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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL No. 475 of 2005
IN
ARBITRATION PETITION No. 290 of 2003.

M/s Jayesh Engineering Works. ..Appellant.
(Original-Respondent)

Vs

The New India Assurance Co. Ltd. ..Respondent.
(Original-Petitioner)

Mr. Rushabh Shah a/with Ms. Bhadra Dalal for the Appellant.
Mr. Cheerag Balsara a/with Ms. Priyanka Kothari and Ms. Jinal Gogri i/by Negandhi Shah & Himayatullah for the Respondent.

CORAM: NARESH H. PATIL &
SMT. BHARATI H.DANGRE, JJ.

RESERVED ON : 22nd June, 2017.
PRONOUNCED ON : 18th July, 2017.

P.C. (PER: SMT. BHARATI H. DANGRE,J.)

1) The present appeal involves a short but important question as to what is the effect of an accord and satisfaction reached between the parties and whether once such accord and satisfaction is reached, whether the parties are under an obligation for satisfaction of the existing contract.

2) Before we deal with the question, it is necessary to refer to certain factual aspects out of which the question arises:

i) The New India Assurance Company Limited - (hereinafter referred to as “the Company”), the respondent (original petitioner in Arbitration Petition) had floated tenders for carrying out three works designated as tender Nos. 1, 2 and 3 for civil works at residential quarters at Juhu Lane, Andheri (West), Mumbai. The work was to be carried out under the supervision of the Architects and Engineers - M/s Talpade & Associates. The present appellant M/s Jayesh Engineering Works is a registered Partnership Firm engaged in the activity of construction who responded to the tenders floated by the New India Assurance Company Ltd. The respondent company awarded tender no. 1 and 2 to M/s Jayesh Engineering Works (hereinafter referred to as “the claimant”). However, the bid of the claimant in respect of Tender No.3 was rejected. Tender No.1 entailed construction of additional floors on the existing buildings A, B1, B2, B3 and B4 and B7. Whereas Tender No.2 entailed construction of an additional floor on the existing buildings B5, B6,B8, C1,C2,C3 and D. Two separate agreements were executed between the parties on 7.4.1981 setting out several terms and conditions. The agreement contained a clause in the form of Arbitration Clause No.37 which provided that all disputes and differences on any count whatsoever arising out of or in connection with the contract or carrying out of the works (whether during the progress of the works or after completion, and whether before or after the determination, abandonment or breach of contract) shall be referred to and settled by the Architects who will give their decision in writing which would be final and without appeal. However, if either the employer or the claimant was dissatisfied with the decision of the Architect or any matter, question of the dispute or withholding of certificates to which the claimant may claim to be entitled, may within 28 days after receiving notice to such decision refer the dispute to the arbitration.

ii) The claimant commenced the work under tender

No. 1 and 2 and submitted its first running bill on 9th April, 1981. During the subsistence of the agreement between the parties, the running bills came to be submitted from time to time and it is to be noted that as per the agreement the claimant was to be entitled for payment by the employer by instalments under interim certificates to be issued by the Architects on account of the work executed. As per the term of the agreement the works were not to be considered as completed until the Architects have certified in writing that they have been virtually completed. The Architects from time to time had inspected the works carried out by the claimant and certified the payments and had also issued directions from time to time in regard to the work allotted to the claimant and on occasions was directed to make reference in relation to any modifications of the work plans. The facts reveal that the Architect from time to time had certified the release of payments due to the claimant and the said methodology was adopted till the 12th running bill was settled by the employer. There is huge correspondence between the parties, as regards technical issues like supply of material, delay in completion of project being attributed to one another. However, we would avert to the necessary correspondence when we would deal with the issue in hand on factual canvass.

iii) On 20th May, 1986 the claimant has submitted his final bill towards tender no.2 and submitted that the previous bill for the work was submitted long back ago on 8/2/1984. However, the claimant was submitting a final bill including all the pending claims. The claim towards final bill on account of work carried out under tender No.2 was calculated to the tune of Rs.11,10,998.56 with a note of interest claimed from 1st June, 1986 till the date of its realization @ 18 per cent. On the same date, the claimant submitted a final bill towards work carried out under tender No.1 amounting to Rs.8,33,563.55.

