

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

ARBITRATION APPEAL NO. 2/2018

(M/S P.J. RATHOD **VERSUS** UNION OF INDIA & ANOTHER)
 WITH

ARBITRATION APPEAL NO. 3/2018

(M/S P.J. RATHOD **VERSUS** UNION OF INDIA)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri A.V. Khare, counsel for appellant.
 Shri Nitin Lambat, counsel for R-Union.

CORAM : A.S. CHANDURKAR, J.

DATE : SEPTEMBER 26, 2019.

Both these appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the said Act') can be conveniently decided by this common order as the applications filed under Section 34 of the said Act by the respondent herein have been adjudicated by a common judgment dated 30.01.2017.

Pursuant to a works contract that was awarded to the appellant herein, various works were carried out on behalf of the respondent. Since disputes arose between the parties, the arbitration clause was invoked by the appellant herein and a claim was accordingly raised. The Arbitrator by his award dated 27.02.2007 recorded a finding that various claims made by the appellant were barred by limitation and were not liable to be adjudicated. Thereafter in respect of other claims as made, the learned Arbitrator accepted the claim in respect of work orders at Serial Numbers 1, 4, 5, 11, 16, 19 and 21. That adjudication gave rise to the applications filed by both the parties under Section 34 of the said Act. Miscellaneous Civil Application No.395 of 2007 was filed by the respondent herein questioning the award on the ground

that the entire claim as made by the appellant was barred by limitation. Miscellaneous Civil Application No.400 of 2007 was filed by the appellant herein being aggrieved by the non-grant of the claim in respect of items that were denied by the Arbitrator. The learned Principal District Judge by the impugned judgment held that the Arbitrator was justified in not adjudicating some of the claims on the ground that they were barred by limitation. On the same premise, the claims as awarded by the learned Arbitrator were set aside holding them to be time barred as well. Hence, the common judgment is the subject matter of challenge in these appeals.

Shri A.V. Khare, learned counsel for the appellant submitted that the contract in question was dated 01.07.1981 and the works therein were to be completed by 30.06.1982. The period of completion was extended by one year till 30.06.1983. Despite completion of the majority of the works, the respondent did not undertake final measurements so as to enable working out the entitlement of the appellant. He referred to the communication dated 18.09.1986 issued by the respondent in which it was stated that the accounts had not been finalized as a result of which payments could not be made. On 24.06.1992 another letter was issued by the respondent calling upon the appellant to attend the office of the respondent on 13.07.1992 for undertaking final measurements. Similar letter dated 29.01.1999 was again issued. It was thus submitted that final measurements in the presence of both the parties was not carried out. Thereafter referring to Clause 45 of the General Conditions of Contract (for short, 'G.C.C.'), it was submitted that if despite notice the contractor was not present for final measurements, it was open for the respondent to carry out such measurements which would be binding on the parties. He

submitted that even such final measurement was got carried out in absence of the appellant despite letters dated 18.09.1986 and 24.06.1992. He then referred to paragraph 15 of the statement of claim to indicate that the respondent had not prepared the final bill despite passage of considerable time. The claim as raised was therefore within limitation and moreover the respondent did not raise any objection whatsoever in its reply that the claim as made by the appellant was barred by limitation. This aspect was considered for the first time in the proceedings under Section 34 of the said Act. It was thus submitted that the claim as made was liable to be entertained on merits.

Shri N.P. Lambat, learned counsel for the respondent on the other hand supported the impugned order. He submitted that on 18.09.1986 the claimant had been called for undertaking final measurements after which the entitlement of the claimant was decided. A bill of Rs.7,736/- was accordingly prepared. The contract in question was terminated on 19.10.1983 and therefore no continuous cause of action as urged arose. He referred to the application filed under Section 34 of the said Act and submitted that the plea as regards bar of limitation was specifically taken therein. The cause of action arose on 18.09.1986 and the letter dated 24.06.1992 was only by way of a reply not giving any cause of action to the claimant. It was thus submitted that no interference was called for with the impugned judgment.

I have heard the learned counsel for the parties at length and I have perused the records of the case. The period of the contract being extended from 30.06.1982 for a period of one year is not in dispute. It is also not in dispute that on 19.10.1983 the contract came to be terminated after which on 18.09.1986 the respondent called upon the appellant to remain present for

undertaking final measurements. Thereafter the bill to the extent to which the claim of the appellant was liable to be accepted was paid to him. The proceedings for arbitration commenced by virtue of notice given on 28.02.1999. In the proceedings under Section 34 of the said Act, it was noticed by the learned Principal District Judge that the learned Arbitrator has observed that various claims were time barred and should have been rejected at the initial stage. Most of the records were not available due to the passage of time. Though the learned Arbitrator was justified in rejecting various claims on the ground of limitation, there was no justification for awarding any amount with regard to Claim Nos.1 and 2. It is on that count that the award passed by the learned Arbitrator came to be set aside. It is seen that the learned Principal District Judge has rightly found that the claim as made was barred by limitation. The letter dated 24.06.1992 did not give any fresh cause of action to the appellant and the same arose on 18.09.1986 as rightly urged on behalf of the respondent. The claim having been raised in the year 1999 was therefore rightly held to be barred by limitation. It is thus found that no exercise of jurisdiction under Section 37 of the said Act, there is no ground made out to interfere with the common judgment passed in exercise of jurisdiction under Section 34 of the said Act.

As a result, both the arbitration appeals stand dismissed with no order as to costs.

JUDGE