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HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 9 of 2017****Order reserved on 29.07.2021****Order delivered on 25.10.2021**

M/s Gokul Krishna Construction Projects Ltd. (Now GKC Projects Limited) A Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Sy. No.9 (P), C-II, Green Building Lane, HITEC City, Kondapur, Hyderabad- 500084, Andhra Pradesh.

---- Applicant/Revisioner**Versus**

1. State Of Chhattisgarh through the Executive Engineer, Pradhan Mantri Gramin Sadak Yojna, Kawardha, District Kabirdham, Chhattisgarh, Chhattisgarh.
2. Chhattisgarh Rural Road Development Agency, through the Chief Engineer Chhattisgarh Rural Road Development Agency (CRRDA) Vikas Bhawan, Civil Lines, Raipur, Chhattisgarh, District : Raipur, Chhattisgarh.

---- Respondents

For the Applicant/Revisioner	: Shri Sarojanand Jha, Advocate.
For the Respondents/ State	: Shri Sameer Uraon, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV JUDGMENT**

1. This civil revision has been filed against the impugned award (Annexure-A/1) dated 18.1.2017, passed by the Chhattisgarh Arbitration Tribunal, Raipur in Reference Petition No. 1 of 2016.
2. The revisioner/applicant is a company incorporated under the provisions of the Companies Act, 1956. Respondent No.1 – State of Chhattisgarh floated a notice inviting tender dated 5.9.2006 for construction and maintenance of rural roads. The applicant submitted his bid which was the lowest and on that basis, he was awarded the tender vide agreement dated 23.4.2007. As per the requirement of the contract, the applicant has deposited 5% of the contract amount amounting to Rs.35,72,000/- as

security deposit in terms of clause 33 of the Agreement and also submitted performance security for the same. Eight roads were proposed to be constructed under this agreement, which are as under:-

1. Nayapura to Patpar
2. Gaourmati to Gaourjhumar
3. Main Road to G. Khamariya
4. Main Road to Magarwah
5. Nawagaon to Pailpur
6. Tendu to Karhi
7. Thankhamhariya Saja Road to Kotgaon
8. Singhangarh to Kuanrachhriya

The date of completion of the project was proposed as 22.4.2008.

3. There was a provision for extension of the completion date in the agreement. The applicant could not complete one of the roads, namely, Tendu-Karhi Road within the stipulated time and sought extension of time, which was extended up to 15.6.2008 and then, on his prayer, a second extension was given up till 15.12.2008, subsequent to which, construction of 7 roads were completed. Then, he made a prayer for extension of time on which, the extension was again granted up till 15.2.2009. The applicant could not complete the work and then again made a prayer for extension of time till 31.3.2009. The work on the last road was completed and a Work Done Certificate was issued by respondent No.1 in favour of the applicant on 13.4.2009 (Annexure-A/20). The Chief Executive Officer then issued an order dated 13.10.2009 (Annexure-A/21) granting Ex-post Facto Approval for extension of the time for completion of work and liquidated damages was ordered to be recovered from the applicant, by invoking clause 44 of the Agreement.

The applicant then filed a Writ Petition No.3532 of 2010 praying to quash the order dated 13.10.2009 (Annexure-A/21). The petition was disposed of by order dated 16.7.2010, directing the respondent No.1 to decide the representation of the applicant within a period of four weeks. The representation made by the applicant was rejected by the Chief Executive Officer of respondent No.1 vide order dated 3.9.2010 (Annexure-P/26). The applicant has not been paid fully and an amount of Rs.40,20,846/-, which is an outstanding amount, remain unpaid by the respondents.

4. The Chief Executive Officer of respondent No.1 has also issued a letter dated 28.2.2012 for recovery of liquidated damages from the revisioner/applicant. The applicant then raised a dispute and invoked clause 25 of the Contract Agreement providing for arbitration by a letter dated 30.8.2012 addressed to respondent No.2 (Annexure – A/35). Respondent No.1 then informed the applicant vide letter dated 1.10.2012 (Annexure-A/36) that the amount of liquidated damages is Rs.68,36,400/- has been levied upon the revisioner/applicant and a partial amount of Rs.18,81,117/- has been deducted from the last payment. The applicant was also directed to pay the remaining amount of Rs.49,55,283/- within 7 days and it was informed that in case of his failure, the fixed deposit receipts of surety shall be encashed.