iv) The said bills came to be certified by the Architect M/s M. K. Talpade & Associates only on 1st June, 1988 in respect of Tender No.1 and on 6th June, 1988 towards tender No.2. The delay in between the submission of bill and its certification by the Architect is attributed to each other by both parties through correspondence. The Architect vide letter dated 1st June, 1988 certified that the claimant had submitted the 13th running bill in August, 1983 when the work was fully completed and was taken over by the Company. The letter intimated that the claimants were asked to submit their final bill in connection with the above tender after completing of joint measurements with necessary papers required for its scrutiny including bills, vouchers, various statements etc., and after a long gap the claimant informed that the 13th running bill may be treated as final bill. The Architect after making necessary deductions/recoveries, certified that M/s Jayesh Engineering Works be paid a sum of Rs.86,435.73 (Rupees Eighty Six Thousand, Four Hundred, Thirty Five and Seventy Three paise) in full and final settlement of their final bill for tender no.1. By letter dated 6th June, 1988, the Architect certified that M/s Jayesh Engineering Works be paid an amount of Rs.2,20,592.57 in full and final settlement of their bill for tender No.2 after making the necessary deductions/ recoveries.

The correspondence between the parties reveal that the amount certified by the Architect was not actually released and the claimant continued his correspondence with the respondent in that regard. On 6/2/1989 the respondent Company addressed a letter to the claimant forwarding a cheque of Rs. 2,79,600/- as full and final settlement amount and requested him to acknowledge the same. It was informed that the Architect vide their letter dated 1st June, 1988 and 6th June, 1988 had certified the final payments to be made and after deducting the recoveries balance due to the claimant is worked out as Rs.2,79,600/-. On 17/2/1989 the claimant received the said letter and cheque of an amount of Rs.2,79,600/- dated 16/2/1989 as full and final payment against tender No.2 and also made a noting that they do not have any further claims in this respect.

v) On 24/2/1989 the claimant addressed a communication to the respondent company informing that they had signed the office copy endorsing that they have "received the payment towards full and final settlement", however, that was done by them under coercion and they were forced to endorse the "full and final payment receipt" and therefore the same is not valid and binding. They alleged that vide their communication dated 20/5/1986 they had given details of their claim. However, a meagre amount was paid to them and it was an attempt to thrust upon them a full and final settlement, which they vehemently denied. A copy of the said letter was also marked to the Architect requesting that the balance claim as per letter dated 20/5/1986 be certified.

vi) The claimant communicated to the respondent company that they would be invoking the arbitration proceedings and they issued a notice indicating their intention to do so by letter dated 28/4/1989. The respondent company was of the opinion that the arbitration agreement under clause 37 of the agreement dated 7th April, 1981 no longer survived as the agreement had been worked out and therefore it was not open for the claimant to seek a reference. With this grievance the respondent approached this Court by filing an Arbitration Petition No.126/1989 seeking a declaration that the Arbitration Agreement under clause 37 of the Articles of Agreement entered between the parties no longer survives as the agreement had been worked out.

vii) The learned Single Judge of this Court by his judgment dated 19th August, 1989 allowed the petition and declared that the agreement of 7/4/1981 between the parties had been completely worked out and has come to an end and the clause 37 which provided for reference of the dispute to arbitration cannot be resorted to. The said order/judgment was carried to the Apex Court by the claimant by filing Civil Appeal No.4166 of 1989 and the Hon'ble Apex Court by order dated 11th March, 1989 was pleased to record a finding that whether the contract has been fully worked out and whether the payments have been made in full and final settlement, are questions to be considered by the Arbitrator, then there is a dispute regarding the same. The Hon'ble Apex Court set aside the order passed by the learned Single Judge and dismissed the application filed under Section 33 of the Arbitration Act and directed that the proceedings before the Arbitrator will have to be continued in accordance with law.

