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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25th April, 2018

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RFA 633/2016

VANGUARD SECURITY AND FIRE SERVICES (P)
LTD

..... Appellant

Through: Mr. Arjun Mitra, Advocate (M-
9810412737).

versus

M/S NATIONAL BUILDING CONSTRUCTION CORPORATION
& ANR

..... Respondents

Through: Mr. S.C. Gupta, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present appeal is preferred against the judgment and order dated 31st May 2016, by which the suit filed by the Appellant/Plaintiff (*hereinafter, 'Plaintiff'*) for recovery of a sum of Rs.7,99,466.89/- along with interest was dismissed on the ground of being barred by limitation.

Brief background

2. The Plaintiff was engaged by Respondent /Defendant (*hereinafter, 'Defendant'*) No.1 – National Building Construction Corporation (*hereinafter, 'NBCC'*) vide Agreement dated 30th May, 2000 for providing surveillance, fire fighting and other services as per the schedule of charges. The said agreement contained the following clauses :-

“3. That in the event of any dispute arising between the parties hereto in respect of or touching these presents except the scope of Work as detailed in the Schedule(s) of Terms and Conditions and of

services, nature and manner of such services to be rendered during the continuance of this Agreement or thereafter, hence the same shall be referred to Arbitration by one Arbitrator not below the rank of Project Manager, NBCC Ltd. to be nominated by Chairman cum Managing Director - NBCC Ltd., whose award shall be final & binding on both the parties.

However, any difference or doubt pertaining to meaning/interpretation of any phrase/word used in terms or in the Schedule of Services, their nature and manner of rendering of such services shall be the excepted matters and be referred to Chairman of Joint Management Committee, who shall further appoint an officer not below the rank of Resident Engr, NBCC Ltd. to settle the issue, whose decision shall be final and binding on both parties."

3. Disputes arose between the parties in respect of the charges being paid by the NBCC. The services of the Plaintiff was terminated by the NBCC on 28th February, 2003. On 31st March 2003, the Plaintiff, sought various payments from NBCC and also sought appointment of an officer by the Joint Management Committee of the NBCC for resolving disputes between the parties. On 17th May, 2003, NBCC appointed Sh. S.P. Kumar, Chief Administrator, HUDCO as the Officer to deal with any difference or doubts pertaining to the meaning and interpretation of the contract. The text of the said letter reads as under :-

".....that Shri S.P. Kumar, Chief (Admn.), HUDCO has been appointed by the undersigned to deal any difference or doubt pertaining to meaning interpretation of any phrase/ word used in terms or in schedule of services, their nature and manner of rendering such services as per in terms of Clause 3, 2nd para."

4. While the reference was pending, NBCC encashed a bank guarantee of Rs.1 lakh, refund of which was sought. Mr. S.P. Kumar, the officer to whom the NBCC had referred the matter, submitted his so called '*Award Report*' dated 26th February 2004, directly to the Chairman of the Joint Management Committee. As per the said report, the Officer decided the following three issues :-

“ The issues to be decided basically in this dispute are as follows :

- 1. Maintaining parity with SAIL contract with respect to payable charges to the Claimant.*
- 2. Release of Service Tax and its effect date.*
- 3. Compensation for not giving three calendar months notice in advance before termination of Claimant's contract.”*

5. On all three issues, Mr. S.P. Kumar held that the Plaintiff is entitled for relief. The relief granted in the said report is -

- (i) Plaintiff is entitled for absolute parity with the terms being paid by SAIL (Steel Authority of India Limited) for similar services from 1st April, 2000 to 28th February, 2003;
- (ii) Plaintiff is entitled for reimbursement of service tax deposited by it, subsequent to the registration, date and subject to furnishing indemnity;
- (iii) the Plaintiff is entitled one calendar month's notice of termination or equivalent cash compensation in lieu thereof.