5. The applicant then filed a Writ Petition No. 2022 of 2012 praying for quashment of the order dated 1.10.2012 (Annexure-A/36), which was dismissed by the order dated 27.11.2012 on the ground of availability of an alternative remedy under clause 24 & 25 of the Agreement. The applicant then preferred SLP before Hon'ble the Supreme Court which was registered

as Civil Appeal No. 6057 of 2015 which was disposed of by the order dated 11.8.2015 (Annexure-A/39), by which the applicant was directed to approach the Arbitration Tribunal and he was granted interim relief against the encashment of the FDRs. Subsequent to this, the applicant filed the reference petition before the Chhattisgarh Arbitration Tribunal, Raipur. After granting opportunity of hearing, learned Arbitration Tribunal has passed the impugned award by dismissing the reference petition of the applicant on the ground that it was barred by limitation.

6. It is submitted by learned counsel for the applicant that the impugned order suffers from infirmity. The reason for extension of time for conclusion of the contract work again and again had been that the land acquisition process was not completed by the respondents and the land for construction of road was not made available to the applicant particularly for the incomplete Tendu-Karhi Road. While extending the stipulated time for completion of work, the officers of the respondents have acknowledged again and again the reason of unavailability of the land for constructing the road, therefore, the delay was not attributable to the applicant for which the respondents were solely responsible. Despite that, the Chief Executive Officer of respondent No.1 had issued a letter dated 13.10.2009 (Annexure-A/21), directing the recovery of liquidated damages from the applicant. In all the letters by which the time was extended by the respondent authorities, there was no such condition, that the applicant was required to pay any liquidated damages. It is also submitted that the learned Tribunal has held in the impugned order that the reference is barred by limitation even then, it has proceeded to decide the reference on merits and then passed the orders.

7. It is submitted by learned counsel for the petitioner that learned Tribunal has failed to appreciate that clause 27 of the Agreement provides that the Engineer shall extend the Intended Completion Date, if a Compensation Event occurs or a variation occur which makes it impossible for completion to be achieved by the Intended Completion Date. Learned Officers of the respondents have considered the fact of non-availability of land for construction of road making mention of the land dispute. The order dated 13.10.2009 has been passed granting Ex-post Facto Approval of time and time was extended by invoking clause 44 of the agreement which provides for realization of the liquidated damages. This order has been passed unreasonably to penalize the applicant for no fault on his part. All the extensions granted to the applicant before the order dated 13.10.2009 were granted by invoking the clause 27 of the agreement. The last extension that was prayed for by the applicant was up to 31.3.2009 regarding which, the recommendation was made by the Executive Engineer of respondent No.1 vide memo dated 20.3.2009 (Annexure-A/19) which was not given any consideration in due time and the work was completed by the applicant before 31.3.2009 regarding which, Work Done Certificate was granted vide Annexure-A/20 on 13.4.2009, therefore, the issuance of the order dated 13.10.2009 is arbitrary without any reason and unjustified.

8. It is submitted, that in Writ Petition (C) No. 2022 of 2012 vide order dated 27.11.2012, learned Division Bench of this Court clearly held that the dispute between the parties can be resolved by invoking clause 24 & 25 of the Agreement. The Arbitration Tribunal is vested with inherent powers under Section 17A of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (in short 'the Act, 1983') which was required to be exercised by the

learned Tribunal to condone the delay, if any, found in bringing the reference before the Tribunal. The Supreme Court in Civil Appeal No. 6057 of 2015 decided on 11.8.2015 has also directed the applicant to approach the Arbitration Tribunal of the State after granting interim relief. The applicant then preferred an application for modification of the order dated 11.8.2015, which was disposed of by order dated 7.12.2015 subsequent to which, the applicant has promptly filed the reference petition on 21.12.2015, therefore, no delay has occurred.