The matter was therefore continued with the Arbitral Tribunal. The respondent company raised two objections before the Arbitrator, namely (i) the arbitration was not invoked in stipulated time frame and there cannot be any further disputes or claims once the accord and satisfaction notes are signed by the claimants. The Arbitral Tribunal considered the claim and also considered the objections raised by the respondent and held that the claim was not barred by limitation since the final certificate was given on 1st June 1988 and the arbitration was invoked on 24/2/1989. As regards the issue of accord and satisfaction, the Arbitral Tribunal held that there is no accord and satisfaction and the Tribunal allowed the claim directing the respondent to pay a net amount of Rs. 10,80,887/- for tender no.1 and Rs. 13,26,000/- for tender no.2 aggregating to Rs.24,06,887/- within one month from the date of the award by its award dated 29/10/2002.

viii) The Insurance Company filed Arbitration Petition challenging the said award before the learned Single Judge and the learned Single Judge by an order dated 23rd February, 2005 in Arbitration Petition No. 290 of 2003 was pleased to set aside the said award and allowed the petition. The learned Single Judge averred to both the issues raised by the respondent and decided the issues in favour of the respondent company. On the issue of limitation, the learned Single Judge after referring to Clause No.37 of the agreement between the parties, concluded that the scheme of the clause contemplated all disputes arising between the parties to be placed before the Architect and the Architect after decision on the dispute issue a final certificate and once the final certificate was issued, if the parties were dissatisfied, then the disputes had to be referred to the Arbitration within 28 days. The learned Single Judge held that if any other meaning is to be attached to the clause, it would mean that in so far as the disputes with regard to which decision is contained in the final certificate, the period of limitation is 28 days. However, so far as this dispute which remained undecided, period of limitation would be governed by the Limitation Act. The learned single Judge held that it is correct interpretation of clause No. 37 it was held that reference was made beyond the period of limitation in Clause 37.

ix) As regards the point of accord and satisfaction, the learned Single Judge observed that the finding recorded by the Arbitral Tribunal is not sustainable and the learned Single Judge after averting to the correspondence between the parties concluded that the endorsement made by the claimant in regard to the receipt of the cheque of Rs.2,79,600/- as full and final payment against tender no. 1 and 2 and endorsing that they do not have any further claim in that respect clearly reflected that they had accepted the said amount towards full and final settlement. The defence set up by the claimants that the receipt was signed under duress and compulsion did not find favour with the learned Single Judge and it was held that there was no coercion or compulsion and the date on which the final receipt was signed i.e. on 16/2/1989, the respondent did not even dispute the final certificate and did not even contemplate making of any reference to arbitration. The learned Single Judge after recording a clear opinion that the finding recorded by the Arbitration Tribunal is perverse was pleased to set aside the award.

x) Being aggrieved by the said judgment passed by the learned Single Judge passed in 290 of 2003 the present appeal has been preferred by the claimant.

3) We have extensively heard Advocate Shri Rushabh Shah for the Appellant and Advocate Shri Cheerag Balsara for

the Respondent.

4) The learned Counsel for the appellant/claimant canvassed before us that the findings recorded by the learned Single Judge are erroneous and the learned Single Judge has erred on both the issues, namely the issue of limitation and also on the finding of accord and satisfaction being reached. It is argued by the Counsel for the appellant/claimant that the learned Judge ought to have appreciated the finding of the Arbitrator that the claimant was a small claimant pitched against a big Corporation and the contention raised on the ground of coercion could not have been brushed aside as the claimant was persuaded by circumstances allowing him for settlement of his dues and he was rather coerced to sign the receipts with a hope that his dues are settled.