6. The Plaintiff did not have knowledge of this *Award Report* which was sent directly to NBCC and acquired knowledge of this report only sometime in July 2004. It then sought implementation of the same, and accordingly, claims for execution of the same were raised by the Plaintiff on 8th July,

2004. The Trial Court takes this date to be when the Plaintiff came to know of the passing of the *Award Report*. Since the NBCC did not implement the *Award Report* of Mr. Kumar, the Plaintiff, under the impression that this would be treated as an Arbitral award waited for three months and thirty days as per Section 36 of the Arbitration and Conciliation Act, 1996 (*hereinafter, 'Arbitration Act'*) from the date of knowledge and thereafter filed execution an petition on 30th October, 2004. The said execution petition was dismissed by the Trial Court, on 27th April 2007, by holding that the *Award Report* of Mr. S.P. Kumar cannot be treated as an Arbitral award though it is a binding Report. The relevant paragraphs of the said judgement dated 27th April, 2007 is set out herein below:

14. *It is now to be examined in the present case whether the award report dated 26.2.2004 is an arbitration award or is it a recommendation, being a fall out of an excepted matter. The decree holder themselves has relied upon letter dated 31.3.2003 which has been addressed to the Chairman, Joint Management Committee, NBCC Ltd., New Delhi, wherein it has been mentioned in para six of the letter that there is difference or doubt pertaining to the meaning/interpretation of the phrase/words used in the schedule which needs to be settled. The Chairman, Joint Management Committee, NBCC was therefore, called upon to get the decisions resolved in respect of payment of service tax and also to interpret certain terms in regard to the payments. In response to this letter, the Chairman, Joint Management Committee vide its letter dated 17.5.2003 has informed the decree holder that pursuant to their letter, Sh. S.P. Kumar Chief (Administration) HUDCO has been appointed to deal with the differences and doubts. From these two letters, it is abundantly clear that according to the decree holder there was a difference of opinion which*

needed to be settled by a person of a certain rank as was mentioned in clause 3 of the agreement. It was thus, a difference of opinion on interpretation which was the subject matter and clearly fell in para 2 of clause 3 and is an Excepted Matter not referable to arbitration.

15 This view is further fortified from the perusal of the award report dated 26.2.2004, as well. Though the report has been termed as an award report, but it has neither been prepared on the stamp-paper as is required for an arbitration award nor does it fulfill the other requisites of a valid award. It does not mention the exact amounts to which the decree holder is entitled nor does it provide for the interest, amount, costs or charges. From the bare perusal of this report, it is evident that only recommendations have been made on the matters about which there existed difference of opinion and required interpretations. Further more, the award is required to be signed by the arbitrator and signed copies are to be made available to both the parties. In the present case, the signed report has not been made available to both the parties but the report has been forwarded to the Chairman, Joint Management Committee, NBCC for further actions as deemed fit. This further corroborates that the report dated 26.2.2004 was infact not an award but a report.

16 To conclude, in the present case, there is no arbitration award and the report dated 26.2.2004 of which execution is sought, falls within the excepted matters and is merely a recommendation which is not executable, though is binding on the parties.

17 The objections filed by the judgment debtor are therefore, allowed. It is held that there is no arbitration award which can be executed. The execution petition is

not maintainable and is hereby dismissed. File be consigned to the record room.”

7. On the strength of the order above that the *Award Report* is binding on NBCC, the present suit came to be instituted on 31st March, 2010 wherein the amounts as per the *Award Report* are claimed along with interest. Pleadings were completed in the matter and the following issues were struck:-

“1. Whether Sh. S.C. Jain, Managing Director, is competent & authorized person to sign, verify the plaint and to institute the suit? OPP

2.1 Whether the suit is within limitation? OPP.

2.2 Whether the suit is barred by time, (under article 7 of Schedule appended to the Limitation Ac)? OPD 1 & 2.

3. Whether the suit is barred by Section 11 of CPC on the principle of res-judicata? OPD 1 & 2.

4. Whether the suit is bad for mis-joinder of defendant no.1, if so, its consequences?

OPD-1

5. Whether the suit is without cause of action? OPD 1 & 2.

6. Whether the plaintiff is entitled for decree of Rs.7,99,466.89/- against the defendant? OPP

7. Whether the plaintiff is entitled for decree of interest @ 12% p.a.? OPP.

8. Relief.”

8. On issues 1,3,4,5,6 and 7, the Trial Court holds that the *Award Report* is of binding nature on NBCC and hence the Plaintiff is entitled to the decree. Relevant paragraphs of the Trial Court’s impugned judgment are set out below :-

“18. Since these issues are intertwined, they are

being taken up together. The decision on two issues i.e. whether the suit is without any cause of action and whether plaintiff is entitled to the decree of Rs.7,99,466.89/- rests on addressing two questions. Firstly, what is the status of the report dated 26.02.2004 given by Sh. S. P. Kumar pursuant to invoking para 2 of the clause no.3 of agreement dated 30.5.2000 which was signed by the plaintiff with the defendant? Secondly, which course of action is to be pursued by the plaintiff for enforcing its rights, if any, under the said report?

