1940 for extension of time in making the award. The trial Court by its impugned order dated 31-3-1997, refused to set aside the award and further refused to make rule of the

court in absence of the prayer for making the rule of the court.

Findings of trial Court

4. The trial Court/learned District Judge by its impugned order refused to set aside the award by holding *inter alia*: --
 - i. That, the arbitrators have not misconducted themselves during the arbitration proceeding and made partition of the ancestral property as per the list submitted to them.
 - ii. That, the original appellant had participated in the arbitration proceeding willingly and has not raised any objection.
 - iii. That, the trial Court enlarged time in making the award invoking Section 28 of the A. Act, 1940.
 - iv. That, objection to the award filed on 23-6-1984 under Section 33 of the A. Act, 1940 was barred by limitation.
 - v. That, since respondent No.1 had not made any application for making the award as rule of the court and therefore non-registration of the award, if any, is inconsequential.
5. Feeling aggrieved against the order of the trial Court refusing to set aside the impugned award, the instant appeal under Section 39(1)(vi) of the A. Act, 1940 has been preferred by the original appellant on the grounds set-forth in the memorandum of appeal.
6. Challenge has been made to the impugned order on the grounds *inter alia* that the Arbitrators have misconducted during the arbitration proceeding, the trial Court has committed illegality in

holding that the objection to the award filed on 23-6-1984 is barred by limitation and no notice was issued to the original appellant under Section 14(2) of the A. Act, 1940 for raising objection and as such, the impugned order deserves to be set aside.

Submissions

7. Mr. B.P. Sharma and Mr. Y.C. Sharma, learned counsel appearing for the appellants, while questioning the impugned order would vehemently submit as under:-

(1) That, the trial Court did not issue any notice as mandated under Section 14(2) of the A. Act, 1940 to the appellant herein after filing of the award on 5-4-1983 before the Court and therefore the order of the trial Court holding their objection filed on 23-6-1984 under Section 33 of the A. Act, 1940 to be barred by limitation is unsustainable and bad in law. They placed reliance on the decision of the Supreme Court in the matters of **Union of India and another v. Deepak Electric and Trading Company and another**¹ and **Oil & Natural Gas Corpn. Ltd. v. Nippon Steel Corpn. Ltd.**² to bring home their submission.

(2) That, the Arbitrators appointed by the parties entered into reference on 30-8-1981 and as per clause 4 of the First Schedule enacted under Section 3 of the A. Act, 1940, being implied condition of the arbitration agreement, the arbitrators failed to make award within four months after the date of entering

1 (2012) 12 SCC 509

2 (2007) 2 SCC 382

on reference and the time for making the award was not extended by the Court and, therefore, the award being void is liable to be set aside, as the award was admittedly made only on 22-3-1982.

(3) That, seven arbitrators were appointed by the parties who had arbitrated to the dispute referred to arbitrators and since one of the arbitrators namely Horilal during the course of arbitration left for heavenly abode and therefore, in view of clause 2 of the First Schedule i.e. under the A. Act, 1940 implied condition of arbitration agreement, the number of arbitrators became even number i.e. six, then the arbitrators ought to have appointed an umpire not later than one month from the latest date of their respective appointments, as such, the award is liable to be set aside. They placed reliance upon the decision of the Supreme Court in the matter of **State of U.P. v. Combined Chemical Co. Pvt. Ltd.**³.

(4) That, Ex.A-1 is only the real arbitration agreement and Ex.A-3 is the forged one. Therefore, the act of the arbitrators to rely on forged agreement is a misconduct upon the arbitration during the arbitration proceeding. The Arbitrators have misconducted themselves by exceeding the terms of reference and acted beyond the scope by including the property other than the ancestral property.

(5) That, the arbitration award is not a registered award as per

3 (2011) 2 SCC 151

prevailing rules or under the provisions of the Indian Registration Act and by order dated 27-12-1987, registration of the award has been refused though the order for payment of stamp duty was passed. Therefore, the award cannot be registered in absence of challenge to order dated 27-12-1987.

8. Mr. G.D. Vaswami, learned counsel appearing for respondent No.1, while opposing and countering the submissions made on behalf of the appellant(s) would submit as under: -

(1) That, the arbitration award was filed by the Arbitrators before the trial Court on 5-4-1983 and on 20-4-1983, the trial Court declared that the award has been filed on 4-4-1983 and the period of 30 days that is up to 5-5-1983 no proceeding would be taken-up and thereafter, the original appellant having constructive notice of filing of the award, promptly filed his detailed objection under Section 30 of the A. Act, 1940 running into several pages on 4-5-1983 which has been duly considered by the trial Court and the objection dated 4-5-1983 to the award has been rejected by the trial Court on merits. He would additionally submit that the appellant herein filed an additional objection under Section 33 of the A. Act, 1940, on 23-6-1984 which was admittedly barred by limitation, as the appellants had no additional right to file additional objection beyond the period of 30 days and therefore the trial Court has rightly held the additional objection dated 23-6-1984 to be barred by limitation. He would further submit that the appellant's objections to the

award taken on 4-5-1983 have been considered on merits, now it cannot lie in the mouth of the appellants to argue on the question of limitation that they had no notice of filing of award under Section 14(2) of the A. Act, 1940 and therefore, the award be set aside.

(2) That, the first arbitration agreement was entered into on 30-8-1981 and thereafter, second reference was made by Ex.A-3, the original appellant had voluntarily and without any objection took part in the arbitration proceeding, and as such, after passing of the award he had not taken any such objection before the trial Court that the award was not passed within a period of four months as required under clause 4 of the schedule enacted under Section 3 of the A. Act, 1940. He would further submit that in M.A.No.358/1986, the High Court of Madhya Pradesh in an appeal preferred by the respondent in paragraph 9 of its judgment has clearly held that the arbitrators would be entitled to exercise their authorities under the both reference agreements. He would also submit that the trial Court in exercise of power conferred under Section 28 of the A. Act, 1940 had enlarged time in making the award, as the trial Court has power to extend the time even after passing the award and therefore, the award on that count is unexceptionable and objection to this count deserves to be rejected.

(3) That, the appellant herein did not raise any objection based on clause 2 of the First Schedule of the A. Act, 1940 before the

trial Court in objection raised under Section 30 of the A. Act, 1940 stating that one of the arbitrators Horilal died during the pendency of the arbitration proceeding, therefore, an umpire ought to have been appointed by the arbitrators within one month from the date of their respective appointment as they had become even number of arbitrators (six). Therefore, the appellants cannot be permitted to raise such an objection at this stage by taking respondent No.1 at surprise and even otherwise, such a question is based upon the facts and cannot be permitted to be raised for the first time before this Court.