It is argued by Mr. Shah that on 20/5/1986 the final bill towards tender No.1 & 2 were submitted to the Architect with a request to certify the said bills immediately. It is contended by Shri. Shah that the Architect issued a final certificate only on 1st June, 1988 and 6th June, 1988 in respect of two tenders. It is also attempted to be argued and demonstrate from the documents that the Architect had informed the claimant that the Central Vigilance Commission was to carry out inspection of the works and though a communication was addressed by the claimant on 27th September, 1982 to the Company in regard of handing over building No.B1, B2, B3, C1, C2 and C3 and after informing that the said buildings were completed in all respects on 15th August, 1982. It was also intimated that building No.B5 and B7 are at the finishing stage and will be handed over by 10th October, 1982. There was delay in payment. Our attention was invited to the document dated 12th July, 1984 from the Architect informing that it is not possible to certify the bills unless the work is re-examined and its final value is assessed. It is also argued that on 17th July, 1984 the claimant addressed a letter informing that the Central Vigilance had not passed any remark on their work and it is more than 15 months the vigilance had visited and a bill was raised by the claimant. However, for no fault, on their part, there was delay in releasing the bill. It is also argued that repeatedly the claimant was requesting for certification of the bill. There was undue delay on the part of the Architects in certifying the bills and being aggrieved by the conduct on the part of the Architects, letter was addressed by the claimant claimant on 11/12/1986 and further on 6/2/1987 requesting for speedy certification of the bills, else the claimant will resort to Clause No.37 of the Agreement. It is contended that the Architects, however, by letter communication dated 28/2/1987 informed the claimant that period of 15 days is very short and since the matter is very old and they had asked submission of number of claims made for verification and the same was not furnished by the claimant and hence the certification cannot be done. However, finally on 1st June, 1988 the final certificate was issued by the Architect in respect of tender No.1 and on 6th June, 1988 the certificate was issued in respect of tender No.2. However, it is also contended that in spite of the said certification and repeated demands to release the payments, the amount came to be released only on 17/2/1989 when the claimant received the cheque of Rs.2,79,600/- and he signed the receipt as "full and final settlement amount against tender no.1 and tender no.2". It is also argued that in the receipt it is further written that "we do not have any further claim in this regard on Central Bank". It is argued by Mr. Shah that the term "in this regard" clearly mentions that they had accepted the amount which is given, however that did not mean that the said amount was towards their full dues and at the earliest opportunity on 24/12/1989 a letter was addressed to the Insurance Company that the receipt signed by them is issued under coercion / duress and the same is not valid and binding upon them. It is also argued that by the said communication the Architect was also requested to certify the balance claim as per letter dated 20th May, 1986. Our attention was also invited to the correspondence made by the claimant with the Company and the letters by which the claimant attempted to invoke the arbitration clause since a dispute had arisen between the parties. Shri. Shah relied upon a judgment of the Apex Court in the case of Continental Construction Ltd Vs. State of Uttar Pradesh reported in (2003) 8 SCC 4 for canvassing the proposition that the jurisdiction of the Court under section 30 of the Arbitration Act, 1940 is very limited and the Court can interfere only when the Arbitrator has misconducted himself or the proceedings or there exists an error apparent on the face of the record. Shri. Shah argued that the order passed by the learned Single Judge is patently erroneous since the learned Single Judge did not record a finding that the Arbitral Tribunal has acted arbitrarily, irrationally, capriciously or in conscious disregard of the contract and therefore the said judgment is liable to be set aside.

5) Mr. Cheerag Balsara, learned Counsel appearing on behalf of the Company, argued that the claim of the appellant was time barred and Clause No.37 of the Agreement between the parties clearly spelt out that the dispute has to be raised within 28 days from the date of final certificate and any dispute raised beyond the aforesaid period would be barred by limitation. He specifically referred to the correspondence between the parties and emphasized on the receipt signed by the claimant on 17/2/1989 on receipt of the letter from the Insurance Company dated 6/2/1989 on receipt of a cheque of amount of Rs.2,79,600/- as full and final payment against tender No. 1 and 2. He stressed further that the endorsement made by the claimant “we do not have any further claims in

this respect" was reflective of the concurrence by the claimant to the full and final payment. According to Shri Balsara, the said receipt clearly reflects the "accord and satisfaction of the claim" and he also argued that the argument advanced by the appellant that there were some other claims which formed the part of letter dated 20th May, 1986 was totally misconceived and the said claim is bogus and sham as the appellant had waived his right to claim those amounts, as in the receipt he had categorically used the words "full and final settlement towards all claims under tender No. 1 and 2". He relied upon the judgment of the Apex Court in the case of Union of India vs. Kishorilal Gupta & Bros reported in (AIR 1959 SC 1362) and referred to paragraph 26 of the judgment wherein the Apex Court held that "accord and satisfaction is the purchase of the release from an obligation arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration which makes the agreement operative".

6) We have given our anxious consideration to the factual aspects involved in the matter in the backdrop of the law laid down in regard to "accord and satisfaction" and also the scope of interference in the findings of an Arbitrator. It can be seen that the parties had indulged into a heap of correspondence and attempted to blame each other for the delay caused in completion of project, in the certification of amount attributing it to one another and finally the delay in payment of the amount due to the claimant. It was on 20/5/1986 the claimant submitted his final bill towards tender no. 1 and 2. It is noteworthy to refer to the preface of the said communication, which reads as follows:-

> "As you are aware, the execution of the above mentioned work has been completed by us, since long back. The previous bill for this work was submitted as early as on 3/8/1983. Despite several reminders the same is still un-paid. Apart from this, there has been several delays, hindrances and breaches of contract on the part of the employer, for which we are entitled to be compensated. We are now enlisting all these claims and presenting to you a final bill including those claims".