19. Taking up the first question, it needs to be appreciated that clause 3 is a part of the Agreement dated 30.05.2000 which was entered into between the plaintiff and defendant No. 1. The agreement was a formal contract and thus enforceable and binding under law. Its enforceability and binding nature is deemed to have been accepted unconditionally by both the parties when the plaintiff invoked clause 3 of the agreement and relying on 2nd para of this clause, the defendant appointed an officer to deal with any difference or doubt pertaining to meaning, interpretation of any phrase/word used in terms or in schedule of services, their nature and manner of rendering such services. A bare reading of the relevant Clause 3 itself shows that any decision given pursuant to 2nd para of the said clause shall be binding. Even the judgment dated 27.04.2007 i.e. Ex.PWL/18 passed by the court of Learned ADJ, dismissing execution petition of plaintiff, which initially tried to enforce the report dated 26.02.2004 as an arbitral award, categorically mentions that the said report is binding on the parties. That judgment has not been assailed by either party.

20. While controverting the plea of the binding nature of report dated 26.02.2004, Learned Counsel for the

defendant had a singular line of defence that the said report was only recommendatory in nature and not binding. However, the Learned Counsel has not been able to substantiate his argument from any corner. The plain language of the agreement is clear. There is nothing to even remotely suggest from the examination in chief or cross examination of either PW or DW that the said report is recommendatory in nature. In para 14 of his affidavit Ex.DW1/A, DW-1 submits that since the report dated 26.02.2004 was contrary to the terms of reference, therefore, it is not binding upon defendants. Thus, there is not even an averment in the evidence (by way of affidavit) that the report dated 26.02.2004 had no binding value per se. If the defendants considered the said report to be non binding since it was contrary to the terms of reference, they should have assailed it. However, there was complete inaction on the part of the defendants to challenge the findings of Sh. S. P. Kumar.

21. Strangely enough, the defendants opposed the petition filed by the plaintiff to execute the award report dated 26.02.2004 by raising an objection that the same is not an arbitral award and hence not executable. The plea was accepted by the Trial Court. However, when the present suit was filed, the first plea taken by the defendants was that the matter should be referred to Arbitration in terms of clause 3 of the agreement dated 30.05.2000. However, the plea was disallowed for the reason that the report dated 26.02.2004 deals with an excepted matter which is excluded from the purview of arbitration clause. This fact has been highlighted for 3 reasons. Firstly, by submitting an application for referring the dispute in the present suit to arbitration, the defendant by its act and conduct affirmed the binding nature of agreement dated 30.05.2000 and clause 3 specifically. It has already been highlighted above that even the 'finding'

by the officer concerned in regard to a matter referred under part 2 of clause 3 was to be final and binding. Secondly, by asking for a reference to arbitration, the defendant has shown that it had no intention to honour the award report dated 26.02.2004 keeping in view that it had successfully opposed the execution of the said report as an arbitral award. Thirdly, the order dated 06.12.2010, vide which the application for referring the matter to arbitration was disallowed, itself observes that the report dated 26.02.2004 is binding and final. That order was not challenged by the defendant as a result of which it became final. This, in the understanding of the court, constitutes issue estoppel and the defendant cannot be permitted to challenge the binding nature of report dated 26.02.2004. Still further, in his cross examination, the DW nowhere states even once that the report dated 26.02.2004 is not binding on the defendant.

22. Learned Counsel for defendant has also tried to argue that even the schedule of rates which forms the basis of report dated 26.02.2004 has not been produced in evidence in the present suit and hence the claimed amount cannot be allowed. This argument is also without any merit. In the present suit, this court has **not** been called upon to judge the merits of the claim of the plaintiff as raised before Sh. S. P. Kumar who gave the report. This court is seized of the issue pertaining to the binding status of that report and the cause of action springing from it. The merits of the claim as raised by plaintiff has already been decided by Sh. S. P. Kumar after going through the evidence available on record. The said report has not been challenged by the defendant. The defendant may keep sitting over it for a number of months or year without taking any action but that cannot dilute its binding nature which is derived from the main agreement dated 30.05.2000.