9. It is submitted that the clause 21.1 of the Agreement very clearly provides that the employer shall handover the complete possession of the site to the contractor within 7 days in advance of the construction programme. The respondents have clearly failed to handover the land for construction of road over it to the applicant. It is also submitted that the dispute regarding the land acquisition was continuing because of which, the applicant had to seek extension from time to time and the reason for extension was very clearly acknowledged by the officers of the respondents. As there is a clear provision under clause 27 of the Agreement regarding the cause of delay which may be a compensation event, can be construed as the event of land acquisition and the presence of such dispute regarding possession and compensation has never been denied by the respondents. It is also submitted that under clause 11 of the Contract, the employer is responsible for the risks which directly affect the execution of work. The delay in land acquisition process was certainly within the risk of the employer, therefore, there had been no occasion for invoking clause 44 of the agreement. It is further submitted that because of the delay no loss has been occurred to the respondents whereas, loss is *sine-quo-non* for levying

liquidated damages. Hence, the case of the applicant was good on merits as well.

10. Reliance has been placed on the judgments of Supreme Court on the issue of limitation in the cases of **Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department & Ors.**, reported in (2008) 7 SCC 169, **Shakti Tubes Limited through Director vs. State of Bihar & Ors.**, reported in (2009) 1 SCC 786, **Union of India vs. West Coast Paper Mills Ltd. & Anr.**, reported in (2004) 2 SCC 747 and **Hukumdev Narain Yadav vs. Lalit Narain Mishra**, reported in (1974) 2 SCC 133. On the aspect of liquidated damages the applicant/petitioner has placed reliance on the judgments of Hon'ble the Supreme Court in the matters of **J.G. Engineers Pvt. Ltd. vs. Union of India & Anr.**, reported in (2011) 5 SCC 758, **Tulsi Narayan Garg vs. M.P. Road Development Authority**, reported in 2019 SCC OnLine SC 1158 and **Indian Oil Corporation vs. Lloyds Steel Industries Limited**, reported in 2007 SCC OnLine Del 1169. It is submitted that the impugned order is unsustainable, therefore, it may be set aside and the relief be granted to the applicant.

11. Learned State counsel appearing for the respondents opposes the submissions made by counsel for the applicant and submits that no error has been committed by the learned Arbitration Tribunal of Chhattisgarh in passing the impugned order. It has been very clearly observed in the impugned order that the applicant was not entitled for any extension of time, because of time spent litigating before the High Court and the Supreme Court, under the provisions of the Limitation Act, 1963 and reliance was placed on the judgment of this Court in the case of **Shashikant Agrawal vs.**

State of Chhattisgarh and Ors. in Civil Revision No.128 of 2015. The applicant had been pursuing for reliefs before the High Court and the Supreme Court despite being aware of the clause 24 of the Agreement, that the applicant had the remedy to resort to the arbitration proceeding in dispute, therefore, Section 14 of the Limitation Act, 1963 cannot be invoked in such a case.

12. Replying to the arguments on merits of the case, it is submitted that the extension was granted to the applicant time to time for completion of work under the Contract Agreement. It is also submitted that the applicant firm itself had given a notice to the respondents on 30.8.2012 vide (Annexure-A/35) making a statement of his complaints, seeking resolution of the dispute within 15 days and subsequent to that, the applicant was required to proceed with suitable action by invoking the provisions of arbitration as per clause 25 of the General Conditions of Contract. Despite the issuance of notice by the applicant, he has not acted upon the same and not proceeded to make a reference to the Arbitration Tribunal which again shows that the act of the applicant was deliberate for not approaching the Arbitration Tribunal, having knowledge that there is a limitation prescribed for approaching the Arbitration Tribunal. The applicant has not acted in good faith and with due diligence. Section 29 of the Limitation Act is not applicable to the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983.

13. It is submitted by the State counsel, that the request letter submitted by the applicant praying for extension specifically (Annexure-A/9) shows that there was a dispute regarding 1300 meters of land only, therefore, there was no hindrance in completing the work of the said road i.e. Tendu-Kahri Road

even then, the applicant preferred to delay the construction itself. The portion of the road of 1300 meters could have been completed within the stretch of two days after the resolution of dispute, therefore, the delay in construction of road appears to be deliberate and the order for levying the liquidated damages is reasonable.

14. Relying on the judgment of Supreme Court in the case of **Kailash Nath Associates vs. Delhi Development Authority & Anr.**, reported in **(2015) 4 SCC 136**, it is submitted that it is a clear case of non-performance by the applicant, which has caused delay in completion of work, therefore, according to clause 44 of the Agreement, the applicant has been rightly held liable, the impugned order needs no interference and the same is sustainable. Hence, the civil revision be dismissed.