(4) That, parties have entered into two references one on 30-8-1981 and second vide Ex.A-3, both have rightly been entered into and which have been found in favour of respondent No.1 in M.A.No.358/1986 by the M.P. High Court on 3-2-1995 and also referred to the decision of that Court in the aforesaid M.A. holding that the award has not created any rights to the parties then it was not compulsorily registrable as the original appellant and respondent No.1 were joint owners of the property, then obviously, the award will not create any right and it was not compulsorily registrable.

(5) That, though the award was made within the time as provided in clause 3 of the First Schedule enacted under Section 3 of the A. Act, 1940, yet the trial Court in exercise of power conferred under Section 28 of the said Act had enlarged the time in making the award which is a discretion exercised by the trial

Court and which need not be interfered with in exercise of appellate jurisdiction under Section 39 of the A. Act, 1940, as the direction has been exercised properly and in accordance with law.

9. I have heard learned counsel for the parties and given thoughtful consideration to the submissions made herein and also gone through the record with utmost circumspection.

10. The following questions would emerge for consideration:-

- (i) Whether the trial Court is unjustified in holding the objection of the appellant filed under Section 33 of the A. Act, 1940 to be barred by limitation?
- (ii) Whether the trial Court is justified in enlarging the time in making the award in exercise of powers under Section 28 of the A. Act, 1940?
- (iii) Whether the appellant(s) can be permitted to raise a new plea based on clause 3 of the First Schedule enacted under Section 3 of the A. Act, 1940 for the first time in appeal?
- (iv) Whether the finding of the trial Court with regard to arbitration agreement Ex.A-3 is perverse?
- (v) Whether the finding of the trial Court with regard to registration is perverse and liable to be set aside?

Discussion Re. Question No.1: -

11. It is not in dispute that in an application filed by the original appellant under Section 14(2) of the A. Act, 1940, the award was filed by the arbitrators before the Court on 5-4-1983 which was duly recorded in the order sheet of the trial Court dated 20-4-1983 and the learned District Judge adjourned the proceeding for one month declaring that the award has been filed on 5-4-1983 and therefore for 30 days up to 5-5-1983, no proceeding

will be taken-up and fixed the case for 20-6-1983. Order dated 20-4-1983 states as under: -

एवार्ड दिनांक 05.04.1983 को प्रेषित हुआ है। तीन दिन की अवधि 05.05.1983 को समाप्त होगी तब तक इस प्रकरण में आगामी का ग्वाही नहीं होगी।

प्रकरण दिनांक – 20.06.1983

Thereafter, the original appellant and respondent No.1 herein appeared through their respective counsel on 4-5-1983 before the trial Court (during summer vacation) and filed their objections to set aside the award. Order dated 4-5-1983 states as under: -

04.05.1983

वादी एवं प्रतिवादी के अभिभाषको ने आपत्ति पेश की।
न्यायाधीश महोदय अवकाश पर है।

पेशी दिनांक 20.06.1983

12. The objection filed by the original appellant to the award on 4-5-1983 clearly states to be objection to the award of arbitrators under Section 30 of the A. Act, 1940 by the original appellant Laxmi Prasad and it runs into five pages. These objections raised were duly considered by the trial Court on its merits regarding that the arbitrators have misconducted during the arbitration proceeding and the award is vitiated for non-compliance of the schedule appended to the A. Act, 1940, as it has not been passed within four months from the date of entering into reference etc.. The appellant was not satisfied with the objections to the award raised on 4-5-1983 under Section 30 of the A. Act, 1940 and further filed additional objections under

Section 33 of the said Act before the trial Court on 23-6-1984 which states as under: -

“The applicant having dis-satisfied with the award dated 22-3-1982 delivered by Arbitrators objects to the validity of award on following grounds besides the grounds urged in previous application.”

This objection runs into four pages taking ten objections to the validity of the award.

13. The trial Court has considered the objections raised by the appellant on 4-5-1983 in the impugned order on merits, but so far as the additional objections raised on 23-6-1984 are concerned, same have been held to be barred by limitation filed beyond the period of thirty days from the date of notice of filing the arbitration award under Article 119(a) of the Limitation Act, 1963.

14. Learned counsel for the appellants have submitted that since there is no notice issued by the Court under Section 14(2) of the A. Act, 1940 to the original appellant, the objections raised on 23-6-1984 which have been held to be time barred is unsustainable and deserves to be set aside, as the trial Court ought to have issued specific notice to the appellant under Section 14(2) of the A. Act, 1940 that the award has been filed and therefore the finding recorded by the trial Court holding the objections to be barred by limitation deserves to be set aside.

Section 14(2) of the A. Act, 1940 states as under: -

“14. Award to be signed and filed.—(2) The arbitrators or umpire shall, at the request of any

party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.”

15. Article 119(a) of the Limitation Act, 1963 provides as under: -

119. Under the Arbitration Act, 1940 (10 of 1940),—

(a) for the filing in Thirty days The date of court of an award service of the notice of the making of the award.

16. In a decision relied upon by the appellants herein in **Oil & Natural Gas Corpn. Ltd.** (supra), Their Lordships of the Supreme Court after discussing all the judgments operating in the field have held that notice in terms of Section 14(2) of the A. Act, 1940 regarding filing of award must be given to the parties by some act of the court and till the date this mandatory provision is complied with, period of limitation to file objections to the award would not start to commence. Paragraphs 16 and 27 state as under: -

“16. In the above background, the following substantial questions of law arise for consideration by this Court:

1. Whether the High Court was justified in extending the principle of constructive notice to the facts of the present case ignoring the express stipulations of [Section 14\(2\)](#) of the Arbitration Act, 1940?

2. Whether the High Court was justified in ignoring the fundamental difference between the

two expressions i.e. date of service of notice and date of knowledge of award?

3. Whether the High Court was justified in overlooking the legislative intent in framing [Article 119\(b\)](#) of the [Limitation Act](#) by incorporating the expression "the date of service of notice"?

4. Whether in view of the exhaustive nature of [Article 119\(b\)](#) of the [Limitation Act](#), the High Court was justified in importing the principle embodied in Order 3 Rule 5 of the Code of Civil Procedure?

5. Whether the High Court has failed to appreciate the significance of the expression "the court shall thereupon give notice to the parties of filing of the award" occurring in [Section 14\(2\)](#) of the Arbitration Act, 1940?

6. Whether the High Court was justified in overlooking that the presumption of constructive notice can be drawn only against the party whom the counsel is representing at the time of performing the said act?

We have given our careful consideration to the entire material placed before us, the arguments advanced by both sides with reference to the pleadings, annexures, documents, provisions of law in the [Indian Arbitration Act](#), 1940 and of the [Limitation Act](#), 1963 and the rulings cited by both the counsel.

27. We shall now consider the decisions cited by learned ASG in support of his contention:

1. [Kumbha Mawji v. Union of India](#)⁴

In this case, this Court was considering the authority of the umpire to file the award on behalf of the appellant into court in terms of [Section 14\(2\)](#) of the Arbitration Act. This Court held that [Section 14\(2\)](#) clearly implies that where the award or a signed copy thereof is in fact filed into court by a party he should have the authority of the umpire for doing so. This Court further held as under: (SCR p. 878)

"The mere filing of award in court by a party to it without the authority of the arbitrator or umpire is not a sufficient compliance with the terms of Section 14 of the [Indian Arbitration Act](#), 1940, nor can it be inferred from the

4 1953 SCR 878 : AIR 1953 SC 313

mere handing over of the original award by the umpire to both the parties that he authorized them to file the same in court on his behalf; that authority has to be specifically alleged and proved."

2. Nilkantha Shidramappa Ningashetti v. Kashinath Somanna Ningashetti⁵

In this case, in a partition suit the Arbitrator filed his award in the court and the judge adjourned the case for "the parties' say to the arbitrator's report". No notice in writing was given to the parties by the court of the filing of the award. Objection to the award was filed by the appellant beyond the period of limitation. The Court ordered the award to be filed and decree to be drawn up in terms of the award as the objection filed was beyond the period of limitation. The appellant's case was that the period of limitation as under [Article 158 of the Limitation Act](#), for an application to set aside the award, would run against him only from the date of service of the notice in writing was issued by the court to the appellant, the time never began to run against him. The appellant also contended that as the court had refused to set aside the award the appeal was maintainable under Section 39(1)(vi) of the Arbitration Act. This Court held as under: (SCR p. 551)

"[T]hat the communication by the court to the parties or their counsel of the information that an award had been filed was sufficient compliance with the requirements of sub-section (2) of Section 14 of the [Arbitration Act](#), with respect to the giving of the notice to the parties concerned, about the filing of the award. Notice does not necessarily mean 'communication in writing'. The expression 'give notice' in sub-section (2) of Section 14 of the [Arbitration Act](#) simply means giving intimation of the filing of the award. Such intimation need not be given in writing and could be communicated orally. That would amount to service of notice when no particular mode of service was prescribed.

Held, further that where there was no objection before the court praying for setting aside the award, no question of refusing to

5 (1962) 2 SCR 551 : AIR 1962 SC 666

set it aside could arise, and no appeal therefore was maintainable under Section 39(1)(vi) of the Arbitration Act."

3. [Parasramka Commercial Co. v. Union of India](#)⁶

In this case, the appellant entered into a contract with the Union of India and the matter was referred to arbitration. The award was made and signed on 26-4-1950. The arbitrator did not send a notice of the making and signing of the award but sent a copy of the award signed by him to the company which acknowledged the receipt of the copy by letters dated 5-5-1950 and 16-5-1950. The appellant filed an application under [Section 14\(1\)](#) of the Arbitration Act in the trial court on 30-3-1951, for making the award rule of the court. The respondent took an objection before the trial court that the application was beyond time as it was not filed within 90 days of the receipt of notice that the award had been made and signed. The trial court upheld the objection and dismissed the application and the High Court, in revision, confirmed it. The Company appealed to this Court with special leave. It was contended that the notice under [Section 14\(1\)](#) had to be something besides the award of which a copy had been sent. This Court held as under: (SCC p. 695)

"[T]hat reading the word 'notice' it denotes merely an intimation to the party concerned of a particular fact. Notice may take several forms. It must be sufficient in writing and must intimate quite clearly that the award has been made and signed. In the present case, a copy of the award signed by the arbitrator was sent to the company. The company had sufficient notice that the award has been made and signed. In fact the two letters of May 5 and May 16 quite clearly show that the Company knew full well that the arbitrator had given the award, made it and signed it. In these circumstances to insist upon a letter which perhaps was also sent, it is to refine the law beyond the legitimate requirements. The only omission was that there was no notice of the amount of the fees and charges payable in respect of arbitration and award.

6 (1969) 2 SCC 694

But that was not an essential part of the notice for the purpose of limitation. A written notice clearly intimating the parties concerned that the award has been made and signed certainly starts limitation. The decision of the learned Single Judge who has endorsed the opinion of the Subordinate Judge that limitation began to run from the receipt of the copy of the award which was signed by the arbitrator and which gave due notice to the party concerned that the award had been made and signed is upheld. That is how the party itself understood when it acknowledged the copy sent to it. Therefore, the application must be treated as being out of time."

4. [Indian Rayon Corpn. Ltd. v. Raunaq and Co. \(P\) Ltd.](#)⁷

This Court in the above matter held: (SCC p. 31)

"In order to be effective both for the purpose of obtaining the judgment in terms of the award and for setting aside the award, there must be (a) filing of the award in the proper court; (b) service of the notice by the court or its office to the parties concerned; and (c) such notice need not necessarily be in writing. It is upon the date of service of such notice that the period of limitation begins and at present under clause (b) of [Article 119](#) of the [Limitation Act](#), the limitation expires on the expiry of the 30 days of the service of that notice for an application for setting aside of the award. It is the service of the notice and not the mode or method of the service that is important or relevant. Beyond this there is no statutory requirement of any technical nature under [Section 14\(2\)](#) of the Act. The expression 'give notice' in [Section 14\(2\)](#) simply means giving intimation of the filing of the award. Such intimation need not be given in writing and could be communicated orally or otherwise."

