

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

APPEAL NO. 377 of 2015

IN

ARBITRATION PETITION NO. 167 OF 2008

Jayabharat Automobiles Limited
(Now known as Pramukh Car Riders Ltd.)
a company registered under the
provisions of the Companies Act, 1956
having its registered office at
Electric Mansion,
Lucas near Century Bazar,
Appasaheb Marathe Marg,
Prabhadevi, Mumbai 400 025

..Appellants
(Org. Petitioners)

v/s.

B.R.International,
a proprietary firm
having its office at
20 Sunshine Building,
Dr. Annie Besant Road,
Worli, Mumbai 400 018

..Respondents
(Org. Respondents)

Dr. Birendra Saraf a/w. Mr. Rohan Sawant, Mr. Arun Mehta, Mr. Sanket Shah & Mr. Mayur Kadam i/b. Akshar Laws for the Appellant.

Ms. Mamta Sadh a/w. Mr. Yajuvendra Surendra Singh for the Respondent.

CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.
JUDGMENT RESERVED ON : 15th NOVEMBER, 2016
JUDGMENT PRONOUNCED ON: 17th APRIL, 2017

JUDGMENT (PER ANUJA PRABHUDESSAI, J):

1. The Appellants herein have challenged the order dated 29th April, 2015 passed by the learned Single Judge of this Court in Arbitration Petition No.167 of 2008 filed under Section 34 of the Arbitration and Conciliation Act, 1996.

2. The appellants were the original petitioners whereas the respondents were the original respondents in Arbitration Petition No.167 of 2008. The appellant is a Public Limited Company engaged in the business of selling car accessories and providing after sale service, accidental repairs etc. The respondent is engaged in the business of importing and selling car air conditioning system and other accessories. Sometime in the month of June 2000 the respondent approached the appellant to sell the accessories which were required to be fitted in the cars and allowed the respondent to occupy a portion of its premises to conduct the business activity of car accessories in their premises. It was agreed between the parties that the respondent would not be charged any compensation for initial period of six months. The appellant, being the authorized

dealer of Hyundai Company, the said company had offer accessories to the appellant at very reasonable price. It was agreed between the appellant and the respondent that the respondent would purchase the car accessories from the appellant as per the requirement of the customers and that the bills would be raised by either parties and would be adjusted against each others bills towards the payment to be made by either of the parties.

3. It was the case of the appellant that the business of the respondent was not up to the mark and that the respondent was liable to pay compensation of Rs.30000/- per month from July 2000. It was also the case of the appellant that there was discrepancy in their respective accounts towards outstanding and overdue bills. The appellant also demanded increased compensation from Rs.30,000/- to Rs.50,000/- from January 200_ onwards. The appellant subsequently canceled the agreement and the respondent left the showroom sometime in the year 2003. The appellant called upon the respondent to pay a sum of Rs.26,38,2142/-.

4. The appellant filed a summary suit against the respondent for recovery of Rs.24,70,038.50. The respondent filed winding up

petition against the appellant for its claim of Rs.56,83,951.23. Both the parties entered into consent terms on 18th August, 2005, pursuant to which by order dated 18th August 2005 passed in Company Petition No. 229 of 2005 a reference was made to Mr. Joseph Fernandes, Sole Arbitrator to adjudicate the respective claims of the parties. Both the parties filed their statement of claim before the Arbitrator and led their evidence. By Award dated 14th September, 2007 the Arbitrator allowed the claim of the respondent to the extent of Rs.3871606.23 with interest @ 6 % per annum from the date of the reference till the payment. The claim of the appellant in respect of damages as well as claim for an amount of Rs.3,38,144/- towards supply of car accessories was disallowed. However, the Arbitrator allowed the claim of the appellant to the extent of Rs.1 lakh towards compensation for five months at the rate of Rs.20000/- per month, and directed the respondent to pay the said amount with interest at the rate of 6% per annum.

5. The appellant had challenged the above order dated 14th September, 2007 by filing Arbitration Petition No. 167 of 2008 under Section 34 of the Arbitration and Conciliation Act, 1996. By

impugned order dated 29th April, 2015 the learned Single Judge dismissed the petition No.167 of 2008. Being aggrieved by the said order, the appellant has preferred this appeal.

6. Mr. Saraf, the learned Counsel for the Appellant has submitted that the claim of the Respondent for Rs.38,71,606.23 is barred by limitation. He has submitted that though the point of limitation was not raised in the Arbitration Proceeding, it can be raised in the Appeal. In support of his contention he has relied upon the decision of *Punjab High Court in Santa Singh Gopal Singh v. Rajinder Singh Bur Singh*¹. The aforesaid decision is not applicable to the facts of the present case as a plain reading of para 8 of the said decision makes it clear that in the said case the point of limitation was not raised for the first time and that it was raised before the trial Court.

7. At this stage, it would be relevant to make reference to the decision of the Division Bench of this Court in *Vimal G. Jain v. Vertex Financial Services Pvt. Ltd.*², wherein the Division Bench has observed as under:

1 AIR 1965 Punjab 415

2 2007(Vol 5) BCR 478

“Further, the Section 16(2) of the said Act clearly provides that a plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because he has appointed, or participated in the appointment of, an arbitrator. Conjoint reading of the above provisions of law would disclose that a party to the arbitration proceedings seeking to raise the point of bar of limitation for initiating the arbitration proceedings should raise the issue at the earliest opportunity and in any case not later than the submission of the statement of defence, otherwise it would be deemed to have been waived. The law in that regard is well-settled by the decision of the Apex Court in [Narayan Prasad Lohia v. Nikunj Kumar Lohia and Ors.](#) wherein it has been clearly held that unless the objection in terms of [Section 16\(2\)](#) is raised within the time prescribed under the said Section, it would be deemed to have been waived in terms of [Section 4](#) of the said Act”

8. In the instant case, it is not in dispute that the respondents had not raised the issue of limitation either before the Arbitrator or before the learned Single Bench of this Court. The said plea has been

raised for the first time in the present appeal without laying any foundation in the Arbitration Proceeding or in the application under Section 34 of the Arbitration Act. The issue of limitation which is a mixed question of law and facts cannot be introduced for the first time in an appeal.

9. In the light of the above and also considering the decision of the Division Bench of this Court in Vimal G. Jain (supra), it is not necessary to refer to the judgment of Punjab & Haryana High Court in Santa Singh (supra) which is otherwise distinguishable and not applicable to the facts of the present case.

10. The learned Counsel for the Appellant has further submitted that the learned Single Judge has erred in holding that the claim of Rs.26.50,000/- was not proved. It is submitted that the respondents had admitted their liability for Rs.26,50,000/- in their letter dated 27.3.2004.

11. As far as the claim for Rs.26,50,000/- is concerned, the learned Arbitrator as well as the learned Judge has held that the Appellant has not only failed to produce the demand notice but had also failed to prove the entries in the ledger account. The learned Arbitrator as

well as the learned Judge after having gone through the entire evidence held that the appellant is not entitled for the said claim. We find no error in the said view taken. We find no merit in the contentions raised by the Appellant. Accordingly, we dismiss the Appeal with no order as to costs.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)