The final bills were forwarded to the Architect requesting for early certification with a request to the company to pay the bill as soon as they are certified by the Architect since large amount of monies legitimately due were held up for long time. While the bill was under scrutiny for certification at the instance of the Architect, the respondent company received a notice under section 226 (3) of the Income-tax Act, 1961 mentioning that an amount of Rs.5,74,000/- is due from M/s Jayesh Engineering Works on account of income-tax/penalty/fine. By the said letter the Company was required to pay forthwith any amount due to them from M/s Jayesh Engineering and it was also requested to pay any money which may subsequently become due from them. The copy of the said notice was also forwarded to the claimant which was received by them on 6/10/1987. After the Architect certified the amount due to the claimant towards tender no.1 on 1/6/1988 and towards tender no.2 on 6/6/1988, the Company was not able to release the said payment on account of the said garnishee notice issued by the Income-tax Department and there is a correspondence between the parties for resolving the issue. The letter dated 18/8/1988 addressed by the Company to the claimant informs them that they are informing that they have not received any information regarding clearance from the Income-tax Department till date. The letter also mentions that on discussion with Mr. Tijoriwala on 26.6.1988 he had informed that he would arrange to send the accountant along with the record to discuss and confirm the proposed recovery. In response to the said communication on 26/11/1988 the claimant replied informing that they had obtained the necessary clearance from the income-tax Department and the said Department had withdrawn their notice under section 226 (3) and the copy of the withdrawal was enclosed. The letter also further mentions "now you are requested to release our payment as per the certificate issued by your Architect M/s M.K. Talpade & Associates for both tender no. 1 and 2 at the earliest and oblige". It can, thus, be seen that as long as the garnishee notice by the Income-tax Department was in existence, the payment could not have been made to M/s Jayesh Engineering. The claimant then himself clarified that since the notice has now been withdrawn, the Company should make the payment as per the certificate issued by the

Architect in reference to tender no. 1 and 2. Thus, the request was made to release the amount due to the claimant in terms of the certificate issued by the Architect on 1/6/1988 and 6/6/1988. It is noteworthy to mention that the claimant did not raise any dispute in reference to the final certification amount by the Architect. Another letter dated 8/12/1988 also reflects the same mind-set of the claimant when the claimant had written to the company and expressed as follows :

> "With reference to your letter No.ESTATE/176/88 dated 18.8.88 and as desired therein we are giving you our concurrence for the recoveries made by you and hence you are requested to release our due payment accordingly."

7) We have already made reference to the letter dated 18/8/1988 above, wherein it was informed by the company to the claimant that Shri Tijoriwala was to send the accountant in respect of the proposed recoveries while settling the final bills as he was to get the record to discuss and confirm the proposed recovery due to the company and no information was received in that regard. Enclosed with it, was a copy of

recovery statement with a request to take up various recoveries proposed by the company and give concurrence for the same. It was also mentioned that in case of any doubt, the company can be contacted for clarification, with prior appointment. The claimant did not raise any objection to the recoveries mentioned in the recovery certificate forwarded along with the letter dated 18/8/1988 and rather by their letter dated 8/12/1988 accorded concurrence for the recoveries made by the company and requested for release of the due payment accordingly. With this clear understanding between the parties on 6/2/1989 the company, based on the certification by the Architect vide letter dated 1/6/1988 and 6/6/1988 worked out the balance amount due to the claimant after taking into consideration the final amount certificate by the Architect towards tender No. 1 and 2 less the recoveries and less the amount paid till running bill No.12. By letter dated 6/2/1989 the company gave the calculations as below :

"A.	**Final amount certified:**			
	Tender No.1		Rs.	23,51,435.00

	Tender No.2		Rs.	27,36,593.00
		Total	Rs.	50,88,028.00
	LESS:			
B.	Recoveries:			
	1. Cement		Rs.	5,18,319.00
	2.Steel		Rs.	4,78,561.00
	3.Water		Rs.	12020
	4.Income Tax		Rs.	18718
	5. Misc.		Rs.	7906
			Total Rs.	10,35,524.00
C.	Amount paid till RA Bills Nos. 12		Rs.	37,72,904.00
D.	Balance due to you		Rs.	2,79,600.00

"Accordingly, we are enclosing our cheque for Rs.2,79,600.00 in full and final settlement of your tender No.1 and 2."

The said letter was acknowledged by the claimant with the following receipt:-

> Received original letter and cheque No. 000764 dated 16/2/1989 amounting to Rs.2,79,600.00 as full and final payment against Tender No.1 and Tender No.2. We do not have any further claims in this respect on Central Bank."

8) It can thus be seen that the claimant was clear in his mind about what bill he had forwarded for certification to the Architect and what amount the Architect had finally certified on 1/6/1988 and 6/6/1988 towards tender No. 1 and 2. The claimant was also made aware of the recoveries to be made from the amount due in view of the letter addressed by the Company to the claimant on 18/8/1988 accompanied with the recovery certificate and the claimant extended his concurrence for the recoveries made in view of letter dated 18/8/1988 and made a request for release of the payment. We will have to examine the receipt given by the claimant on the letter dated 6/2/1989 which we had reproduced above, in this background. It is clear that the claimant had no grievance about the amount finally certified by the Architect, the recoveries desired by the Company and payment of the final amount as determined by the company by their letter dated 6/2/1989. It was only on 24/2/1989 for the first time the claimant raised an objection to the receipt of the payment and to the words "full and final settlement" and put up a theory of coercion / duress and attempted to retaliate from its earlier

stand by stating that the receipt is not valid and binding upon them. For the first time, the claimant requested for making a payment of all the claims and amounts as per their letter dated 28/5/1986 which amount they had claimed as an amount towards final bill. However, we can see that from 20/5/1986 i.e. when the final bills were forwarded till 24/2/1989 there was no discord between the parties with regard to the amount due and payable and specifically after the certification by the Architect on 1/6/1988 and 6/6/1988. The claimant and the company were ad idem on the amount due to the claimant after the recoveries and after adjusting the amount towards running bill no.12 and the claimant had in clear terms had accepted the amount of Rs.2,79,600/- as full and final settlement for tender No. 1 and 2. It is thus, nothing but after thought on the part of the claimant to argue that the receipt which they had signed was with a writer that they had accepted the amount of Rs. 2,79,600/- as full and final payment against tender No. 1 and tender No.2 but they had clarified that they will not have any further claim "in this respect". However, the argument advanced on behalf of the counsel for the appellant has failed to persuade ourselves to agree to the effect that the amount of Rs.2,79,600/- was only towards the 13^{th} running bill and this did not include the amount of compensation, interest etc. In this background, we are of the opinion that the "liability of the company stood discharged in view of the accord and satisfaction" which is reflected from the receipt signed by the claimant.

9) We need not venture to find out whether this accord and satisfaction destroyed the arbitration clause itself since in the earlier round and litigation the Apex Court had clearly recorded a finding that whether any amount is due to be paid and how far the claim made by the appellant is tenable are matters to be considered by the Arbitrator and this perfectly falls within the scope of clause 37 of the agreement. The Apex Court had clearly directed the parties to approach the Arbitrator to find out whether the contract has been fully worked out and whether the payments have been made in full and final settlement. The matter whether there is full and final satisfaction of the claim was to be dealt by the Arbitrator.

However, the panel of arbitrators did not deal with the aforesaid aspects of the matter. Though the objection was specifically raised by the respondent that the claim stands discharged in view of the accord and satisfaction notes signed by the claimant. The Arbitral Tribunal held that the matter is arbitrable and in respect of the receipt that was issued, the Arbitral Tribunal holds that the entire contents of the said letter did not contain a word about the claims of claimants but only talks about "full and final settlement" which itself shows that the claims arising out of contract are not included in this respect since the final certificate is only for 13th bill and it is completely silent on the other claims of the claimant. The Arbitral Tribunal had recorded a finding that the receipt appears to have been given under duress and hence it cannot be termed as satisfaction and accord in the given circumstances of the case wherein the payments are held up for more than five years. The Tribunal had also given benefit to the claimant as being a small claimant pitched against a big corporation and held that the said receipt did not amount to "accord and satisfaction". The learned Single Judge is perfectly justified in recording an opinion that the said finding is perverse since the Arbitral Tribunal has held that the receipt relates to only 13th bill under tender no. 1 and 2, whereas the receipt in terms says that the amount represents full and final settlement against tender no. 1 and 2 and has rightly set aside the said finding of the Tribunal.

10) The learned Single Judge was also justified in construing the period of limitation mentioned in clause 37 of the agreement between the parties as a mandatory period and the finding of the learned Single Judge that after the final certificate is issued the Architect loses its power to decide its dispute and then reference has to be made, if there is any dissatisfaction between the parties by way of arbitration clause is a perfectly logical interpretation of clause 37. The final certificate issued by the Architect gives the Arbitral Tribunal a jurisdiction to entertain the reference since the reference to arbitration can be made only after the final certificate is issued by the Architect and if there is no final certificate issued by the Architect then the Tribunal does not get any jurisdiction and hence the finding in the Award is rightly held to be arbitrary.

11) It will also be appropriate to refer to the definition of the term 'accord and satisfaction' given by the Privy Council in Payana Reena Saminathan vs. Pana Lana Palaniappa – (1913-14) 41 IA 142, is as under:

> *"The 'receipt' given by the appellants and accepted by the respondent, and acted on by both parties proves conclusively that all the parties agreed to a settlement of all their existing disputes by the arrangement formulated in the `receipt'. It is a clear example of what used to be well known as common law pleading as `accord and satisfaction by a substituted agreement'. No matter what were the respective rights of the parties inter se they are abandoned in consideration of the acceptance by all of a new agreement. The consequence is that when such an accord and satisfaction takes place the prior rights of the parties are extinguished. They have in fact been exchanged for the new rights; and the new agreement becomes a new departure, and the rights of all the parties are fully represented by it."*

12) We may also gainfully refer to the following passages from the judgment of the Apex Court in the case of National Insurance Co. Ltd vs. Boghara Polyfab Pvt Ltd (2009) 1 SCC 267. The Apex Court in paragraph 26 and 27 was pleased to observe as follows:-

"26. When we refer to a discharge of contract by an agreement signed by both the parties or by execution of a full and final discharge voucher/receipt by one of the parties, we refer to an agreement or discharge voucher which is validly and voluntarily executed. If the party who has executed the discharge agreement or discharge voucher, alleges that the execution of such discharge agreement or voucher was on account of fraud/coercion/undue influence practiced by the other party and is able to establish the same, then obviously the discharge of the contract by such agreement/voucher is rendered void and cannot be acted upon. Consequently, any dispute raised by such party would be arbitrable.

27. While discharge of contract by performance refers to fulfillment of the contract by performance of all the obligations in terms of the original contract, discharge by `accord and satisfaction' refers to the contract being discharged by reason of performance of certain substituted obligations. The agreement by which the original obligation is discharged is the accord, and the discharge of the substituted obligation is the satisfaction. A contract can be discharged by the same process which created it, that is, by mutual agreement. A contract may be discharged by the parties to the original contract either by entering into a new contract in substitution of the original contract; or by acceptance of performance of modified obligations in lieu of the obligations stipulated in the contract."

13) In the light of the above observations of the Apex

Court, we hold that the claimant had signed the receipt voluntarily and accepted the amount of 2,79,600/- voluntarily and thus the contract was also discharged voluntarily on his part. Though an attempt has been made to demonstrate that the said receipt was issued under coercion and duress, it is required to be seen that a mere bald plea of fraud, coercion or duress is not enough but the party who sets up plea must prima facie establish the same by placing the material before the adjudicating authority. The plea i.e. raised by the claimant in the present case in regard to the coercion and duress is bereft of any details or particulars and is nothing short of a bald assertion and that too at a belated stage. While accepting the amount and while issuing the receipt there is no protest or any demur raised about the amount certified or the amount received satisfaction of the claim. Thus, the acceptance of the amount by cheque and issuance of receipt was voluntary and we are of the firm view that there was a real “accord and satisfaction” as defined by the Privy Council in the judgment referred to above.

14) The order passed by the learned Single Judge

therefore cannot be faulted with on both the counts namely on the point of limitation and also on the point of reaching an accord and satisfaction. We do not find any reason to interfere with the order/judgment of the learned Single Judge dated 23/2/2005 and uphold the same.

15) In the circumstances, the present appeal deserves to be dismissed and the same is dismissed.

(SMT. BHARATI H. DANGRE,J.) (NARESH H.PATIL,J.)

Ladda (P.S.)