5. [Food Corpn. of India v. E. Kuttappan](#)⁸

In this case, this Court held as under: (SCC pp. 450-51, para 10)

7 (1988) 4 SCC 31

8 (1993) 3 SCC 445

"[W]hen the arbitrator had sent the award and other papers to the respondent through his counsel, unless he had authorized the respondent or his counsel on his behalf to the filing of it in court, it cannot be assumed that when the respondent or his counsel filed the award and other connected papers in court it was not done for and on behalf of the arbitrator. Instantly it was the respondent who by his letter had requested the arbitrator to send to his lawyer the award for filing it into court and to whom the arbitrator obliged on such request. ... when the arbitrator chose to accede to the request of the respondent in specific terms, he by necessary implication authorized the respondent's counsel to file the award and the connected papers in court on his behalf. The law enjoined on the arbitrator to file the award in court for which purpose he could even be directed by the court. The obligation of filing the award in court is a legal imperative on the arbitrator. The agency of the party or its lawyer employed by the arbitrator for the purpose normally need be specific but can otherwise be deduced, inferred or implied from the facts and circumstances of a given case. It needs, however, shedding the impression that when a lawyer files the award in court when given to him by the arbitrator, his implied authority to do so shall not be presumed to exist. In the instant case, no one raised the plea that the filing of the award in court by the respondent's lawyer was without the authority of the arbitrator and the courts below were not engaged on that question. The matter was agitated on the basis of knowledge of award from that fact."

6. [Patel Motibhai Naranbhai v. Dinubhai Motibhai Patel](#)⁹

In the above case, this Court held thus: (SCC pp. 588-89, paras 9-10)

"9. Under sub-section (2) of [Section 14](#), a duty is cast upon the arbitrator to file the award or cause the award to be filed in the court at the request of the party to the arbitration agreement or if so directed by the

9 (1996) 2 SCC 585

court. There is no provision which requires the arbitrator to apply to the court for filing of the award and pass a decree in terms of the award. An application for filing the award in court has to be made within thirty days from the date of service of the notice of making of the award under [Article 119](#) of the [Limitation Act](#). Even if it is held that [Article 119](#) will apply only to an application made by a party and not by the arbitrator, [Article 137](#) will come in the way of the arbitrator's making any application beyond the period of three years from the date of making of the award.

10. Faced with the situation that an application for filing the award in court under [Section 14\(2\)](#) of the Arbitration Act has become barred by limitation, Jayantikumar Ishwarbhai Patel induced the Arbitrator to make an application for filing of the award and also for making the award the rule of the court. In other words, Jayantikumar Ishwarbhai Patel, a party to the dispute, with the help of the Arbitrator, did indirectly what he could not have done directly. We are of the view that law cannot be allowed to be circumvented in this fashion. The court should have declined to entertain the application moved by the arbitrator nearly six years after making of the award. Without the application of the arbitrator, the application made by Jayantikumar Ishwarbhai Patel under [Section 14\(2\)](#) could not survive. The court should not come to the aid of a party where there has been unwarrantable delay in seeking the statutory remedy. Any remedy must be sought with reasonable promptitude having regard to the circumstances."

7. [Secy. to Govt. of Karnataka v. V. Harishbabu](#)¹⁰

In the above case, this Court held thus: (SCC pp.410-11, para 21)

"We also do not find any merit in the submission of the learned counsel for the respondent that the endorsement made by the Government Pleader on 24-6-1993 on the award which was then filed by the arbitrator in the court would amount to a notice under [Section 14\(2\)](#) of the Act. The endorsement

made by the Additional Government Pleader on 24-6-1993 can at best be construed as a notice issued by the arbitrator under [Section 14\(1\)](#) of the Act and such a notice, as we have already observed, is not a substitute for a notice which is mandatorily required to be issued by the court and served upon the parties regarding the filing of the award under [Section 14\(2\)](#) of the Act. The trial court, therefore, fell in error in opining that 'admittedly he has not filed any objections within 30 days from the date of the filing of award by Respondent No.3 before this Court and there are no other impediments as such to deny the relief sought for by the petitioner'. The period of limitation, for filing the objections to the award as we have already noticed, does not commence from the date of filing of the award by the arbitrator in the court and that period would only commence from the date of service of the notice issued by the court under [Section 14\(2\)](#) of the Act. The High Court also fell in error in observing that the appellant could not be heard to say that he had no knowledge of the filing of the award in the court prior to 13-7-1993 on the ground that 'the Additional Government Pleader representing Respondents 1 and 2 before the court below had taken notice of the filing of the award by the arbitrator on 24-6-1993'. There is nothing on the record to show that any such notice was issued by the court regarding the filing of the award. The endorsement made by the Additional Government Pleader on the award which was later on filed by the arbitrator in the court, did not relieve the court of its mandatory obligation to issue the notice, orally or in writing, to the appellant or its counsel to file the objections, if any, to the award. The endorsement made by the Additional Government Pleader is of no consequence insofar as the issuance of notice by the court under [Section 14\(2\)](#) is concerned. Computing the period of 30 days with effect from 13-7-1993 no award could be made a rule of the court before the expiry of the period of 30 days from that date. Not filing of any objections to the memo by 31-7-1993, could

not take away the statutory right of the appellants to file objections to the award within a period of 30 days commencing from 13-7-1993. Under these circumstances, the order of the trial court as well as the impugned order dated 12-7-1995 of the learned Single Judge of the High Court cannot be sustained and the same are hereby set aside. This appeal consequently succeeds and is allowed."

8. Ch. Ramalinga Reddy v. Superintending Engineer¹¹ (three Judges)

In this case, this Court held thus:

"3.The award was made on 29-7-1985. It was sent by the arbitrator to the Court on 31-7-1985 and was received by the Court at 12 noon on 5-8-1985. It is the case of the appellant that his advocate informed the Additional Government Pleader in writing of the receipt of the award on 5-8-1985. On 7-8-1985, the Court issued notice of the award and it was received by the respondents on 10-8-1985. The petition to challenge the award was filed by the respondents on 6-9-1985.

* * *

6. Section 14(1) of the Arbitration Act, 1940, requires arbitrators or umpires to give notice in writing to the parties of the making and signing of the award. Section 14(2) requires the court, after the filing of the award, to give notice to the parties of the filing of the award. The difference in the provisions of the two sub-sections with respect to the giving of notice is significant and indicates clearly that the notice which the court is to give to the parties of the filing of the award need not be a notice in writing. The notice can be given orally. (See Nilkantha Sidramappa Ningashetti v. Kashinath Somanna Ningashetti.) In Indian Rayon Corpn. Ltd. v. Raunaw and Co. (P) Ltd. it was held that the fact that parties have notice of the filing of the award is not enough. The notice must be served by the court. There must be (a) filing of the award in the proper court; (b) service

of the notice by the court or its office to the parties concerned; and (c) such notice need not necessarily be in writing. It is upon the date of service of such notice that the period of limitation begins for an application for setting aside the award.

