

Firstly, it is submitted that, pursuant to the order passed by a Division Bench of this Court on 13 June 2011, the Petitioner had deposited a sum of Rs.10 lakhs towards the Respondent's claim, a sum of Rs.6 lakhs out of which was allowed to be withdrawn by the Respondent. Learned Counsel submits that there is no proper appropriation of the amount of Rs.6 lakhs withdrawn by the Respondent towards principal and interest. Secondly, it is submitted that the statement of claim, along with particulars of claim, are not submitted within the period of limitation.

3. Insofar as the first contention is concerned, the Arbitrator has noted that on appropriation of the amount of Rs.6 lakhs, neither parties addressed any issue or made any submissions on the same. Yet in order to meet the ends of justice, the Arbitrator himself has carried out an exercise by appropriating the amount proportionately, that is to say, by taking into account the proportion of principal outstanding amount and interest *vis a vis* the amount withdrawn by the Respondent (Original Claimant). Considering the ratio of 6.52 : 2.64 of the principal outstanding amount and the interest, appropriation was made by adjusting a sum of Rs.4,27,074 towards outstanding principal amount and the balance amount of Rs.1,76,976 towards interest, from out of the amount of Rs.6 lakhs withdrawn by the Respondent. No fault can be found with this appropriation within the parameters of law of challenge to an arbitral award.

4. As far as the contention regarding limitation is concerned, the *terminus a quo* for limitation insofar as the arbitral reference is concerned, is the date of invocation of the arbitration agreement.

Arbitration agreement has been invoked in the present case within time and there is no dispute about such invocation. There is no merit in the contention that the statement of claim along with particulars of claim was not filed within the period reserved by the Arbitrator. Learned Arbitrator permitted the Respondent to file particulars of claim after awarding costs. The Petitioner cannot be said to have suffered any detriment as a result of the particulars of claim being filed in the course of arbitration. He has not been thereby denied any opportunity to raise his defence or show cause.

5. Accordingly, there is no merit in the Arbitration Petition. The Petition is dismissed. No order as to costs.

6. In view of the disposal of the Arbitration Petition, the Notice of Motion does not survive and the same is also disposed of.

(S.C. GUPTE, J.)