15. In reply, it is submitted by counsel for the applicant that prior to grant of Ex-post Facto extension by order dated 13.10.2009, all the extensions were granted to the applicant without invoking clause 44 of the Agreement. While passing the order dated 13.10.2009 there is no such finding given or reason recorded that the delay was attributed to the applicant, therefore, the recovery of liquidated damages from the applicant is contrary to the terms of the agreement and law. There had been no lack of due care and attention, therefore, the act of the applicant had been in accordance with good faith which is defined under Section 2(h) of the Limitation Act.

16. Reliance has been placed on 2016 (Journal) Law reports. The applicant has very amply given the reasons regarding not approaching the arbitration Tribunal because he was pursuing for relief before the High Court and before the Supreme Court and then as per the directions of the High

Court and Supreme Court, the reference petition has been filed. It is also submitted again, that the respondents have not suffered any loss because of the delay in conclusion of the project, therefore, the imposition of penalty on the applicant by the respondents is totally illegal and arbitrary. Hence, the relief has been prayed for.

17. Heard learned counsel for the parties and perused the documents.

18. The learned arbitration Tribunal has decided the reference and dismissed the same on twin grounds. Firstly, that the case of the applicant does not have merit and secondly, that the reference is barred by limitation. The ground of limitation is required to be considered first.

19. The learned Tribunal has after considering on the submission of the applicant claiming exemption of delay under the provisions of Section 14 of the Limitation Act, 1963 and relying on the judgment of Chhattisgarh High Court passed in CR No.128/2015 (Shashikant Agrawal Vs. State of Chhattisgarh and others) disallowed the prayer made by the applicant holding that the case will not be covered under Section 14 of the Limitation Act, 1963.

20. In the case of **Shashikant Agrawal Vs. State of Chhattisgarh and others** (supra) the High Court of Chhattisgarh has held in paragraph 10 that:-

“10. In the matter of State of Orissa v. Damodar Das, the Supreme Court while considering Section 3 of the Limitation Act, 1963, held as under: -

"Russell on Arbitration by Anthony Walton (19th Edition) at pp. 4-5 states that the period of limitation for commencing an arbitration runs from the date on which the "cause of arbitration" accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place

upon the dispute concerned. The period of limitation for the commencement of the arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued:

"Just as in the case of actions the claim is not to be brought after the expiration of the specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.

Even if the arbitration clause contains a provision that no cause of action shall accrue in respect of any matter agreed to be referred until an award is made, time still runs from the normal date when the cause of action would have accrued if there had been no arbitration clause."

On reading the whole judgment in the case of **Shashikant Agrawal Vs. State of Chhattisgarh and others** (supra) it is found that the exemption from the limitation was not claimed by the party concerned under the provisions of Section 14 of the Indian Limitation Act and it has also been observed by Hon'ble the Supreme Court in catena of decisions that the cause of action is different from the cause of arbitration.

21. Present is a clear case in which the applicant is claiming exclusion of time on the ground that he was pursuing for relief in a bona fide manner before other Courts. In the case of **Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department & Ors** (supra) Full Bench of Hon'ble the Supreme Court has held in paragraphs 21, 22 and 57 that :-

"21. 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.

22. 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 (sic of) 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.

57. The decision in Popular Construction (2001) 8 SCC 470 is also of no assistance. That decision makes it clear that the AC Act, 1996

being a special law, and Section 34 thereof prescribing a period of limitation different from that prescribed under the Limitation Act and providing a ceiling on the period by which the period of limitation could be extended, the corresponding provisions in the Limitation Act prescribing the period of limitation for filing an application for setting aside an award [Article 119(b) of the Schedule to the Limitation Act] and for extending the period of limitation for sufficient cause (Section 5 of the Limitation Act), were inapplicable. It did not relate to applicability of Section 14(2) of the Limitation Act. Nor did this Court consider the applicability of Section 14(2). Therefore, the decision in *Popular Construction* (2001) 8 SCC 470 will not apply. *Fairgroth* (2004) 11 SCC 472 merely reiterates the principle in *Popular Construction* (2001) 8 SCC 470 in regard to the exclusion of Section 5 of the Limitation Act, as is evident from the following observations: (SCCp.482, para 17)

17.the general rule as far as special and local Acts are concerned is that the specified provisions including Section 5 of the Limitation Act will apply provided the Special or local Act provides a period of limitation different from that prescribed under the Limitation Act. There is an additional requirement viz. That the Special/local Act does not expressly exclude the application of the Limitation Act.”