23. Once it stands established that the report dated 26.02.2004 is of binding character, the next question is that which remedy was available the plaintiff to effectuate its rights under the report?

24. The plaintiff first tried to execute the report dated 26.02.2004 as an arbitral award but the same was rejected by the court of Learned ADJ vide its judgment dated 27.04.2007. The only other remedy was to file a suit which the plaintiff did since Civil suit is the established mode of legal proceedings to enforce rights arising out of an agreement or a binding contract.

25. In view of the above discussion, issue No.5 & 6 are decided in favour of the plaintiff. In view of issue No.6 being decided in favour of the plaintiff, issue No.7 is also decided in favour of the plaintiff i.e., to claim interest on the suit amount.”

9. Thus, insofar as the merits of the matter are concerned, the Trial Court came to the conclusion that the *Award Report* of Mr. Kumar is binding on NBCC. The Trial Court also held that the dispute raised in the suit is not arbitral as it constitutes ‘Excepted Matter’. It further held that the nature of the report being of a binding character, the Plaintiff is liable to be paid the amounts and the suit is liable to be decreed.

10. However, on the question of limitation, while deciding issues Nos.2.1 and 2.2, the Trial court came to the conclusion that the suit is barred on the ground of limitation. The Trial Court’s observation are as below :-

“34. I have carefully considered the submissions of the Learned counsel for the plaintiff but I tend to respectfully disagree with the same for the following reasons. Firstly, the cause of action for filing the present suit arose when Sh. S. P. Kumar gave his

report dated 26.02.2004 and not when the execution petition filed by the plaintiff, to execute the report dated 26.02.2004 as an arbitral award, was dismissed. Infact, while submitting arguments on Issue No.5 & 6, the Learned counsel for the plaintiff, strenuously and repeatedly, stressed on the finding given by Sh. S. P. Kumar in his report to substantiate the plaintiffs claim for decree of Rs.7,99,466.89P/-. This amount has been worked out on the basis of report dated 26.02.2004. Even in the para detailing the cause of action i.e. in the plaint, the plaintiff has mentioned the cause of action as being submission of report dated 26.02.2004 by Sh. S. P. Kumar. However, plaintiff has also relied on the judgment dated 27.04.2007 as being the cause of action to file the present suit.

35. It is patent that the plaintiff never had any doubts regarding the binding nature of report dated 26.02.2004 or else it would not have filed the execution petition on 30.10.2004. Therefore, it is not tenable now to change the entire line of argument regarding cause of action while addressing the issue of limitation.

36. Learned counsel for the plaintiff has cited a judgment of the Hon'ble High Court of Madras (AIR 1925 Madras HC) to reinforce its argument that the cause of action arose to file the present suit from the finding given by Learned ADJ in its judgment dated 27.04.2007. I have carefully perused the judgment in question and am of the opinion that the same has no application to facts of the present case. The ratio of said judgment is to the effect that a suit would be maintainable to enforce a judgment if the judgment itself is unexecutable. Learned counsel submits that the status of report dated 26.02.2004 is that of an unexecutable judgment as already held vide judgment dated 27.04.2007. Still further, the cited judgment also lays down that a suit is maintainable to enforce an obligation arising out of a judgment.

37. The court is unable to agree to the submission that

report dated 26.02.2004 is an unexecutable judgment. Patently, it is not a judgment as referred to in the cited judgment. Nevertheless, the remedy available to enforce the said report is of course to file a suit. However, the judgment dated 27.04.2007 does not create a new obligation so as to permit the plaintiff to compute a fresh period of limitation. As has already been held while deciding issue No.5 & 6, report dated 26.02.2004 is a result of the contractual obligation undertaken by the plaintiff and the defendant, and compliance of the same or its binding nature also springs from the contract dated 30.05.2000 entered into between the parties.

38. In view of this, I am of the clear opinion that the present suit has been filed beyond the period of 3 years. Hence, issue No.2.1 is decided against the plaintiff and issue No.2.2 is decided against the defendants.”

Thus, the suit came to be dismissed being barred by limitation.

11. Before this Court, NBCC has not preferred any appeal challenging the decision of the Trial Court on any of the issues that were decided in favour of the Plaintiff. Plaintiff has filed the present appeal on the ground that the suit was within limitation and hence could not have been dismissed.

12. Submissions have been heard on behalf of the parties. A perusal of the Trial Court judgment reveals that the Trial Court primarily took into consideration two dates to hold that the suit is barred by limitation. Firstly, the date of the *Award Report* of Mr. Kumar being 26th February, 2004 and date of filing of execution i.e., 30th October, 2004, and secondly the Court holds that even if the benefit of the period during which the execution proceedings were pending is given to the Plaintiff, even then the suit is barred by limitation.

13. Counsel for the Plaintiff has argued that the Execution petition having been dismissed on 27th January, 2007, limitation period ought to be counted from the said date. In the alternate, he has argued that in addition to the period during which execution proceedings were pending, an additional three month period ought to be also excluded as per Section 36 of the Arbitration Act which provides that an Execution petition would not lie until the period of 3/4 months as stipulated in Section 34 expires. Thus, the Plaintiff who was under the impression that the *Award Report* is an arbitral award could not seek execution prior to the expiry of 3/4 months. He submits that in either situation, the suit is within limitation. He also relies upon ***Ramaswami Nathan And Ors v. M P Muthiah Chetti AIR 1925 (Mad) 279*** (hereinafter, '*Ramaswami Nathan*') in support of his submission that the Trial Court judgement which holds the *Award Report* to be binding in nature constitutes a fresh cause of action.

14. On the other hand, counsel for the Respondent submits that the Plaintiff was all along aware that the *Award Report* was not an award and hence not executable. Thus, the filing of the execution was itself misconceived and the execution petition was rightly dismissed. It is further submitted by learned counsel for the Respondent that in any event, the Plaintiff having acquired knowledge of the *Award Report* on 8th July, 2004, the suit was barred by limitation and no benefit can be granted to the Plaintiff for having awarded till the disposal of the execution of petition.

15. Having heard counsel for the parties and having perused the record, it is clear that Clause 3 has two parts. The first deals with reference to arbitration and the latter part deals with reference to an Official for '*settling disputes related to interpretation of any term/phrase of the agreement*'. The

difference between the two is not clearly decipherable for a common litigant. The manner in which the clause is worded and the subsequent conduct of NBCC i.e., of reference to the Official, the preparation of the *Award Report* and submission of the same, could have led the Plaintiff to believe that the Report is a binding Award and would be implemented in right earnest, by the NBCC. When the implementation did not happen, a representation was made seeking implementation. Upon not receiving a response, under the *bona fide* belief that the same constitutes a binding Arbitral award, an Execution Petition came to be filed.

16. The report of Mr. Kumar, in fact, is titled as '**Award Report**'. Thus, it cannot be completely ruled out that the Plaintiff was led to believe that this could constitute an arbitral award which is of an executable nature. What lends credence to this is also the manner in which the reference was made to Mr. Kumar which uses language such as "*to deal with any difference or doubt pertaining to meaning/interpretation of any phrase/word used in terms or in schedule of services, their nature and manner of rendering such services as per in terms of clause 3, 2nd para*". When such language is used, it cannot be said with confidence that a litigant ought to be aware that this is not an arbitral award. Moreover, the Plaintiff after acquiring knowledge of the report having been rendered, repeatedly sought implementation of the report. However, at no point of time did NBCC inform the Plaintiff that the report of Mr. Kumar is not an arbitral award. The repeated representations of the Plaintiff seeking implementation of the report did not evince any response thereto.

17. The Plaintiff then filed the execution petition seeking execution of the award after waiting for a period of three months. In the objections filed to

the execution, the NBCC took a stand that the alleged award dated 26th February, 2004 passed by Sh. Kumar is not an award under the Arbitration and Conciliation Act, 1996. The relevant portion of the first objection raised by the NBCC is extracted below :-

*“That the **alleged Award** dated 26-2-2004 passed by Sh. S.P. Kumar is not an Award passed under the provisions of Arbitration & Conciliation Act 1996, which is capable of being executed as a decree under section 36 of the said Act. Neither appointment of Arbitrator was made under Arbitration & Conciliation Act, nor proceedings conducted under the said Act.”*

From a perusal of the above extract, it is clear that NBCC also referred to the report of Mr. Kumar as an ALLEGED AWARD and not a REPORT. The execution petition was dismissed. However, while dismissing the same, the Trial Court had held that the report is binding on NBCC. Even then, the NBCC chose not to implement the report which led to the filing of the present suit.

18. The Trial Court has erroneously held the suit to be barred by limitation by taking the date of the *Award Report* as the relevant date. The *Award Report* was not communicated to the Plaintiff, which could thus not have acquired knowledge of the same. Thus, the first date which is of relevance is 8th July, 2004 which is the date, the Trial Court considers to be the date of knowledge of the report. If limitation is calculated from 8th July, 2004 and minimum three months is excluded thereafter, the time for filing of execution starts only on 7th October, 2004. The execution was preferred on 30th October, 2004 i.e. within 21 days after the expiry of three months. The execution was dismissed on 27th April, 2007. The present suit was filed on

31st March 2010 within three years from the date of dismissal of the execution petition. The benefit of three months ought to be granted to the Plaintiff as the Plaintiff all along proceeded on the belief that the *Award Report* of Mr. Kumar is an arbitration award - which impression was not wholly unjustified.

19. The Judgment of the Madras High Court has rightly been relied upon by the Plaintiff. The execution Court held that the *Award Report* of Mr. Kumar is binding on NBCC and hence this order gave the Plaintiff new cause of action to file the present suit. The Madras High Court observed in *Ramaswami Nathan (supra)* as under:

“.....There was an appeal to the District Court and the High Court and the Subordinate Court’s decree was finally confirmed by the High Court on 5th February, 1917. Meanwhile, there was an attempt to execute the decree of the Subordinate Court in E.P. No. 309 of 1914. The Subordinate Court of Ramnad held that the decree was unexecutable and that it contemplated that the 5th plaintiff as Receiver should sue the 1st defendant to recover the amounts (Exhibit G. dated 26th October, 1914). There was no appeal against this order and the order is now binding on all the parties. The result is that the decree must be construed, in the light of that order, to be a decree declaring or creating rights which are unenforceable in execution and can be enforced only by suit.

.....

He contends that the suit is not maintainable and is barred by limitation. It is true, as he points out, that a claim to recover a sum of money due from one of the partners must form part of the inquiry in the action for winding up the partnership and no suit will lie after a suit for an account is barred by limitation. Gopala

Chetty v. Vijayaraghavachariar A.I.R. 1922 P.C. 115. But the respondent contends that the judgment (as construed by the order of 26th October 1914, Exhibit G) creates fresh rights in the place of the older rights and this suit is an action on the judgment. This is obvious, and, provided there is no obstacle in India to a suit on a judgment, when there is no other remedy to enforce the right, the contention ought to prevail.

.....

In our opinion, there is nothing in all the Indian authorities cited before us against the maintainability of the suit. Such a case can occur only very rarely. Ordinarily the Indian Courts pass judgments which are to be enforced in execution and even when they create new relation involving fresh rights and obligations they provide for working out the rights in execution. Rarely do they create a new obligation without providing for its execution and indicating a suit as the only method of enforcing it. But when they do, as in the case, the suit is maintainable.

We accordingly hold that the suit is maintainable. If so the only period of limitation that is applicable to it is Article 122. There was no old cause of action on which such a suit would be maintained nor does it subsist if it ever existed. The judgments created a new obligation in lieu of the old. The suit is therefore within time.”

20. Thus, under the circumstances as existed in the Madras High Court, the suit was held to be within limitation. In the present case, there has to be some method in which the *Award Report* is implemented. It would be unjust to hold that it is not an executable Award and also no suit is maintainable for seeking implementation of the same. Any remedy which may be pursued in a bonafide manner ought to be considered while calculating limitation and benefit of the period of pendency of the said litigation ought to be granted. This is the whole purpose of Section 14 of the Limitation Act, which has

been reiterated by the Supreme Court in ***Consolidated Engg. Enterprises v. Principal Secy. Irrigation Deptt. and Ors. (2008) 7 SCC 169***, where it was held as under:

“12. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said Section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;*
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;*
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;*
- (5) Both the proceedings are in a court.*

The policy of the Section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to

get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.”

This position has recently been upheld by the Supreme Court in ***Commissioner, Madhya Pradesh Housing Board & Ors. v. Mohanlal and Co. (2016) 14 SCC 199***. The facts of the present case clearly satisfy the tests laid down by the Supreme Court.

21. Examining the matter either way, i.e. either three years from the date of dismissal of the execution petition or by giving three months benefit under Section 34 read with Section 36 of the Arbitration Act (as prevalent) to the Plaintiff, and excluding the period during which the Execution proceedings were pending, the suit is well within limitation. Issues no.2.1 and 2.2 are answered accordingly.

22. The Trial Court’s judgment on the remaining issues are not under challenge. This Court has however examined the reasoning by the Trial Court on the issues qua which reference was made to Mr. Kumar by NBCC, and the Trial Court has rightly held that it was not open to the NBCC not to implement the said award.

23. The present litigation reveals an unsatisfactory state of affairs in

respect of dispute resolution. Clause 3 in the agreement which has been extracted above, has two parts. The first part relates to disputes which are to be referred to arbitration. The second part of the said clause pertains to “*meaning/interpretation of any phrase/word used in terms or in the Schedule of Services, their nature and manner of rendering such services*” which is termed to be “*excepted matters.*” The excepted matters i.e. which are presumed to be excepted from arbitration proceedings, are referred by the Chairman of the Joint Management Committee of the NBCC to an officer whom they deem appropriate, who is not below the rank of Resident Engineer of NBCC. The purpose of such reference, as per the clause, is ‘*to settle the issue*’. The same is termed as final and binding on both the parties. Thus, it ought to operate as a settlement.

24. However, as is seen in the present case, representation was made by the Plaintiff on 31st March, 2003 for appointment of an officer under Clause 3 of the Agreement to settle the disputes between the parties. The NBCC appointed an officer on 17th May 2003. The appointed officer, Mr. S.P. Kumar, submitted an *Award Report* to the NBCC directly without marking a copy to the party seeking reference. Even after the *Award Report* was received, no action was taken by NBCC. No intimation of the receipt of the *Award Report* was given to the Plaintiff. When the Plaintiff came to know of the said *Award Report*, it sought implementation thereof at least on three occasions, which went completely un-replied. This led to the filing of a civil suit and the long drawn out litigation between the parties for the past 8 years.

25. The entire purpose of a dispute resolution clause, either by arbitration or a settlement clause, like the one contained in clause 3 of the Agreement,

is to enable expeditious resolution and closure of disputes, especially those which are commercial in nature. If the parties have to be finally relegated to a civil court, then the entire purpose of such resolution clause is defeated. Organizations which have a large number of contractual and commercial disputes on a daily basis, ought to have an internal mechanism by which resolution of disputes takes place and when such resolution is done by their own officer to whom reference is made, the binding nature of such resolution ought to be respected. The purpose of such clauses would be set at naught if commercial claims are to be delayed in the manner as has been done in the present case. Moreover, the nature of the clause itself can result in confusion as to the enforcement mechanism in case of a reference by the Joint Management Committee. If the *Award Report* was not to be accepted at all, then the entire reference itself was a complete eye wash.

26. In view of the above, the following directions are issued:

- a) The cases, in which such reference under the second part of Clause 3 would be made, should be specified and the binding nature of the report should be made clear to the person making the claim.
- b) Any report submitted by the officer to whom the reference is made ought to be communicated by the officer and/or Joint Management Committee to the person making the claim within a period of 15 days.
- c) The implementation/challenge mechanism of such reports ought to be incorporated in the clause itself. Such a mechanism ought to be in the spirit of the clause i.e., to 'settle the issue' and not to relegate parties to long-drawn litigation.

27. It is, directed that a copy of this order be sent to the Chairman and

Board of Directors of NBCC to frame appropriate guidelines in respect of implementation of *Award Reports* or reports that may be passed, post a reference by the Joint Management Committee under the second part of Clause 3 contained in their agreements.

28. The suit is decreed in favour of the Appellant along with simple interest @8% p.a. payable from the date of filing of the suit till the date of payment. No costs. Appeal is accordingly dismissed.

PRATHIBA M. SINGH
JUDGE

APRIL 25, 2018/Rahul/dk