* * *

9. It will be noted that it was held that it did not lie in the mouth of the party who had filed the award in court through his advocate to contend that he did not have knowledge of the filing of the award and he could not contend that it was only the subsequent date upon which the Court issued notice that was the starting point of limitation. This judgment, as the passage quoted indicates, does not in any way dilute what was laid down in the cases of Nilkantha Sidramappa Ningashetti and Indian Rayon Corpn. Ltd., indeed, it could not, for those were decisions of a larger and a coordinate Bench, respectively. The judgment holds only that a party who has filed the award in court through his advocate is estopped from contending that, so far as he is concerned also, the period of limitation to challenge the award begins only when the court issues notice in respect of its filing. The ratio of the judgment has, therefore, no application to the facts of the case before us."

9. Deo Narain Choudhury v. Shree Narain Choudhury¹²

In the above judgment, this Court held that notice regarding filing of the award must be some act of court even though it need not be in writing but intimation by the arbitrator is not sufficient for the purpose of [Section 14\(2\)](#). Dismissing the appeal, this Court held that the period of limitation under [Article 119](#) of the [Limitation Act](#), 1963 will start running from the date on which the notice has been given by the court under [Section 14\(2\)](#) of the Act. This Court in para 16 held thus: (SCC p. 630)

"16. There can be no dispute with the proposition of law that the notice need not be in writing and can be oral. However, all the authorities clearly lay down that the notice must be some act of the court. The

proposition that a notice must be by the court is also confirmed by an authority of this Court in [Ch. Ramalinga Reddy v. Superintending Engineer](#)¹³. In this case it has been held that mere intimation by an Arbitrator is not sufficient and it is the court which has to give notice.

10. [East India Hotels Ltd. v. Agra Development Authority](#)¹⁴

In this case, this Court held thus: (SCC p. 179, para 9)

"9. From a perusal of the above provision, shorn of unnecessary details, it is clear that notice under sub-section (2) of [Section 14](#) of the Act need not be in writing and that it can also be oral. What is essential is that there must be service of notice or intimation or communication of the filing of the award to the parties, mode of service of such a notice being immaterial. But such information, communication and knowledge must be by or pursuant to an order of the court. However, after filing of an award by the arbitrator or the umpire in the court, if it merely records the presence of the parties or their counsel but does not indicate that notice of filing of the award be given to the parties, no service of notice can be attributed from that fact, as notice must be referable to an act of the court."

11. [Bharat Coking Coal Ltd. vs. L.K. Ahuja](#)¹⁵

In this case, this Court held thus: (SCC p. 110)

"If there is no material to show that a notice of filing of the award has ever been given to the parties, any period of limitation as prescribed in [Article 119\(b\)](#) loses its significance. The law is clearly to the effect that mere knowledge of passing of an award is not enough. The period of limitation will commence as provided in [Article 119\(b\)](#) of the [Limitation Act](#) only upon notice as to filing of the award in the court being given to the parties concerned.

In the present case the situation has arisen

13 (1999) 9 SCC 610

14 (2001) 4 SCC 175

15 (2004) 5 SCC 109

with very special features. The Supreme Court made an order appointing a new arbitrator who was directed to file an award in the Court and he submitted the award in court after publishing the same to the parties. Though on 18-2-2002 the Registry notified the submission of the award in court by way of an office report, but the same cannot be treated to be in the nature of a notice. The noting made by the Registry in the office report merely brought to the notice of the Court as to what had transpired and as the matter was being listed before the Court, a copy was served upon the parties concerned. It is only thereafter it can be said that the Court directed issue of notice to the parties regarding filing of the award which has been sent by the Registry. The Registry on its own could not have issued a notice without a direction from the Court in this regard. Therefore there was no notice of filing of the award in the Court to the parties as contemplated in [Article 119\(b\)](#) of the [Limitation Act](#). Further, on 11-3-2002 when the matter was listed before the Court, the parties concerned took notice of the same and thereafter, objections have been filed by the parties on 11-4-2002. The plea based on limitation is therefore liable to be rejected."

17. If the facts of the present case are examined in light of the principles laid down by Their Lordships of the Supreme Court in aforesaid cases, it would be quite vivid that in the present case, the trial Court by its order dated 20-4-1983 declared that the award has been filed on 5-4-1983 and period of 30 days would expire on 5-5-1983 and till date no proceeding will be taken-up and fixed the case for 20-6-1983. The appellant having constructive notice of filing of award by the declaration of the Court rightly filed objection under Section 30 of the A. Act, 1940 before the trial Court on 4-5-1983 during summer vacation running into several pages which was duly considered by the trial Court on merits and two issues on them have been formulated

and they have been answered in negative which has also been challenged by the appellants in this miscellaneous appeal on its own merit. The appellant having filed specific objection under Section 30 of the A. Act, 1940 and objections so filed to the validity of award having been duly considered by the trial Court on merits and in previous round also by this Court, now it does not lie in the mouth of the appellant to say that he had no notice and the Court has not issued any notice to him. The position would be different if after declaration of the court dated 20-4-1983, the appellant could not have filed objections to the validity of award by express declaration of the court, which is an express act of the court. The appellant did file his objections right in time within 30 days and even during summer vacation and before the date fixed for hearing on 20-6-1983 noticing that 30 days period would be expiring on 4-5-1983 as provided in Article 119(a) of the Limitation Act, 1963 and those objections having been considered by the learned District Judge clearly on merits which is open to challenge and has also been challenged and which is being considered in this appeal also. Merely because the appellant's subsequent additional objection filed on 23-6-1984 has been held to be barred by limitation, the appellant is not entitled to urge that the trial Court had not issued any notice in terms of Section 14(2) of the A. Act, 1940. The declaration made by the Court on 20-4-1983 is clearly an act of the court as contemplated under Section 14(2) of the A. Act, 1940 and by

that, the appellants took notice and promptly and rightly filed objection before the trial Court raising legally permissible objections regarding validity of the award under Section 30 of the A. Act, 1940 which has also been considered by the trial Court. The trial Court has rightly rejected the additional objection raised by the appellant on 23-6-1984 holding barred by limitation, as the objections raised subsequently by application under Section 33 of the A. Act, 1940 dated 23-6-1984, which was additional objections, were beyond the period of limitation described under Article 119(a) of the Limitation Act, 1963 for filing objections to set aside the award. Therefore, the finding recorded by the trial Court in this regard holding objection / application under Section 33 of the A. Act, 1940 to be barred by limitation is valid and in accordance with law and no interference is called for in exercise of appellate jurisdiction under Section 40 of the A. Act, 1940. This question is answered accordingly.

Discussion Re. Question No.2: -

18. In order to answer this question, clause 3 of the First Schedule i.e. implied condition of arbitration agreements enacted under Section 3 of the A. Act, 1940 deserves to be noticed which provides as under: -

“3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.”

19. A careful reading of Section 3 of the A. Act, 1940 read with

clause 3 of the First Schedule would show that the arbitrators shall make an award within four months from the date after entering on reference. The arbitration proceeding consists of two stages. One such stage consists of mainly ministerial acts while the second stage consists of effective adjudicative acts in furtherance of the work of arbitration, namely of proceedings to decide the controversies between the parties, whether arising out of the main dispute or procedural aspects in the disposal thereof. The arbitrator cannot be said to have entered on the reference unless the second stage can be said to have reached someway or the other. It is only when the arbitrator first applies his mind to the dispute referred to him that he enters on the reference.

20. The Madhya Pradesh High Court in the matter of **Ramsahai v. Harishchandra**¹⁶ has pointed out that it is always a question of fact on what date an arbitrator or umpire may be said to have entered upon the reference, and is to be answered in accordance with the circumstances of each case. It is not necessarily the date on which the arbitrator has before him the versions of the different parties of the subject matter of the controversy in the form of written statements or affidavits or oral depositions, though immediate entry on the reference is not inconceivable. It would be the date on which the arbitrator or the umpire does the first judicial act in connection with the

16 AIR 1963 MP 143

controversy referred to him, by way of examining witnesses, hearing arguments and the like.

21. In the present case, the arbitration agreement is dated 30-8-1981 (Ex.A-1) and thereafter, parties willingly participated in the arbitration proceeding till the award is passed by the arbitrators on 22-3-1982 without demur. It has also to be noticed that willingness to participate in the arbitration proceeding was without protest which can be gathered from the fact that when the original appellant raised objection under Section 30 of the A. Act, 1940, no such objection based on clause 3 of the First Schedule was raised before the trial Court. Only when the second objection was filed as late as on 23-6-1984, then only objection based on this ground was raised.
22. In the first round of litigation, the award was set aside by the trial Court which was challenged before the High Court of Madhya Pradesh in M.A.No.358/1986 and while setting aside the order passed by the trial Court dated 30-7-1986, the M.P. High Court granted liberty to the party concerned to make an application under Section 28 of the Act to enlarge the time in making the award. At this stage, it would be appropriate to notice relevant decisions on the issue of enlargement of time in making award under Section 28 of the A. Act, 1940.
23. In the matter of **State of Punjab v. Hardyal**¹⁷, Their Lordships of the Supreme Court have held that power to extend time for

17 AIR 1985 SC 920

making award can be exercised even by appellate court and further held that if parties are taking willing part in arbitration proceedings after expiry of prescribed time limit, Section 28 of the A. Act, 1940 can be invoked into service, and observed in paragraph 14 as under: -

“14. The policy of law seems to be that the arbitration proceedings should not be unduly prolonged. The arbitrator therefore has to give the award within the time prescribed or such extended time as the court concerned may in its discretion extend and the court alone has been given the power to extend time for giving the award. As observed earlier, the court has got the power to extend time even after the award has been given or after the expiry of the period prescribed for the award. But the court has to exercise its discretion in a judicial manner. The High Court in our opinion was justified in taking the view that it did. This power, however, can be exercised even by the appellate court. The present appeal has remained pending in this Court since 1917. No useful purpose will be served in remanding the case to the trial court for deciding whether the time should be enlarged in the circumstances of this case. In view of the policy of law that the arbitration proceedings should not be unduly prolonged and in view of the fact that the parties have been taking willing part in the proceedings before the arbitrator without a demur, this will be a fit case, in our opinion, for the extension of time. We accordingly extend the time for giving the award and the award will be deemed to have been given in time.”

24. Likewise, similar is the proposition laid down by the Supreme Court in the matter of **Hindustan Steelworks Construction Ltd. v. C. Rajasekhar Rao**¹⁸ in which Their Lordships highlighting the policy of law have held that where the parties have been participating in the proceeding willingly without protest, time for

18 (1987) 4 SCC 93

making award can be extended. Paragraph 2 of the report states as under: -

“2. The policy of law is that the arbitration proceedings should not be unduly prolonged. The arbitrator therefore has to give the award within the time prescribed or such extended time as the court concerned may in its discretion extend and the court alone has been given the power to extend time for giving the award. The court has got the power to extend time even after the award has been given or after the expiry of the period prescribed for the award. But the court has to exercise its discretion in a judicial manner. In view of the policy of law that the arbitration proceedings should not be unduly prolonged and in view of the fact that the parties have been taking willing part in the proceedings before the arbitrator without a demur and had all along been willing to extend time, this will be a fit case, in our opinion, for the extension of time.”

25. In the matter of **Nagar Palika, Mirzapur v. The Mirzapur Elect.**

Supply Co. Ltd.¹⁹, the Supreme Court has held that conduct of the parties is major factor to waive the extension of time given by the Court and time should be taken as extended by observing in paragraph 5 as under: -

“5. The conduct of the parties is a major factor to waive the extension of time given by the Court. The time be taken as extended.”

26. Apart from this, the decision of the M.P. High Court in the matter of **Shivlal Prasad v. Union of India**²⁰ is on the same line and in which Their Lordships of the Madhya Pradesh High Court have held as under in paragraph 30: -

“30. Another authority which needs mention, is the Judgment of this Court given in **Rambihari v. The State of Madhya Pradesh**, Misc. App No. 178 of

19 AIR 1990 SC 2273

20 AIR 1975 MP 40

1968, D/- 27-11-1972 (Madh. Pra.), Sen. J., who delivered the judgment for the Court said in para. 6:

"The appellant is precluded by his conduct from objecting to the award on the ground that it was made out of time. There is a rule well recognized and established in the nature of an estoppel, that if the parties to an arbitration proceeding by their conduct lead arbitrators to think and believe, that even though the time of making their award has in fact expired that they should continue the proceedings and to which course, the parties must be deemed to have assented, by acquiescing in taking part in such proceedings, that then, though the time for making the award may have expired, the jurisdiction of the arbitrators would be deemed to continue, to validate and give effect to the award. See : Halsbury's Laws of England, Vol. 2, 3rd Edn., p. 42 : Choudhri Murtaza Hossein v. Mst. Bibi Bechunnissa, (1876) 3 Ind App 209 (PC); Pattoo Kumari v. Upendra Nath Ghosh, AIR 1919 Pat 93 and M/s. [Bokaro and Ramgur Ltd. v. Dr. Prasun Kumar Banerjee](#), AIR 1968 Pat 150 (FB)."

27. Keeping in view the principles of law laid down by Their Lordships of the Supreme Court in this regard in above-stated judgments, falling back to the facts of the present case, it is quite vivid that the arbitration agreement was signed by the parties on 30-8-1981, there is no evidence on record to hold on what date the arbitrators entered into reference and even if it is assumed that the arbitration proceedings were commenced on 30-8-1981, but thereafter, the original appellant participated in the arbitration proceedings without demur and raised no objection to the arbitration proceeding, in the objection against the award filed on 4-5-1983 under Section 30 of the A. Act, 1940, and for the first time on 23-6-1984, he raised objection after the period of

limitation prescribed for filing objection to the validity of award that the award was not passed within the prescribed period of limitation. The above-stated conduct of the appellant would show that he had taken willing part in the arbitration proceeding and the objection raised in this regard is only a creation of afterthought. However, the trial Court keeping in view the principles laid down in **Hardyal's** case (supra) has extended the time in making the award and time for making award has been held to be extended in exercise of power conferred under Section 28 of the A. Act, 1940. Following the principle of law laid down by the Supreme Court in **Hindustan Steelworks Construction Ltd.** (supra) and **Nagar Palika, Mirzapur** (supra), since the appellant had taken willing part in the arbitration proceeding and there is no evidence as to the date on which the arbitrators entered into reference, the finding recorded by the trial Court extending the period for making award under Section 28 of the A. Act, 1940 cannot be held to be the finding contrary to record or perverse to record, it is in accordance with the record and in accordance with law laid down by Their Lordships of the Supreme Court in this regard. Thus, this question is answered accordingly.

Discussion Re. Question No.3: -

28. The appellant has raised altogether a new ground for the first time in this appeal preferred under Section 39(1)(vi) of the A. Act, 1940 that the award is bad for non-compliance of clause 2 of

the First Schedule enacted under Section 3 i.e. implied condition of arbitration agreement, as out of seven arbitrators appointed by the parties, one arbitrator Horilal died during the arbitration and thereby reference became to an even number of arbitrators, therefore, the arbitrators ought to have appointed an umpire before passing the arbitration award and in absence of that appointment, the award so passed is void and unsustainable.

29. Clause 2 of the First Schedule enacted under Section 3 of the A. Act, 1940 provides as under: -

“2. If the reference is to an even number of arbitrators, the arbitrators shall appoint an umpire not later than one month from the latest date of their respective appointments.”

30. Undisputedly, reference was made by the parties to seven number of arbitrators and therefore there was no violation of this clause, as reference was made to odd number of arbitrators by the parties. It is the case of the appellant herein that death of one of the arbitrators namely Horilal occurred during the arbitration proceeding and thereby reference becomes to an even number of arbitrators. Non-participation of one of the arbitrators nominated by the parties due to death is a pure and simple question of fact. The appellant did not raise such question / ground at any stage of the entire proceeding, in this round and in previous round of this litigation. The appellant filed two objections against the award, one under Section 30 of the A. Act, 1940 and secondly, under Section 33 of the said Act which

has been held to be time barred. A perusal of those objections would show that no such objection has been reduced into writing by the appellant herein before the trial Court. Even before the trial Court, it was not raised and surprisingly, the memo of appeal preferred before this Court is also blissfully silent with regard to this ground of non-appointment of umpire and reference to the even number of arbitrators. Therefore, I am of the considered opinion that such a plea is creation of an afterthought, it is beyond the pleading and not available on record, and entertaining such an objection at the appellate stage would tantamount to denial of justice.

31. The scope of appeal under Section 39(1)(iv) of the A. Act, 1940 is very much limited. In this regard, relevant decisions of the Supreme Court laying down the law on the subject may be noticed gainfully herein.

32. In the matter of **Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore**²¹, Their Lordships of the Supreme Court have held that Arbitrator's award on both fact and law is final and Court cannot review its award, unless objection to legality of award is apparent on face of it.

“2. Counsel for the appellant submitted that the award should be set aside for three reasons. He submitted, firstly, that there were errors of law apparent on the face of the award. Now, the claim of the respondent consisted of two items. The first item of claim was Rs.84,006-20 for loss on resale of 176 bales. The respondent's case was that 176

bales were resold with the consent of the appellant and under the authority given by it in a letter, dated July 10, 1948. The appellant's case was that no authority for the resale of all the 176 bales was given by the letter and the resale was not made with its consent. The second item of claim was for Rs.88,849-14-0 on account of the price of 461/2 bales. The respondent's case was that 461/2 bales were sold and the property in the goods had passed to the appellant on June 30, 1948 and yet the appellant had not taken delivery of the bales. The appellant's case was that the contract in respect of 461/2 bales remained executory and it stood cancelled on the passing of the freezing order, dated July 30, 1948 by the Textile Commissioner, Indore under clause 25(b) of the Indore Cotton Textiles (Control) Order, 1948, whereby the respondent was directed not to deliver any cloth or yarn from the Mills' premises. The appellant submitted that, in any event, having regard to this freezing order it should not be held liable for the full price of 461/2 bales and on its giving up its claim to the bales, should be made liable for only the difference between the contract price and the market price. On a consideration of the contentions, and submissions of the parties, the arbitrator directed the appellant to pay Rs.1,17,108-79 and to give up its claim to 461/2 bales. As the respondent was allowed to retain the bales, the arbitrator passed a lump sum award for Rs.1,17,108-79 only in respect of both items of the respondent's claim. The arbitrator could give a lump sum award. He was not bound to give a separate award for each claim. His award on both fact and law is final. There is no appeal from his verdict. The Court cannot review his award and correct any mistake in his adjudication, unless an objection to the legality of the award is apparent on the face of it. [In Champsey Bhara & Company. v. Jivraj Balloo Spinning and Weaving Company Ltd.](#) 50 Ind App 324 : (AIR 1923 PC 66), the Privy Council stated:

"An error in law on the face of the award means, in Their Lordship's view, that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award

and which you can then say is erroneous."

In the present case, the arbitrator gave no reason for the award. We do not find in the award any legal proposition which is the basis of the award, far less a legal proposition which is erroneous. It is not possible to say from the award that the arbitrator was under a misconception of law. The contention that there are errors of law on the face of the award is rejected."

33. Likewise, in the matter of **The President, Union of India and another v. Kalinga Construction Co. (P) Ltd.**²², Their Lordships of the Supreme Court have laid down the scope of appeal under Section 39 of the A. Act, 1940, as under: -

"In proceeding to set aside award appellate Court cannot sit in appeal over the conclusion of the arbitrator by re-examining and re-appraising the evidence considered by the arbitrator and hold that the conclusion reached by the arbitrator is wrong.

Court though it differs cannot set aside the award as it cannot be said that there is any error apparent in the award."

34. Likewise, in the matter of **Smt. Santa Sila Devi and another v. Dharendra Nath Sen and others**²³, Their Lordships of the Supreme Court reviewed a number of authorities on the issue and have held as under: -

"Where an award given by the arbitrator is filed in Court and it is challenged on the ground of its incompleteness, the Court has to bear in mind certain basic positions. These are: (1) a Court should approach an award with a desire to support it, if that is reasonably possible, rather than to destroy it by calling it illegal; (2) unless the reference to arbitration specifically so requires the arbitrator is not bound to deal with each claim or matter separately, but can deliver a consolidated award. The legal position is clear that unless so specifically required an award need not formally

22 AIR 1971 SC 1646

23 AIR 1963 SC 1677

express the decision of the arbitrator on each matter of difference; (3) unless the contrary appears the Court will presume that the award disposes finally of all the matters in difference; and (4) where an award is made de praemissis (that is, of and concerning all the matters in dispute referred to the arbitrator), the presumption is, that the arbitrator intended to dispose finally of all the matters in difference; and his award will be held final, if by any intendment it can be made so.”

35. In a decision in the matter of **Shivlal Prasad** (supra), the Division Bench of the M.P. High Court has clearly held that the scope of enquiry under Section 30 of the A. Act, 1940 is limited and the Court cannot reappraise the evidence nor sit in judgment over the conclusions of the Arbitrator(s) and the award could be interfered with only when there is error apparent on the face of the award meaning thereby that some legal proposition which was the basis of the award was erroneous and such error must be apparent in the award or the document actually incorporated thereto.
36. Since the appellant did not raise such an objection either before the trial Court or in the shape of objection under Section 30 of the A. Act, 1940 nor taken in the memo of appeal preferred before this Court, such an objection with regard to reference to even number of arbitrators raised by the appellant cannot be permitted to be raised for the first time in this appeal at all and this submission deserves to be and is accordingly rejected.

Disucssion Re. Question No.4: -

37. The High Court of Madhya Pradesh while setting aside the

award in M.A.No.358/1986 on 3-2-1995 has held that “when there are two agreements before the Court below, referring the matter to the arbitrators for their decision, then the arbitrators would be entitled to exercise their authority under both reference agreements. Prima facie, it does not appear that the award suffers with uncertainty, because, as stated above, the agreement, Ex.A-1, and the agreement Ex.A-3, gave different avenues to the arbitrators for deciding the dispute between the parties. Once Ex.A-3 was executed between the parties, then it would not be held that the arbitrators misconducted by giving the award beyond Ex.A-1”.

38.The trial Court after due consideration has clearly recorded a finding that Ex.D-3 is not a forged document and that is again a new agreement entered into between the parties. In view of the binding observation of the M.P. High Court recorded between the parties inter se in the proceeding initiated by one of the parties herein and finding recorded by the trial Court is pure and simple finding of fact, I do not find any illegality in the said finding recorded by the trial Court as such, such a submission deserves to be rejected.

Discussion Re. Question No.5: -

39.The next contention raised is relating to the award not being on the stamp paper and could not be acted upon.

40.In order to answer this question, the matter of **Hindustan Steel**

Ltd. v. M/s. Dilip Construction Co.²⁴ deserves to be noticed in which Their Lordships of the Supreme Court have observed as under: -

“The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments; it is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument. Viewed in that light the scheme is clear. Section 35 of the Stamp Act operates as a bar to an unstamped instrument being admitted in evidence or being acted upon; section 40 provides the procedure for instruments being impounded, sub-section (1) of Section 42 provides for certifying that an instrument is duly stamped, and sub-section (2) of Section 42 enacts the consequences resulting from such certification.”

41. Thus, in the light of the aforesaid decision of the Supreme Court, the decision of the trial Court cannot be faulted with.

42. Now, the last contention of the appellant is that the arbitration award is compulsorily registrable and has not been registered in accordance with the provisions of the Indian Registration Act and therefore it cannot be acted upon and cannot be made Rule of Court. The trial Court has also held that the award is compulsorily registrable and it has not been registered. The trial Court has further held that since no prayer has been made for making the award as a rule of the court under Section 17 of the A. Act, 1940, the award cannot be set aside on such an objection. The trial Court has also held in paragraph 18 as

24 AIR 1969 SC 1238

under: -

प्रतिवादी अधिनिर्णय का पंजीयन करा लेने के बाद उसके आधार पर
डिक्री प्राप्त करने के लिए आवेदन दे सकेगा।

43. The award has been held to be compulsorily registrable and it is required to be registered for making the award as a rule of the court under Section 17 of the Registration Act. The trial Court has already recorded a finding that no such application has been made for making the award as a rule of court and granted liberty to respondent No.1 herein to make an application for making the award Rule of Court after registration of the award, in accordance with law. Therefore, I do not find any illegality in the said finding since award is compulsorily registrable and it cannot be made as a rule of the court under Section 17 of the A. Act, 1940 unless it is registered. Against this finding, respondent No.1 has not preferred any appeal / cross objection in accordance with law. Therefore, this finding has attained finality and do not warrant any interference by this Court.
44. Having answered all five questions in negative, I do not find any merit in this appeal, the appeal deserves to be and is accordingly, dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge