

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ OMP 370/2014

Reserved on: 24th October, 2017
Date of decision: 22nd December, 2017

JOGINDER SINGH DHAIYA Petitioner
Through: Mr.J.P.Sengh, Sr.Adv. with Mr.Aditya
Nayyar, Mr.Anish Gupta, Ms.Mansha
Mehta, Ms.Vaishali Tanwar and
Ms.Mrigna Shekhar, Advs.

Versus

M.A TARDE THR LRS Respondent
Through: Mr.Vikas Mehta, Mr.C.V.Atre, Mr.Rajat
Sehgal and Mr.Mukul Atre, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. The petitioner, by this petition, has challenged the Award dated 17th February, 2014 passed by the Sole Arbitrator whereby the application for substitution of legal representative of Mr. M.A. Tarde filed by the petitioner under Section 40 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') was dismissed as being time barred and the arbitration proceedings were held to have abated.

2. I, at the outset, quote the relevant finding of the arbitrator in the impugned award/order:

“16. That there is no dispute regarding legal proposition as provided in Section 19 of the Act that arbitral tribunal shall not be bound by the code of CPC. Provision contained in section 43 of the Act cannot be ignored, which provides that Limitation Act, 1963 shall apply to arbitration as it applies to proceedings in court. Article 120 of the Limitation Act provides that LRs are to be substituted within 90 days of death of party, as the case may be. In this case, claimant slept over the matter for long time and did not substitute LRs. Hon’ble High Court of Delhi also observed in order dated 01.8.2013 that respondent is rightly aggrieved for not filing the claim before me by the claimant.

In view of the above discussions, I am of the opinion that the application U/s 40 of the Act is hopelessly time barred and arbitration proceedings stand abated, when arbitration proceedings stand abated the injunction matter need not be heard and there is no need to enter reference to proceed further. Signed copy of the order be given to both the parties. File be kept in the office and will be sent whenever it is submitted by any Hon’ble Court.”

3. The dispute between the parties arose out of Agreement to Sell dated 12th October, 2006 between the petitioner and Late Shri M.A. Tarde, the predecessor of the respondents.
4. The petitioner invoked the Arbitration Agreement/Clause by notice dated 13th March, 2007 and appointed the Sole Arbitrator, who entered upon reference and vide letter dated 9th April, 2007 called upon the parties to appear before him.
5. The proceedings continued before the appointed Arbitrator, however, the same are not relevant for the purpose of present

adjudication and are not being referred to in detail. Suffice it to say that it is submitted by the petitioner that he had filed a Statement of Claim before the Arbitrator on 25th October, 2007.

6. The appointed Arbitrator recused himself from the arbitration proceedings on 25th February, 2008. The petitioner, therefore, filed an application under Section 14 and 15 of the Act before this Court being OMP No. 283/08, seeking appointment of a substitute Sole Arbitrator. An application under Section 9 of the Act, being OMP No. 381/08, seeking an interim injunction against Mr. Tarde was also filed.

7. This Court passed an ad-interim order dated 23rd July, 2008 restraining Mr. Tarde from creating any third party interest in respect of the land for which payment had been received from the petitioner. This order was confirmed on 18th February, 2009.

8. This Court, by a separate order dated 18th February, 2009 passed in OMP No. 283/2008, appointed the present Sole Arbitrator. It was directed that “he shall enter the reference as and when claim is filed before him and he shall endeavor to give the award as early as possible”.

9. It is the case of the petitioner that he tried to obtain the original Statement of Claim and the documents filed before the previous arbitrator, however, in spite of efforts, he could not obtain the same. It seems that the claim petition was filed before the present arbitrator only on 1st August, 2013 i.e. after more than four years of the

appointment of the arbitrator and after the Legal Heirs of Mr. Tarde had raised a grievance against the same before this court.

10. In May, 2013 the Legal Representatives of Mr. Tarde filed an application, being IA No. 7927/13 in OMP No. 381/2008, before this Court submitting therein that Mr. Tarde had expired on 17th June, 2010 and as the petitioner had taken no steps to file his claim, a request had been sent to the arbitrator for closing the arbitration proceedings. In the application, a prayer was made that the interim order dated 18th February, 2009 be vacated.

11. It is only after issuance of notice in the said application by this Court, the petitioner finally filed an application IA No. 13415/2013 in OMP No. 381/2008 under Section 40 of the Act read with Order XXII Rule 4 of the Code of Civil Procedure 1908 seeking substitution of Legal Representatives of Mr. Tarde before the Arbitrator. It was alleged in the application that as the claimant was ignorant of the details of the legal representatives of the original respondent, the application for substitution of legal representatives could not be filed earlier.

12. The respondents i.e. the legal heirs of Mr. Tarde filed their reply to the above referred application inter alia contending that the petitioner was aware of the death of Mr. Tarde in 2010 itself as this had been stated in the reply filed before Punjab & Haryana High Court in a Criminal Petition filed by the petitioner. It was further stated that the application for substitution of legal heirs can be filed only within

90 days from the date of knowledge of death and, therefore, the application filed by the petitioner is time barred.

13. The above application, however, was withdrawn by the petitioner on 21st November, 2013. The following order was passed by this Court on 21st November, 2013 on the above mentioned application seeking impleadment of the legal heirs of Mr. Tarde.

“1. This is an application filed by the petitioner to bring on record the legal heirs of Mr M.A. Tarde. Mr Sengh, learned senior counsel for the petitioner, on instructions states that since an identical application has been filed before the learned arbitrator, he does not wish to press the captioned application.

2. I may only note that the legal heirs of Mr Tarde have filed a reply to the captioned application in which they have specifically taken the defence that the petitioner had knowledge of the death of Mr M.A. Tarde, as far back as on 09.09.2010. Therefore, according to the legal heirs of Mr.M.A.Tarde, the proceedings taken out, whether in this court or before the arbitrator to implead them as parties, ought to fail. A similar defence has been taken by the legal heirs of Mr M.A. Tarde in the application for impleadment filed by the petitioner, before the arbitrator.

3. In the aforesaid circumstances, I do not propose to comment on the merits of the stand taken by the parties before me either way, as the counsel for the petitioner has taken a decision to withdraw the captioned application. The learned arbitrator will, however, decide this issue before proceeding further in the main action pending before him in respect of the application filed by the petitioner for impleadment of the legal heirs

4. The application is dismissed as withdrawn.”

14. As stated above, the arbitrator upon hearing of the application under Section 40 of the Act has, vide his impugned Award dated 17th February, 2014, dismissed the application on the ground that the same is hopelessly time barred and has held that the arbitration proceedings have abated.

15. The learned senior counsel for the petitioner has contended that provisions of Order XXII Rule 4 CPC do not apply to the arbitration proceedings; as far as the arbitration proceedings are concerned, they are only governed by Section 40 of the Act, which does not provide for any period of limitation for making an application seeking substitution of the legal heirs of the deceased parties. He further contends that in any case, the period of limitation for moving such application shall be governed by Article 137 of the Schedule to the Limitation Act, 1963 and not by Article 120 of the same and therefore, the period of limitation for filing such an application seeking substitution of legal heirs is three years from the death of Mr. Tarde. He further submits that the impugned award is liable to be set aside as the arbitrator has committed a misconduct by not considering the judgments relied upon before him and merely brushing them aside by stating that the relied upon judgments are not directly relevant to decide the issue involved in the case.

16. On the other hand, the counsel for the respondent has raised a preliminary objection on the very maintainability of the petition by

contending that the Award dated 17th February, 2014 passed by the arbitrator is not an 'Award' and therefore, the present petition under Section 34 of the Act is not maintainable. On merits he contends that Section 43 of the Act makes the Limitation Act, 1963 applicable to the arbitration proceedings and in terms of Sub-Section 3 of Section 40 provision of Order XXII Rule 4 would be applicable and the application for substitution, having not been filed within a period of 90 days, the proceedings have rightly been held to have abated. In the alternative, he contends that even if it is held that Code of Civil Procedure 1908 (hereinafter referred to as CPC) does not apply, the principles thereof would definitely apply to determine the reasonable period within which such application could have been filed and the effect of non-filing of such application would be abatement of proceedings.

17. I have considered the rival submissions of the parties. Before I proceed to answer the same, I may first reproduce the relevant provisions of the Act namely Sections 14, 15, 32, 40 and 43, which read as under:-

“14. Failure or impossibility to act.—

(1) The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if]—

(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

15. Termination of mandate and substitution of arbitrator.—

(1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate— (a) where he withdraws from office for any reason; or

(b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

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32. Termination of proceedings—

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

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40. Arbitration agreement not to be discharged by death of party thereto.—

(1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

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43. Limitations.— *(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.*

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred to in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.”

18. The objection of the respondent to the maintainability of the petition is based on the judgment of the Supreme Court in ***Lalitkumar V. Sanghavi vs. Dharamdas V. Sanghavi***, reported in (2014) 7 SCC 255.

19. Learned counsel for the respondent submits that the impugned award is in nature of an order under Section 14 of the Act and therefore, the petition under Section 34 of the Act shall not be maintainable to challenge the same.

20. I am unable to accept the said contention. Section 14 of the Act deals with the termination of 'Mandate of an Arbitral Tribunal', therefore, it would be applicable in situation where the grounds are personal to the 'Arbitrator' and not to the 'arbitration proceedings'.

21. Section 32 of the Act provides for termination of proceedings. Under Sub-section (1) of Section 32, 'arbitral proceedings' shall terminate by the 'final arbitral award'. Under Sub-section (2) of the Section 32, termination of the 'arbitral proceedings' would also take place where the complainant withdraws his claim; or where the parties agree on the termination of the proceedings; or where the arbitral tribunal finds that the continuation of proceedings 'has for any other reason become unnecessary or impossible'.

22. In the case of ***Lalitkumar V. Sanghavi (supra)***, the arbitrator had terminated the arbitration proceedings as the claimant had taken no

interest in the matter. This order was interpreted by the Supreme Court to be falling under Section 14 and 32(2)(c) of the Act and the remedy against the same was held to be in Section 14(2) of the Act.

23. In the present case, however, the Arbitrator, vide his impugned Award, has held that the arbitration proceedings stand abated. The abatement of the proceedings has the effect of bringing about an end to the litigation and the claim raised therein. In fact, though it may not be strictly applicable to the arbitration proceedings, a suit having abated, Order XXII Rule 9 of the Code bars a fresh suit being filed on the same cause of action. The impugned Award, therefore, has the effect of debarring the petitioner from instituting fresh proceedings on the same cause of action. The impugned Award would, therefore, be an 'award' in terms of Section 2(1)(c) of the Act.

24. Section 2(1)(c) of the Act defines 'arbitral award' to include an interim award. Section 31 of the Act provides for the form and contents of arbitral award. In the case of ***Centrotrade Minerals and Metal Inc. vs. Hindustan Copper Ltd., (2017) 2 SCC 228***, Supreme Court while holding that the 'arbitral result' would be an 'award' given by the arbitral tribunal, observed as under:-

“9. The general principle that we have accepted is supported by two passages in Comparative International Commercial Arbitration. In Para 24-3 thereof reference is made to Article 31(1) of the United Nations Commission on International Trade Law (or UNCITRAL) Rules to suggest that while all awards

are decisions of the Arbitral Tribunal, all decisions of the Arbitral Tribunal are not awards. Similarly, while a decision is generic, an award is a more specific decision that affects the rights of the parties, has important consequences and can be enforced. The distinction between an award and a decision of an Arbitral Tribunal is summarised in Para 24-13. It is observed that an award:

(i) concludes the dispute as to the specific issue determined in the award so that it has res judicata effect between the parties; if it is a final award, it terminates the tribunal's jurisdiction;

(ii) disposes of parties' respective claims;

(iii) may be confirmed by recognition and enforcement;

(iv) may be challenged in the courts of the place of arbitration.

10. In International Arbitration, a similar distinction is drawn between an award and decisions such as procedural orders and directions. It is observed that an award has finality attached to a decision on a substantive issue. Para 9.08 in this context reads as follows:

“9.08. The term “award” should generally be reserved for decisions that finally determine the substantive issues with which they deal. This involves distinguishing between awards, which are concerned with substantive issues, and procedural orders and directions, which are concerned with the conduct of the arbitration. Procedural orders and directions help to move the arbitration forward; they deal with such matters as the exchange of written evidence, the production of documents, and the arrangements for the conduct of the hearing. They do not have the status of awards and they may perhaps be

called into question after the final award has been made (for example as evidence of ‘bias’, or ‘lack of due process’). ”

11. *In International Commercial Arbitration, the general characteristics of an award are stated. In Para 1353 it is stated as follows:*

“1353.—An arbitral award can be defined as a final decision by the arbitrators on all or part of the dispute submitted to them, whether it concerns the merits of the dispute, jurisdiction, or a procedural issue leading them to end the proceedings.”

This is subsequently elucidated through four aspects of an award, namely:

- (i) an award is made by the arbitrators;*
- (ii) an award resolves a dispute;*
- (iii) an award is a binding decision; and*
- (iv) an award may be partial.”*

(Emphasis supplied)

25. From the above, it would be apparent that the distinction between an ‘order’ and an ‘award’ lies in the fact whether the decision of the arbitral tribunal affects the rights of the parties, concluding the dispute as to the specific issue, and has finality attached to the same.

26. In the present case, the impugned Award has resulted in termination of the arbitration proceedings and would bar the petitioner from re-agitating the same in any other proceedings. The said award, therefore, has finality attached to it and determines a vital right of the parties.

27. Similar reliance on the judgment of the Bombay High Court in *Anuptech Equipments Private Ltd. vs. Ganpati Co-op. Housing Society Ltd., Mumbai & Ors. AIR 1999 Bom 219*, is unfounded as the Bombay High Court was dealing with a case where the proceedings had been terminated under Section 25(a) of the Act. The same was held not to be an ‘award’.

28. In the present case, the arbitration proceedings, as noted above, have not been terminated only because of non-filing of Statement of Claim but because, according to the Arbitral Tribunal, the proceedings have abated. This, as discussed above, has legal consequences on the parties. To my opinion, therefore, the aforesaid judgment would not be applicable to the facts of the present case.

29. I have no hesitation in holding that the impugned award would therefore, be an ‘award’ as defined in Section 2(1)(c) of the Act that can be challenged in the present proceedings under Section 34 of the Act.

30. On merits, the learned senior counsel for the petitioner contends that the Arbitrator has simply brushed aside all the judgments cited before him with the following vague observations, which amount to denial of principles of natural justice and also makes the Award in conflict with the public policy of India:-

“The judgment relied on by both the parties are not directly relevant to decide the issue involved in the case. No such judgment has been brought to my notice as to

what will be fate of arbitration proceedings, if LR's are not substituted within three months."

31. I am unable to accept the said argument. The Arbitrator is not expected to analyze each and every judgment cited before him and express his agreement or disagreement with the same by giving cogent reasons for the same. The reasons under Section 31(3) of the Act are the reasons upon which the award is based. What, therefore, has to be challenged before this Court under Section 34 of the Act, are the reasons that the arbitrator gives for the award and not how he follows or distinguishes a particular judgment. If the eventual reasons for the Award cannot be challenged under any of the grounds mentioned in Section 34 of the Act, merely because the Arbitrator did not in detail, deal with the judgments cited before him, the award cannot be set aside.

32. Learned senior counsel for the petitioner further contended that under Section 43 of the Act, unlike Order XXII Rule 4(3) of the Code, there is no provision providing for abatement of proceedings in case the application for substitution is not made within the time limited by law. He further contends that even if arbitral proceeding can abate, the time prescribed for filing an application seeking substitution of the legal heirs would be governed by Article 137 of the Schedule of the Limitation Act and not by Article 120 of the same.

33. Learned senior counsel for the petitioner relies upon the judgment of the Supreme Court in *Ravi Prakash Goel vs. Chandra Prakash Goel*

& Anr. (2008) 13 SCC 667 and in particular, paragraph 18 of the same, to submit that in the Arbitration Act, 1940, an analogous provision to Section 43 of the Act was contained in Section 40 and while interpreting the same, Supreme Court had held that the arbitration agreement is not discharged by the death of any party thereto and would be enforceable by or against the legal representatives of the deceased. Paragraph 18 of the judgment is reproduced hereinbelow:-

“18. It is clear from Section 40 of the Arbitration Act that an arbitration agreement is not discharged by the death of any party thereto and on such death it is enforceable by or against the legal representatives of the deceased, nor is the authority of the arbitrator revoked by the death of the party appointing him, subject to the operation of any law by virtue of which the death of a person extinguishes the right of action of that person.”

34. The above said judgment would have no application to the facts of the present case. In the case of **Ravi Prakash Goel (supra)**, there was neither a plea of abatement nor plea of limitation raised before the Supreme Court. It was a case where the legal heir of a party to the arbitration agreement had sought to invoke the arbitration agreement; it was held to be maintainable relying upon Section 40 of the Arbitration Act, 1940.

35. Learned senior counsel for the petitioner placed strong reliance on the judgment of the Gauhati High Court in **Lilawati Gupta & Ors. vs. Union of India & Anr. (2004) 2 Arb. LR 649**. In the said case, the Gauhati High Court had held that provisions of the Code would apply to

the proceedings before the Court under the Arbitration Act, 1940. It then proceeded to conclude that the application for substitution of legal heirs in a suit pending before the Court for setting aside the award would be in nature of a miscellaneous application under Section 141 of the Code. Considering the same to be a miscellaneous application, it was held that Article 137 of the Schedule to the Limitation Act would apply to such application. As far as Article 120 of the Schedule to the Limitation Act is concerned, it was held that as the said Article uses the words ‘plaintiff – appellant’ or ‘defendant-respondent’, the same would apply only to suits and appeals and not to such miscellaneous applications.

36. In my view, the above judgment rightly holds that provisions of Order XXII would be applicable even to the arbitration proceedings, however, its reasoning for not applying Article 120 of the Schedule to the Limitation Act fails to consider the effect of Section 37(1) of the Arbitration Act, 1940.

37. Section 37(1) of the Arbitration Act, 1940 provides as under:-

“37. Limitations -

(1) All the provisions of the Indian Limitation Act, 1908, (9 of 1908) shall apply to arbitrations as they apply to proceedings in Court.”

38. Similar provision is contained in Section 43(1) of the Act. Once the Limitation Act is held to be applicable to the arbitration, it would have to apply with full rigour, however, with necessary changes in the nomenclature contained therein.

39. In *Union of India vs. Jain Associates 2001 (3) SCC 277*, the Supreme Court had rejected the plea that Order IX of the Code would not apply to arbitration proceedings merely because the parties are not described as plaintiff or defendant. The Supreme Court held that even if the nomenclature of plaintiff or defendant is required to be taken into consideration, the party who seeks decree in terms of an award can be held to be plaintiff and the party who objects to such award can be treated as defendant.

40. Similarly, once the Limitation Act is held applicable and it is further accepted, as was accepted before the Gauhati High Court, that provision of Order XXII would apply, by necessary implication, in Article 120 of the Schedule to the Limitation Act, the words ‘deceased plaintiff’ would be read as the ‘deceased claimant’ and ‘deceased defendant’ would be the ‘deceased respondent/opposite party’.

41. Article 120 of the Schedule to the Limitation Act deals specifically with the application for substitution of legal representatives. In presence of a specific provision, reliance on the general residuary provisions contained in Article 137 of the Schedule to the Limitation Act cannot be maintained.

42. Learned senior counsel for the petitioner further placed reliance on the judgment of the Calcutta High Court in *Ramnibas Jhunhunwalla vs. Benarashi L. Jhunhunwalla, 1966 SCC Online Cal 22* wherein it was held that Order XXII of the Code would not be applicable to an award.

The said judgment was rendered in the context where the award had already been made by the arbitrator and had been filed in Court. Therefore, relying upon Rule 6 of Order XXII, it was held that once the hearing is closed, the question of abatement would not arise.

43. In the present case, the arbitration proceedings were still pending before the Arbitrator. It is correct that in the above said judgment an observation was made that the essential features of an arbitration proceedings are much different from a suit because of which Order XXII of the Code cannot be applied without violence to the provisions of Order XXII itself to the arbitration proceedings, the same in my opinion, was not the ratio of the case.

44. Similarly, in the case of ***Santosh Kumar Patsaria vs. Radha Krishna Patsaria & Ors.*** 91 CWN 237, the Court was dealing with an application under Section 14(2) of the Arbitration Act, 1940 and the objections filed to the award under Sections 30 and 33 of the Act. The same would, therefore, equally not apply to the facts of the present case.

45. Section 40(3) of the Act saves the operation of any law by virtue of which any right of action is extinguished by the death of a person. Abatement is one such consequence. Though it is correct that in terms of Section 19 of the Act, the Arbitral Tribunal shall not be bound by the CPC, once Section 43 of the Act makes the Limitation Act applicable, in my opinion, an application for substitution has to be filed in terms of Article 120 of the Schedule to the Limitation Act, 1963 i.e. 'within 90

days of the date of death of the defendant/respondent'. No award can be made against a dead person. Therefore, the application for bringing on record the legal representatives of the deceased party is a legal necessity. The effect of not filing the application within the time prescribed would necessarily result in abatement.

46. In interpreting the provisions of the Act, it is to be remembered that the purpose and object of the Act is to achieve expeditious and effective disposal of the arbitration matters. The general principle on which the Act is founded is to ensure a fair resolution of dispute by an impartial tribunal without unnecessary delay or expense. The Act intends to provide a speedy method of resolution of dispute between the parties.

47. In the case of ***Union of India vs. Singh Builders Syndicate (2009) 4 SCC 523***, it was emphasized that the object of the alternative dispute resolution process of arbitration is to have expeditious and effective disposal of disputes through a private forum of the parties' choice.

48. In the 246th Report of Law Commission of India, the need for expeditious disposal of arbitral proceedings was again emphasized in the following words:-

"16. The Commission notes that this cultural revolution has to come from within the arbitration community. Arbitrators must eschew purely formal sittings, which are meant only for compliances. The Courts have already indicated that delay in passing an award can lead to such an award getting set aside [see for instance the decisions of the Delhi High Court in

Oil India Ltd v Essar Oil Ltd, OMP No 416/2004 dt 17.8.2012 at paras 30-40; UOI v Niko Resources 13 Ltd, OMP No 192/2010 dt 2.7.2012 at paras 43-51; Peak Chemical Corporation Inc v NALCO, OMP 160/2005 No dt 7.2.2012 at para 29] – and the same should be a nudge to all arbitrators to hear and decide matters expeditiously, and within a reasonable period of time. Counsel for parties must similarly refrain from seeking frivolous adjournments or insisting upon frivolous hearings or leading long winded and irrelevant evidence. The Commission further notes that a conscious use of technology, like teleconferencing, video-conferencing etc., should also be encouraged and the same can easily replace the need for purely formal sittings and thereby aid in a smoother and more efficient conduct of arbitral proceedings.”

49. Therefore, it cannot be accepted that a party to the arbitration can stall the proceedings by not filing an application seeking substitution of the legal heirs in place of the party to the agreement who has expired.

50. Though it may not be strictly applicable to the present case, the intent of the legislature is evidenced by Section 29A of the Act inserted through the Arbitration and Conciliation (Amendment) Act, 2015 and which provides that the award has to be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

51. Even in the Arbitration Act, 1940, Clause 3 of Schedule-I provided that the arbitrator shall make the award within four months after entering on the reference. This period, of course, could be enlarged by the Court

under Section 28 of the Arbitration Act, 1940. Therefore, to contend that a party can be granted three years' time to make an application seeking substitution of the legal representatives of a deceased party would not only defeat the object of the Act but would also run counter to the various provisions of the Act.

52. At the same time, in case there is some delay in moving an application seeking substitution of the legal heirs of a deceased party, the arbitrator, of course, would have the power to condone the same in a more liberal manner than even a Court, as arbitration is also envisaged to be less formal or bogged down by the strict rules of procedure.

53. In the present case, the petitioner had not filed any application for seeking condonation of delay in filing of the application to bring on record the legal representative of the deceased case Mr. Tarde. The death of Mr. Tarde had taken place on 17.6.2010. The application seeking substitution of his legal heirs, having been filed beyond the period of limitation and without any application seeking condonation of delay, the said application was, therefore, rightfully dismissed by the learned Arbitrator.

54. Learned senior counsel for the petitioner submits that such application seeking substitution of legal representatives of Mr. Tarde could not be filed earlier as the petitioner was not aware of the legal heirs of Mr. Tarde. However, in my opinion, the same would not be a 'sufficient cause' for not filing of the said application as it has not been

shown on record if any steps were being taken by the petitioner for finding out the names of the legal heirs of Mr.Tarde. As noted above, it is only when the legal representatives of Mr.Tarde filed an application seeking vacation of the interim order passed in favour of the petitioner, that the petitioner woke up and filed the application seeking substitution of the legal heirs of Mr.Tarde.

55. The conduct of the arbitral proceedings also shows that once the petitioner obtained the interim order from this Court, he abandoned the proceedings and did not file the Statement of Claim till 01.8.2013, i.e. more than 4 years of the appointment of the Arbitrator. The plea of the petitioner that delay in filing the Statement of Claim was because the original Statement of Claim filed before the earlier Arbitrator had not been received, to say the least, is totally unacceptable. Nothing prevented the petitioner from filing a photocopy of the said Statement of Claim and/or seeking exemption from the Arbitrator from filing original documents.

56. In view of the above discussion, I find no merit in the objections raised by the petitioner to the Arbitral Award. The same are accordingly dismissed with costs of Rs.25,000/- to be paid to the respondent.

NAVIN CHAWLA, J

DECEMBER 22, 2017

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