Therefore, it has to be held that Section 14(2) of the Limitation Act, 1963 is applicable to proceedings under Section 34(1) of the AC Act.”

22. As it has been held if the Special Act or local Act does not specifically excludes the application of Limitation Act, in that case Section 14(2) of the Limitation Act, 1963 shall be applicable and therefore, it is applicable to the proceeding under Section 34 of the Arbitration and Conciliation Act, 1996.

23. In the case of **Shakti Tubes Limited through Director Vs. State of Bihar and others** (supra) the case of **Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department & Ors** (supra) has not been discussed even then the same principle has been laid down

that provisions of Section 14 of the Limitation Act shall be applicable to the proceeding arising under Section 34 of the Arbitration and Conciliation Act, and the ratio laid down in the case of **Gulbarga University v. Mallikarjun S. Kodagali**, (2008) 13 SCC 539 was followed.

24. In the case of **Union of India and others Vs. West Coast Paper Mills Ltd. and another** (supra) Hon'ble the Supreme Court has held in paragraphs No.23 and 41 that:-

"23. In Kunhayammed and others Vs. State of Kerala and another, (2000) 6 SCC 359, this Court held:

"12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way – whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."

It was further observed: (SCC p. 383, paras 41-42)

"41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would

not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.

42. "To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality.(See Corpus Juris Secundum, Vol. LVII, pp. 1067- 68)"

[See also Raja Mechanical Co. (P) Ltd. v. CCE, (2002) 4 AD (Del) 621]"

41. In the aforementioned cases, this Court failed to take into consideration that once an appeal is filed before this Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The subject-matter of the lis unless determined by the last court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of much relevance once this Court grants special leave and decides to hear the matter on merit."

25. Section 14(2) of the Limitation Act, 1963 is as follows:-

14. Exclusion of time of proceeding bona fide in court without jurisdiction. – (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence

another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of like nature, is unable to entertain it.”

Section 14(2) of the Act, 1963 provides for exclusion of time spent by a party in prosecuting before other courts with due diligence. 'Due Diligence' is a word which has not been defined anywhere, normally, it will mean a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances.

26. In the present case, the grievance of the applicant occurred when the Chief Executive Officer issued the order dated 13-10-2009 (Annexure-A/21) directing for recovery of liquidated damages from the applicant. The applicant then preferred W.P.(C)No.3532 of 2010 praying to quash the order dated 13-10-2009. The petition was entertained by the High Court and then the same was disposed off by order dated 16.07.2010 directing that the representation of the applicant/petitioner be decided by the respondents within a period of four weeks. The representation of the applicant was then decided and the applicant was communicated by memo dated 03.09.2010 (Annexure-A/26) and his representation was rejected. Subsequent to that,

the applicant raised dispute by invoking clause 25 of the contract agreement by an application dated 30.08.2012 (Annexure-A/35) addressed to the Executing Engineer, CRRDA. This application remained unanswered and the applicant was given intimation by memo dated 01.10.2012 by which the applicant was directed to deposit the amount otherwise the amount was to be realized from the security deposits. It was then the applicant approached this High Court again by filing Writ Petition (C) No.2022 of 2012 which was disposed off on 27.11.2012 on the ground that the contract agreement provides for dispute redressal through arbitration under Clause 25 of the Act, 1996. The the applicant filed SLP No.21440/2013 before Hon'ble the Supreme Court which was entertained and the respondents were directed not to encash the Fixed Deposit(s). During pendency of that SLP the applicant had filed reference petition before the Arbitration Tribunal. The SLP was disposed off by order dated 11.08.2015 by continuing the interim order until disposal of the dispute by the Arbitration Tribunal.

27. Section 7(B) of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (in short 'the Act, 1983) is as follows:-

“7-B Limitation. – (1) The Tribunal shall not admit a reference petition unless–

- (a) the dispute is first referred for the decision of the final authority under the terms of the works contract; and
- (b) the petition to the Tribunal is made within one year from the date of communication of the decision of the final authority :

Provided that if the final authority fails to decide the dispute within a period of six months from the date of reference to it, the petition to the Tribunal shall be made within one year of the expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where no proceeding has been commenced at all before any Court proceeding the date of commencement of this Act or after such commencement but before the commencement of Madhya Pradesh Madhyastham Adhikarn (Sanshodhan) Adhiniyam, 1990, a reference petition shall be entertained within one year of the date of commencement of Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990 irrespective of the fact whether a decision has or has not been made by the final authority under the agreement.

(2-A) Notwithstanding anything contained in sub-section (1), the Tribunal shall not admit a reference petition unless it is made within three years from the date on which the works contract is terminated, foreclosed, abandoned or comes to an end in any other manner or when a dispute arises during the pendency of the works contract:

Provided that if a reference petition is filed by the State Government, such period shall be thirty years.”

28. According to the facts of the case, the order by which the applicant is aggrieved is dated 13.10.2009. The W.P.(C) No.3532 of 2010 was preferred after lapse of some time, but there is no fact present to work out the time lapsed between the order passed on 13.10.2009 and the filing of the W.P.(C) No.3532 of 2010. The writ petition was disposed off on 16.07.2010. After lapse of about two years the application was made to Executive Engineer on 30.08.2012 (Annexure- A/35) praying to invoke clause 25 of the agreement and decide the dispute by arbitration.

Proviso to Section 7(B)(1)(B) of the Act, 1983 provides that if the final authority fails to decide the dispute within a period of six months from the date of reference to it, the petition to the Tribunal shall be made within one year of the expiry of the said period of six months. The application to the Executive Engineer dated 30.08.2012 remained unanswered, there by after

completion of six months, from the end of February, 2013 limitation for filing reference petition before the Arbitration Tribunal had started running and the limitation ended until last of February, 2014, but no reference was filed. It can be taken into consideration that in between the applicant had preferred Writ Petition (C) No.2022 of 2012, but the order under challenge in that petition had been order dated 28-02-2012 by which second representation of the applicant/petitioner was rejected by the respondents. Subsequent to the order in this writ petition the applicant moved to Hon'ble the Supreme Court until the SLP was decided on 11.08.2015.

As it appears from the facts present that from date of grievance of the applicant, i.e., 13.10.2009 the applicant started pursuing for remedy in the High Court and after disposal of the writ petition on 16.07.2010 the first representation was dismissed on 03.09.2010 and the second representation was dismissed on 28.02.2012. In the meanwhile, for about two years between the order of this Court in W.P.(C) No.3532 of 2010 on 16.07.2010 and until filing of second petition Writ Petition (C) No.2022 of 2012 the applicant has done nothing except filing second representation which was again rejected. No liberty had been granted to the petitioner/applicant by the High Court for filing second representation. This lapse of time has to be taken into consideration. The exclusion of time under Section 14 of the Limitation Act, 1963 is granted on certain conditions, firstly, that the proceedings must relate to the same matter in issue and there must be continuation of such prosecution in good faith before a court not having jurisdiction.

It can be gathered from the circumstances present in this case that the

dispute between the applicant and the respondents was referable for arbitration, the High Court or Hon'ble the Supreme Court are not the authority to arbitrate upon the dispute between the parties. The authority having jurisdiction is the Arbitration Tribunal which has been constituted under the Act, 1983. The words in Section 14(1) and (2) both are very clear that the time which may be excluded shall be the time during which the applicant had been prosecuting with due diligence another civil proceeding. Therefore, it means that the time that has not been spent in prosecution of a civil proceeding before another court cannot be taken into consideration. The time spent must have continuity, which is not the case present here. Clearly, there is lapse of time as it is discussed hereinabove, which is time of about two years which cannot be accounted for exclusion as provided under Section 14 of the Limitation Act, 1963. Hence, I am of this view that the learned Arbitration Tribunal has not committed any error in holding that the reference made to the Arbitration Tribunal was barred by limitation.

Although, the learned Tribunal has taken pains to decide the reference on merits as well, but looking to the clear bar present under Section 7-B of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 and on finding that the applicant has no entitlement to claim benefit of Section 14 of the Limitation Act, 1963, the reference was not fit to be entertained and decided at all. Therefore, this petition is dismissed and disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge