

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

**APPEAL NO. 989 OF 2005
IN
ARBITRATION PETITION NO. 36 OF 2004**

**M/s.Satish K. Narang & Co.)
B-11/2096, Rock View Apartment,)
Vasant Kunj, New Delhi 110 070.) Appellant**

VERSUS

**Jamnadas Morarje Secs.Ltd.)
Member(s) Clg. No. 330,)
204, Stock Exchange Tower,)
Dalal Street, 2nd Floor, Mumbai) Respondent**

Mr.Kunal Kumbhat, a/w. Ms.Rachana Kumbhat, i/b. Ms.Sunanda Kumbhat for the Appellant.

Mr.Simil Purohit, a/w. Mr.Vishal Paltabiraman, i/b. M/s.Purohit & Co.
for the Respondents.

**CORAM: R. D. DHANUKA AND
V. G.BISHT, JJ.**

RESERVED ON : 19th MARCH, 2021
PRONOUNCED ON : 4th MAY 2021

JUDGMENT (Per R. D. Dhanuka, J.) :-

. By this appeal filed under section 37 of the Arbitration and Conciliation Act, 1996 (for short 'Arbitration Act'), the appellant has impugned the judgment dated 2nd May, 2005 passed by the learned Single Judge dismissing the arbitration petition filed by the appellant under section 34 of the Arbitration and Conciliation Act, 1996. Some

of the relevant facts for the purpose of deciding this appeal are as under:-

2. The appellant was the original petitioner/claimant before the learned Single Judge and also before the arbitral tribunal. The respondent herein was the original respondent before the learned Single Judge as well as in the arbitral proceedings. It was the case of the appellant that the appellant is an investor whereas the respondent is a corporate member of the Bombay Stock Exchange Limited and is carrying on business as share, stock and finance broker.

3. On 3rd August, 1994, the appellant purchased 1000 shares of Prakash Tubes Ltd. through the respondent. On 27th August, 1994, 200 shares of the said company were returned to the respondent as the same were returned by the said company Prakash Tubes Ltd. on the ground that the signature differed. On 12th August, 1995, 100 shares were returned by the respondent after rectification along with 75 bonus shares on the said 100 shares to the appellant. It is the case of the appellant that the respondent was right to return 100 shares plus 75 bonus shares of the said Prakash Tubes Ltd. to the appellant.

4. It is the case of the appellant that on 4th January, 1995, the

appellant purchased 100 shares of Brook Bond Ltd. through the respondent. On 23rd January, 1995, the respondent delivered 50 shares of the said Brook Bond Ltd. to the appellant and did not deliver the balance 50 shares of the said company. It is the case of the appellant that on 4th May, 1994, the appellant purchased 1,00,000 shares of Torrent Gujarat Bio Tech Ltd. through the respondent. On 24th November, 1994, the appellant returned 100 shares to the respondent with objection memo of the said company Torrent Gujarat Bio Tech Ltd. The respondent however did not return those 100 shares after rectification of the objection to the appellant.

5. It is the case of the appellant that on 30th March, 1995, though the respondent had sold 100 shares of Atlantic Spinning on behalf of the appellant, the respondent did not give credit of the sale proceeds of those shares to the appellant. The respondent sent a statement of account of the appellant for the period between 27th March, 1995 and 11th August, 1995. According to the appellant, the statement of account showed the difference of Rs.3,100/- in settlement nos. 5527 and 7453. The last transaction between the appellant and the respondent was on 6th December, 1995. On 29th May, 1996, the respondent sent a letter to the appellant for reconciliation of the statement of accounts. It is the case of the appellant that on 25th June, 1996, the appellant forwarded

his reconciliation statement to the respondent. According to the appellant, during the period between 17th September, 1996 and 14th October, 1998, the appellant sent various reminders to the respondent for payment due to the appellant. The respondent however did not make any payment due to the appellant.

6. On 26th March, 1998, the SEBI called upon the Bombay Stock Exchange to amend its bye laws to include the applicability of the Limitation Act, 1963. On 31st March, 1998, the Governing Board of the Bombay Stock Exchange passed a resolution thereby adopting the instructions of the SEBI and resolved to amend the bye-laws. On 29th August, 1998, the bye-laws of the Bombay Stock Exchange were amended. The provisions with respect to the limitation were added by amending the bye law no.252. The amendment were two fold i.e. claim against defaulter members and the claim between the members and non-members.

7. It is the case of the respondent that as far as the claim against the defaulters are concerned, the bye-law prescribed a period of six months from the date the claim arises or becomes due. However, the arbitral tribunal was granted sufficient power to condone delay as provided under section 5 of the Limitation Act. Bye-law 252(2) of the amended

bye-law provided that the provisions of the Limitation Act, 1963 were applicable.

8. On 7th June, 2002, the Governing Board of the Bombay Stock Exchange passed a resolution and once again amended the bye-law 252(2) by the said amendment. It was provided that the claim has to be received by the exchange within a period of six months from the date of transaction. The said amendment empowers the Governing Board to appoint the committee to settle all claims and differences amicably. It was provided that the time taken by the Investor's Grievances Redressal Committee (IGRC) would be excluded while computing the period of limitation. It was also provided that all transactions done prior to the date on which the bye-laws came into effect, the limitation period of six months shall be computed from the date on which the bye-laws came into effect. SEBI granted its approval to the said amendment on 4th June, 2003.

9. It is an undisputed position that on 29th April, 1999, the appellant made a complaint which was referred to the IGRC against the respondent member. On 29th August, 1999, the respondent replied to the said complaint dated 29th April, 1999. It is the case of the appellant that the respondent for the first time in the said reply to the complaint

indicated that there was a dispute between the parties. On 17th September, 1999, a meeting came to be held by the said IGRC. On 29th September, 1999, the IGRC directed the parties to go for arbitration. On 29th September 2000, 30th September 2000 and 4th November, 2000, the appellant addressed letters seeking help of the Bombay Stock Exchange for the registration of the dispute between the appellant and the respondent.

10. On 1st July, 2002, the appellant lodged a statement of claim against the respondent. According to the arbitral award, the date of the reference was 26th October, 2002. On 31st October, 2002, the respondent filed a reply and the counter claim and raised a plea of limitation in respect of the claims made by the appellant. The appellant filed a rejoinder on 10th February, 2003. The respondent filed sur-rejoinder on 11th March, 2003. During the period between 19th December, 2002 and 5th May, 2003, the matter was heard by the arbitral tribunal. On 27th June, 2003, the learned arbitrator rejected the claim made by the appellant on the ground of limitation. The learned arbitrator held that the claim of the appellant was time barred on 13th June, 2003. The appellant ought to have filed their claim on or before 28th August, 2001. The appellant applied for rectification of the said award before the learned arbitrator.

11. By an order dated 21st July, 2003, the learned arbitrator made few corrections in the said arbitral award dated 27th June, 2003. The appellant filed the petition under section 34 of the Arbitration Act impugning the said award dated 27th June, 2003 before the learned Single Judge. The learned Single Judge dismissed the said arbitration petition by a judgment dated 2nd May, 2005. The appellant preferred this appeal under section 37 of the Arbitration Act against the said judgment dated 2nd May, 2005.

12. Mr.Kunal Kumbhat, learned counsel for the appellant invited our attention to various documents annexed to the appeal paper-book and submits that the disputes between the parties arose during the period between 1994-1995 which was referred to the arbitration. The last transaction between the parties took place on 6th December, 1995. The respondent had forwarded reconciliation statement to the appellant on 29th May, 1996. The appellant reconciled the statement of account and forwarded their reconciliation statement to the respondent on 25th June, 1996. The appellant had called upon the respondent to return 175 shares of Surya Roshni Ltd., 50 shares of Brook Bond Ltd., 100 shares of Torrent Gujarat Bio Tech Ltd., 100 shares of Atlantic Spinning and demanded payment of Rs.3,100/- as difference in settlement nos. 5527 and 7453.

13. It is submitted that during the period between 1996 to 1998, the appellant had exchanged about 12 correspondences with the respondent and had repeatedly requested for return of those shares and the amount. All those correspondences were placed before the arbitral tribunal. The respondent had neither denied the liability nor returned the said shares and the amount demanded by the appellant. He submits that even in the reply to the complaint filed by the appellant before the IGRC, the respondent had not specifically denied the claim of the appellant but had only contended that there was serious dispute between the appellant and the respondent.

14. In the minutes of the meeting dated 29th April, 1999, issued by the IGRC, it was observed that the respondent member wanted to oppose the claim only on the technical point such as limitation etc. He submits that the said IGRC directed the parties to go for arbitration only on 29th September, 2000. The appellant had accordingly lodged a statement of claim before the learned arbitrator on 1st July, 2002. The respondent did not deny the claim of the appellant on merits but only raised an issue of limitation in the written statement filed before the learned arbitrator. He submits that the learned arbitrator passed an award which was patently illegal on the ground of limitation.

15. It is submitted by the learned counsel that the arbitration between the appellant and the respondent was filed as a statutory arbitration under the rules, bye-laws and regulations of the Bombay Stock Exchange. When the transaction took place between the parties in the year 1995-96, none of the rules, bye-laws and/or regulations of the Bombay Stock Exchange prescribed any limitation period for reference of a dispute to arbitration. He submits that though section 43 of the Arbitration Act provided that the provisions of the Limitation Act, 1963 would be applicable to the arbitration proceedings, in view of section 2(4) of the Arbitration Act, section 43 which provided for applicability of the provisions of the Limitation Act, 1963 was specifically excluded to statutory arbitration. The law of limitation thus could not be applied by the respondent or by the learned arbitrator in view of the specific exclusion to the applicability of the provisions of the Limitation Act, 1963 in case of statutory arbitration.

16. Learned counsel for the appellant invited our attention to the impugned judgment delivered by the learned Single Judge. He submits that the learned Single Judge has upheld the arguments of the appellant that the arbitral reference 2002 was not barred by the law of limitation. The said finding rendered by the learned Single Judge has not been challenged by the respondent. He submits that though on the date of

the transaction between the parties, the period of limitation was not applicable, in view of section 2(4) of the Arbitration Act, the learned arbitrator applied the amended bye-laws 252 of the Bombay Stock Exchange from the date of enactment of the said bye-laws to the transaction between the parties and held the claims made by the petitioner as barred by law of limitation.

17. It is submitted that the learned arbitrator was bound to decide the dispute on the basis of the arbitration agreement between the parties and the provisions of law applicable on the date of transaction and not subsequent amendment to the bye-laws of the Bombay Stock Exchange. The rejection of the substantial claims of the appellant by means of a post facto amendment of bye-laws and by applying it to all past disputes in the absence of any such specific provision in the bye-laws and in the absence of any authority which is entrusted with the framing of such delegated legislation would clearly be against the clear legislative intent of section 2(4) of the Arbitration and Conciliation Act, 1996. Such amendment which is brought into effect on the later date could not have been applied to the earlier transaction and to place the appellant in disadvantage situation.

18. The learned Single Judge in paragraph (1) at page 83 of the

paper-book has opined that if there was no period of limitation laid down for making a reference to arbitration, under the Bombay Stock Exchange bye-laws, the arbitration must be invoked within a reasonable period of time is contrary to the legislative intent and section 2(4) of the Arbitration Act. He submits that the learned Single Judge failed to take cognizance that the Arbitration Act, 1940 which governs all the arbitrations, specifically excludes the application of Limitation Act to statutory arbitrations under section 46 of the said Act. The learned arbitrator has not dealt with the said aspect in the impugned judgment.

19. Learned counsel strongly placed reliance on the judgment of Division Bench of this Court in case of ***Savita Khandu Berali vs. Nagar Agricultural Sale & Ors., AIR 1957 Bom.178*** and would submit that this Court in the said judgment has categorically held that the Limitation Act cannot be applied to statutory arbitration by analogy. Learned counsel for the appellant placed reliance on the judgment of this Court in case of ***Ashalata Lahoti vs. Hiralal Liladhar, 1999 (1) Bom C.R. 293*** and in case of ***R.C.Goenka vs. Chase Trading Co., & Anr., 2002 (3) Bom C.R. 201***. He also placed reliance on the judgment of this Court in case of ***Marwadi Shares & Finance Ltd. vs. Minal Kinaksinh Thakore & Ors.,*** delivered on 7th January, 2014 in

Arbitration Petition Nos. 485 of 2013 and 486 of 2013.

20. Learned counsel for the appellant placed reliance on the judgment of Madras High Court delivered on 25th April, 2018 in case of ***The Project Director, Project Implementation Unit & Anr. vs. K.Periyasamy & Ors. in W.A.Nos. 308 to 312 of 2016*** and other connected matters and in particular paragraphs 20 to 34 in support of his submission that in view of the provisions of section 2(4) applicable to the statutory arbitrations, the provisions of the Limitation Act, 1963 could not be applied to the transactions already held prior to the amendment of the bye-laws of the Bombay Stock Exchange and more particularly bye-law 252 w.e.f. 29th August, 1998.

21. It is submitted by the learned counsel that the arbitral tribunal has applied the amended bye-law 252 of the Bombay Stock Exchange from the date of enactment of the said bye-law which never formed part of the rules, regulations and bye-laws by which the transaction in question were governed. It was beyond the authority of the arbitral tribunal to apply the provisions of bye-laws 252 to the past transactions which were governed by section 2(4) of the Arbitration Act which expressly excluded the provisions of the Limitation Act to the statutory arbitrations. He submits that the rules, regulations and bye-laws of the

Bombay Stock Exchange clearly provided that a broker, shares a fiduciary relation with his client and carries out all the transactions as an agent. Since the shares in respect of which the arbitration shall be instituted still lie in trust of the respondent, the question of limitation did not arise.

22. It is submitted that the learned Single Judge failed to appreciate and came to the conclusion erroneously that since there was a debit entry in the statement of account of the appellant, the shares could not have been in the custody of the respondents. He submits that though there were debit entries in the statement of accounts of the appellant, but the debit entries were only pertaining to the part of the shares partly received by the appellant and those debit entries could not be inferred as debit entries for all the shares purchased by the appellant from the respondent.

23. It is submitted that there was continuous cause of action in view of the respondent having failed to pay the sale proceeds of the shares to the appellant or to deliver the shares lying in trust with the respondent and thus the question of commencement of the limitation would not arise. He submits that though all the original documents were filed by the appellant before the arbitral tribunal, the arbitral tribunal

simplicitor rejected the claims made by the appellant only on the ground of limitation and did not consider those claims on merits.

24. It is submitted by the learned counsel that the findings of the arbitral tribunal that the cause of action arose in January 1995 is totally erroneous. The learned Single Judge erroneously held that the cause of action for making a reference to arbitration accrues on the date on which the cause of action for filing a suit arises. The respondent had not denied any time prior to filing of the arbitration that the transaction had not taken place or that the shares had not been transferred to the appellant. The cause of action thus never arose as the respondent had not made denial to the demand of the appellant. He submits that the respondent by their letter dated 24th August, 1999, had merely stated that there was some dispute with the appellant and the matter be sent for arbitration. Since there was no refusal on the part of the respondent, the dispute never arose.

25. It is submitted by the learned counsel that the learned Single Judge did not consider the submission of the appellant that the shares of the appellant were lying with the respondent in a fiduciary relation, which continued until the delivery of the shares was effected over by the respondent to the appellant. It could not be held that the agency

had been terminated and the claims made by the appellant were beyond the period of limitation. The findings recorded by the learned Single Judge that the cause of action arose in January 1995 are without assigning any reason whatsoever.

26. It is submitted by the learned counsel that the letter dated 29th May, 1996, could not be construed as denial of the liabilities by the respondent as the respondent had neither at any point of time denied that the appellant had purchased the shares for which the appellant was seeking delivery nor the respondent had stated that they had delivered those shares. The findings of the learned Single Judge that the debit entry is a conclusive proof of delivery of the shares is completely fallacious and unacceptable. The transaction in the year 1994-95 took place physically and not online.

27. It is submitted by the learned counsel that the period taken before IGRC i.e. between 29th April, 1999 and 29th September, 2000 is required to be excluded. He submits that even if the provisions of the Limitation Act, 1963 were made applicable, the period of three years would commence only after 29th September, 2000 when the IGRC directed the parties to refer their disputes to arbitration. The statement of claim was already filed by the appellant on 26th October, 2002. The

claim thus filed by the claimant was within the period of limitation.

28. Mr.Purohit, learned counsel for the respondent on the other hand submits that it is not the case of the respondent that the said amendment brought to the bye-law of the Bombay Stock Exchange in the year 1998 was made effective with retrospective effect. He submits that since the appellant had invoked the arbitration agreement after the date of the said amendment to bye-law of the Bombay Stock Exchange in the year 1998, the provisions of the said bye-law stood apply to the said claims filed by the appellant after the date of the amendment. He submits that it is an undisputed position that last transaction between the appellant and the respondent took place on 6th December, 1995. The respondent sent the last statement of account to the appellant on 29th May, 1996 contending that the respondent had to recover Rs.18,379/- from the appellant. During the period between 17th September, 1996 to 14th October, 1998, the appellant had sent various reminders to the respondent.

29. On 29th August, 1998, the bye-laws of the Bombay Stock Exchange were amended including bye-law no. 252. It is submitted that the appellant had made a complaint to IGRC only on 29th April, 1999. The IGRC had already directed both the parties to proceed

further for arbitration. The appellant had filed statement of claim only in the month of July 2002 which was *ex-facie* barred by law of limitation according to the learned counsel for he respondent.

30. It is submitted that the cause of action as far as the appellant is concerned, commenced in or around 1996. The respondent had vide its letter dated 29th May, 1996 had denied their liability to the appellant. He submits that the statute of the limitation is procedural. It is submitted that merely because there was no limitation period prescribed prior to 29th August, 1998, it did not give any vested right in the appellant prior to 1998. In support of this submission, learned counsel placed reliance on the judgment of Allahabad High Court in case of ***Mt.Begam Sultan vs. Sarvi Begam, AIR 1926 Allahabad 93*** and in particular on pages 93 and 94. He submits that the law of limitation is applicable to an application for making a claim at the time when the application is made.

31. It is submitted that the amendment to the bye-laws brought in the year 1998 was in line with the provisions of the Limitation Act, 1963. The said amendment has not extinguished the right of the parties. In support of the submission that no vested right was created in favour of the appellant even by virtue of section 2(4) of the Arbitration Act, the

learned counsel placed reliance on the judgment of Supreme Court in case of ***Ramprasad Dagaduram vs. Vijaykumar Motilal Hirakhanwala & Ors., AIR 1967 SC 278 and*** in particular paragraphs 11 and 13. He also placed reliance on the judgment of Allahabad High Court in case of ***The Allahabad Bank Ltd. vs. Rane Sheo Ambar Singh & Ors., AIR 1976 Allahabad 447*** and in particular paragraphs 11 to 13 of the said judgment.

32. It is submitted by the learned counsel that since in this case by virtue of the amendment to bye-law 252 of the Bombay Stock Exchange, the unlimited period of limitation applicable to the transaction in view of section 2(4) of the Arbitration Act was curtailed by providing the prescribed period of limitation under the provisions of Limitation Act, 1963, the limitation would commence from the date when the said amendment to bye-law 252 of the bye-law of the Bombay Stock Exchange was made. He submits that three years period of limitation thus would have commenced from 29th August, 1998. Even if the time period taken before the IGRC to hear the complaint made by the appellant is excluded, the claim made by the appellant before the arbitral tribunal would be still time barred.

33. Learned counsel for the respondent placed reliance on the

judgment of Supreme Court in case of ***R.C. Jall Parsi vs. Union of India and another, AIR 1962 SC 1281*** and in particular paragraph 5.

He submits that right to sue has no connection with the period of limitation and such right is not taken away by the said amendment to bye-law 252 inserted in the year 1998.

34. Learned counsel for the respondent placed reliance on the judgment of Supreme Court in case of ***Vinod Gurudas Raikar vs. National Insurance Co. Ltd. & Ors., AIR 1991 SC 2156*** and in particular paragraphs 2 to 11 in support of the submission that the mere right existing on the date of the repeal of statute, to take advantage of the provisions of the statute repealed is not a "right accrued" within the meaning of the usual saving clause i.e. section 6 of the General Clauses Act. Learned counsel submitted that since the appellant in this case had not invoked arbitration agreement and had not filed statement of claim prior to the date of amendment to bye-law 252 of the bye-laws of the Bombay Stock Exchange, no right of any nature whatsoever was vested in the appellant. The limitation period thus prescribed by the said amendment to bye-law 252 of the Bombay Stock Exchange would apply to the past transaction also however w.e.f. from the date of such amendment.

35. It is submitted that the appellant did not invoke the arbitration agreement nor did file statement of claim even within the period of limitation prescribed under the amended bye-law 252 and thus the claim made by the appellant was *ex-facie* barred by law of limitation. The appellant had reasonable time of three years to invoke arbitration agreement and to file statement of claim before the arbitral tribunal which the appellant admittedly failed. The accrual of the cause of action and the initiation of the arbitral proceedings are two different aspects. If the appellant would have taken recourse to the remedy by invoking the arbitration agreement and by filing statement of claim before the date of amendment to bye-law 252 of the Bombay Stock Exchange, the appellant would have vested right only in that event. Even otherwise, the law of limitation is a matter of procedure, it does not create a vested right.

36. Learned counsel for the respondent placed reliance on the judgment of this Court in case of ***Gopaldas Ganpatdas and others vs. Tribhuwan and others, AIR 1921 Bom 40*** and in particular relevant paragraph on pages 40 and 41. Learned counsel distinguished the judgment of this Court in case of ***R.C. Goenka*** (supra) on the ground that the petitioner in that matter had availed of the remedy before the amendment of the bye-law of the Bombay Stock Exchange and had

withdrawn the said proceedings before amendment. The issue before the learned Single Judge in the said matter was whether the issue of limitation is a procedural law or not? The parties had obtained liberty to file claim after the amendment to bye-law 252 of the bye-law of the Bombay Stock Exchange to file claim in the line with the bye-law of the Bombay Stock Exchange.

37. Learned counsel for the respondent distinguished the judgment of this Court in case of ***Marwadi Shares & Finance Ltd.*** (supra) on the ground that this court in the said judgment had considered the rights of the parties to file an appeal as substantive right which is not the case in this matter. In that matter, the original proceedings were already filed prior to the date of amendment to the bye-law of the Stock Exchange.

38. It is submitted by the learned counsel that even in the statement of the account submitted by the respondent to the appellant, the respondent had demanded the amount from the appellant and thus it was clear that the cause of action had started even from such date of receipt of such statement of account from the respondent to the appellant.

39. Learned counsel for the respondent distinguished the judgment

of this Court in case of **Ashalata Lahoti** (supra) on the ground that it was not the case of the respondent that 1998 amendment to bye-law 252 of the Bye-laws of the Bombay Stock Exchange does apply with retrospective effect.

40. Mr.Kumbhat, learned counsel for the appellant in rejoinder invited our attention to ground (d) raised in the appeal memo and would submit that the findings rendered by the learned Single Judge that the cause of action accrued in the month of January 1995 has been impugned by the appellant. He submits that since there was no refusal on the part of the respondent to pay the dues of the appellant till 24th August, 1999 when for the first time the respondent raised the dispute, the invocation of the arbitration and filing a statement of claim by the appellant was within the period of limitation. He submits that none of the judgments relied upon by the respondent before this Court have dealt with the issue of limitation in case of statutory arbitration under section 2(4) of the Arbitration Act.

41. Learned counsel for the appellant distinguished the judgment of Allahabad High Court in case of **Mt.Begam Sultan** (supra) on the ground that there was a distinct provisions of limitation at the relevant period in that matter. In this case, in view of section 2(4) of the

Arbitration Act, no period of limitation was at all applicable in view of there being a statutory arbitration between the parties under the bye-laws of the Bombay Stock Exchange. Learned counsel for the appellant distinguished the judgment of Supreme Court in case of ***Ramprasad Dagaduram*** (supra) on the ground that the facts before the Hon'ble Supreme Court were different.

42. Learned counsel distinguished the judgment of Allahabad High Court in case of ***The Allahabad Bank Ltd.*** (supra) and would submit that in that case the provisions of the Limitation Act, 1908 were referred. The legislature in its wisdom has provided for a specific period of limitation in that matter. No such specific provisions of limitation was applicable by virtue of section 2(4) of the Arbitration Act. The period of limitation prescribed for the first time in the year 1998 was admittedly not applicable with retrospective effect. Such period of limitation introduced for the first time in the year 1998 could not apply to the cause of action having arisen prior to the date of such amendment.

43. Learned counsel for the appellant distinguished the judgment of Supreme Court in case of ***Vinod Gurudas Raikar*** (supra) on the ground that the period of limitation under the unamended Limitation Act and

amended Limitation Act were the same. He relied upon section 6(c) of the General Clauses Act, 1897. Learned counsel distinguished the judgment of this Court in case of **Gopaldas Ganpatdas and others** (supra) on the ground that in the said judgment this Court had considered the retrospective effect of section 48 of the Code of Civil Procedure, 1882 in regard to the decree passed prior to the date of coming into force of the new Code. The said judgment does not state that on the amendment of the provisions relating to the period of limitation, the said provision would apply with retrospective effect. Learned counsel for the appellant distinguished the judgment of Supreme Court in case of **R.C. Jall Parsi** (supra) on the ground that the facts before the Supreme Court in the said judgment were different.

44. Learned counsel for the appellant relied upon following judgments:-

- (1) Judgment of Madras High Court delivered on 25th April, 2018 in case of **The Project Director, Project Implementation Unit & Anr. vs. K.Periyasamy & Ors. in W.A.Nos. 308 to 312 of 2016 and other connected matters.**
- (2) Judgment of this court in case of **Savitra Khandu Beradi vs. Nagar Agricultural Sale & Ors., AIR 1957 Bom. 178.**
- (3) Judgment of Supreme Court in case of **T.N. Generation and**

Distbn. Corpn. Ltd. Vs. PPN Power Gen. Co. Pvt. Ltd., (2014) 11 SCC 53 dealing with the identical issue.

45. Mr. Purohit, learned counsel for the respondent in his sur-rejoinder arguments would submit that section 2(4) of the Arbitration Act came into effect only in the year 1996 when the said Arbitration Act was enacted. He submits that by virtue of the said amendment to the bye-law 252 of the Bombay Stock Exchange, the provisions of the Limitation Act, 1963 were made applicable to the transaction governed by those bye-laws. Section 2(4) of the Arbitration Act was already in the statute on the date of amendment to bye-law 252 of the Bombay Stock Exchange and thus no contrary intention appears in the said amendment to bye-law 252 carried out in the year 1998. The said amendment to bye-law 252 in the year 1998 does not have any exception to the Act that the past transaction in respect of which no proceedings were filed prior to the date of the amendment to the bye-law 252 would not be governed by the said amendment.

REASONS AND CONCLUSION :-

46. The questions that fell for consideration of this Court are as under :-

- (a) Whether any period of limitation was applicable to the

transactions in question prior to 29th August, 1998 or thereafter in view of Section 2(4) read with Section 43 of the Arbitration and Conciliation Act, 1996 ?

(b) What is the effect of the amendment to Bye-law 252(2) amended by the Stock Exchange, Mumbai providing that the provisions of Limitation Act, 1963 would be applicable ?

(c) Whether any vested rights had accrued in favour of the appellant by virtue of Section 2(4) of the Act even though no arbitral proceedings were filed by the appellant prior to 29th August, 1998 ? If amended provision of Bye-law 252(2) of the Bye-laws inserted on 29th August, 1998 applies to the transactions in question with effect from the date of such amendment, whether the appellant had filed arbitral proceedings within the period of three years from the date of such amendment ?

47. We shall now deal with the aforesaid questions fell for consideration of this Court. The undisputed facts are as under :-

The last transaction between the appellant and the respondent was on 6th December, 1995. The respondent had sent a letter to the

appellant on 29th May, 1996 for reconciliation of the statement of accounts. On 25th June, 1996, the appellant had forwarded its reconciliation statement to the respondent. According to the statement of accounts submitted by the respondent to the appellant, the respondent were entitled to recover the sum of Rs.18,379/- from the appellant.

48. It was the case of the appellant that during the period between 17th September, 1996 and 18th October, 1998, there was exchange of correspondence between the parties. On 29th August, 1998 Bye-law 252(2) was amended providing that the provisions of Limitation Act, 1963 would be applicable. The appellant made a complaint to the Investment Grievance Redressal Cell on 29th April, 1999. The Investment Grievance Redressal Cell directed the parties to go to arbitration on 29th September, 2000. The statement of claim was filed by the appellant on 26th October, 2002 with the Stock Exchange, Mumbai.

49. In the statement of claim filed by the appellant, it was the case of the appellant that various shares were purchased by the appellant through the respondent broker which were either not delivered by the respondent or the sale price was not paid to the appellant. There was

the difference of Rs.3,100/- in two statements of account of the respondent. Various letters were addressed by the appellant to the respondent for payment.

50. In the written statement filed by the respondent, the respondent raised a plea of limitation and also denied the claims made by the appellant on merits. The respondent relied upon Articles 2, 3 and 4 of the Schedule to the Limitation Act, 1963. The respondent also relied upon the Bye-laws 252(2) of the Stock Exchange, Mumbai which came into force on 29th August, 1998. It was contended that the law of limitation did not apply to the arbitral proceedings under the Bye-laws before the amendment of 1998. The cause of action thus arose before the amendment to the Bye-laws came into force on 29th August, 1998. The said amendment to Bye-law 252(2) did not apply with retrospective effect. The last account statement was received by the appellant from the respondent on 29th May, 1996. It was contended that limitation period is reduced from unlimited period to three years. Section 30 of the Limitation Act will be applicable and there was no question of non-applicability of limitation after the amendment.

51. The arbitral tribunal in the impugned award recorded various reasons while dismissing the claims made by the appellant. It is held

by the arbitral tribunal that it is an admitted fact that the last transaction took place on 6th December, 1995 much before the amendment of Bye-laws of the Bombay Stock Exchange when the limitation was made applicable to the Bombay Stock Exchange transaction as and from 29th August, 1998. Prior to the said amendment the rules specifically provided that the law of limitation does not apply. It was the case of the appellant before the arbitral tribunal that since the transactions were prior to 29th August, 1998, no limitation was applicable and the claim could be filed at any time in future.

52. It is held by the arbitral tribunal that if the argument of the appellant would be accepted, it would lead to absurdity. Any claim prior to the date of amendment will not become time barred at any time and the appellant can file claim by filing application on any day while all claims claimed after the date of amendment would become time barred on the expiry of three years from the date of amendment. The arbitral tribunal held that time cannot be unlimited for the appellant as transaction was prior to the amendment of Bye-laws of the Stock Exchange making Limitation Act applicable to the transaction under Rules, Regulations and Bye-laws. The arbitral tribunal accordingly held that the claims made by the appellant on 26th October, 2002 were time barred. The appellant ought to have filed their claim on or before

28th August, 2001.

53. The arbitral tribunal corrected the said award by a rectification order dated 21st July, 2003. In the award at various places the date of 13th June, 2003 mentioned was corrected as 26th October, 2002. Similarly, the date of filing of statement of claim mentioned as 12th January, 2003 was corrected to 26th October, 2002. The learned Single Judge held that even if no period of limitation was laid down in the Bye-laws, there would be an obligation on the part of the petitioners to invoke the arbitration clause within a reasonable time from the date of accrual of the cause of action to the petitioner. The cause of action accrued in the month of January 1995 when according to the petitioner, the petitioner was entitled to receive the delivery of the shares purchased by the petitioner but was refused by the respondent.

54. It is held that even in cases where there is no period of limitation prescribed, justice demands that the litigant must make his claim without any undue delay. Inaction on the part of the claimant for a long time in lodging a claim may make it unjust to uphold his claim. The requirement of making a reference without any undue delay applies with full force in relation to commercial litigation because most of the time, the commercial litigation is based on documents and

accounts which are required to be maintained by the parties in the ordinary course of business. These documents which are required to be maintained cannot be kept for unlimited time and the need for destruction of the record after lapse of a particular period is also recognized by various laws. It may workout to the prejudice of the other side because in a given case the claim may be made after the other side has destroyed its record for the relevant period. It is in the public interest that the claim has to be filed within reasonable time when no period of limitation is prescribed to institute proceedings or enforcement of the claim.

55. The learned Single Judge also noticed that the only explanation given by the appellant for not approaching the Investment Grievance Redressal Cell till 1999 was that the respondent did not deny their liability specifically. It is held by the learned Single Judge that the letter dated 29th May, 1996 from the respondent to the appellant makes the position absolutely clear which was in response to the statement of account dated 28th May, 1996 sent by the petitioner to the respondent. According to the said statement of account sent by the respondent there was a debit of Rs.18,379/- in the account of the appellant.

56. Both the parties through their learned counsel relied upon several

judgments in support of their rival contentions. Learned Single Judge of this Court in case of **Ashalata Lahoti** (supra) held that the Bye-laws framed under Section 9 of the Securities Contracts Act are statutory in nature and in view of Sections 46 and 37 of the Arbitration Act are not covered by Limitation Act. It is held that insofar as the dispute between a member and a member is concerned, Bye-laws had been framed whereby limitation to refer a dispute is three months. It is however, no answer to contend that the principle of laches should be read into the Act. Once the parties sign an Agreement to refer a dispute to arbitration and make no provisions for raising disputes within a specific period, the question of reading limitation into it will not arise. It is for the Exchanges to consider amending the Bye-laws in manner like dispute between members and members and providing for a suitable period of limitation. It is not in dispute that in the year 1998 Bye-laws 252(2) was amended so as to provide the period of limitation to the arbitration under the Stock Exchange Bye-laws.

57. A learned Single Judge of this Court in case of **R.C. Goenka** (supra) while dealing with a petition under Section 34 of the Arbitration and Conciliation Act, 1996 impugning the arbitral award rejecting the claim on the ground of limitation considered a situation where the transactions were effected before the bye-laws of Stock

Exchange came to be amended. The earlier statement of claim was filed in the month of November 1997 and was withdrawn on 5th August, 1998. Fresh reference was filed on 6th November, 1998 i.e. after amendment of Bye-law 252(2) inserting the provision of Limitation Act, 1963 in the Bye-laws. The arbitral tribunal rejected the claim on the ground of limitation. The learned Single Judge in the said judgment held that there was no provision for limitation in the contract as a term until 29th August, 1998 except for disputes arising from contracts between members and members.

58. It was held that there is nothing in the said bye-laws to hold that the said provision will also apply to the contract which were entered into and to which contracts Bye-law 252(2) was not incorporated as a term of the contract. Only those contracts which have been entered into after Bye-law 252(2) came into force will be governed by the provision of limitation becoming applicable as term of the contract. This Court held that the said amendment would not apply with retrospective effect. These Bye-laws are statutory in character. It is not the case of the respondent that the said Bye-law 252(2) introduced and came into effect on 29th August, 1998 applied with retrospective effect to the transactions prior to the date of such amendment. The said judgment thus would not assist the case of the appellant.

59. A learned Single Judge of this Court in case of **Marwadi Shares & Finance Ltd.** (supra) had dealt with a petition under Section 34 of the Arbitration Act impugning the order passed by the Appellate bench of the Stock Exchange, Mumbai dismissing the appeal filed by the petitioner on the ground of limitation. In that case, the learned Arbitrator had made an award on 1st November, 2011. On 2nd November, 2011, the petitioner had made an application under Section 33 *inter-alia* praying for corrections in the said award. The said application was decided by the learned Arbitrator on 5th March, 2012. The petitioner had thereafter filed an appeal on 12th April, 2012 before the Appellate Bench of the Bombay Stock Exchange Limited. There was delay of three days in filing the appeal. The said application for condonation of delay was rejected by the Appellate Bench on the ground that SEBI circular and subsequent amendments by Bombay Stock Exchange, the Bye-laws and Regulations had taken away the powers of the Appellate Bench to condone delay. In that context, the learned Single Judge of this Court (one of us R. D. Dhanuka, J.) held that right of appeal is a vested right which can be taken away only by a subsequent enactment if it so provides expressly or by necessary indenment and not otherwise.

60. This Court held that the right of appeal is not a mere matter of

procedure but is a substantive right which is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the original cause of action commences and although it may be actually exercised when adverse judgment is pronounced. Such a right has to be governed by the law prevailing on the date of original cause of action and not as per the bye-law that prevails at the time of its decision or at the date of filing of an appeal. The petitioner had already filed proceedings before the learned Arbitrator. The vested right of filing an appeal against the impugned award, if any and the right to file an application for condonation of delay on showing sufficient cause on the date of filing the original proceedings would be continued. In our view, the said judgment would not assist the case of the appellant. In this case, the appellant had not filed any arbitral proceedings prior to the date of the amendment to Bye-law 252(2) w.e.f. 29th August, 1998 but filed the proceedings much later. No right had been thus accrued in favour of the appellant.

61. This Court in case of ***Savitra Khandu Beradi*** (supra) relied upon by the learned counsel for the appellant had considered an issue whether the Indian Limitation Act applies to claims referred for adjudication under the procedure prescribed in Section 54 of the Bombay Co-operative Societies Act or not. This Court held that a

proceeding before the arbitrator is not a suit, appeal or application and in terms Section 3 can have no application. Expiry of the period of limitation prescribed for a suit does not destroy the right. It only bars the remedy. In our view, the said judgment would not apply to the facts of this case and would not advance the case of the appellant in view of the appellant not having filed any claim prior to the amendment to Bye-law 252(2).

62. Madras High Court in case of ***The Project Director, National Highways Authority of India*** (supra) relied upon by the appellant considered the issue as to whether provisions of Limitation Act, 1963 in particular Article 137 applies to the statutory arbitration under Section 3-G(5) of the National Highways Act, 1956 or not. Section 3-G(5) of the National Highways Act, 1956 provided that ‘subject to the provision of that code, the provision of Arbitration and Conciliation Act, 1996 was applied to every arbitration under this Act’. The Madras High Court adverted to and applied the principles laid down in the judgment of this Court in case of ***Savitra Khandu Beradi*** (supra) and also judgment of Supreme Court in case of ***Tamil Nadu Generation and Distribution Corporation Limited v/s. PPN Power Generating Company Private Limited, (2014) 11 SCC 53*** and held that the provision of the Limitation Act and more particularly Article 137

would apply to an application for a reference to arbitration under Section 3-G(5) of the National Highways Act, 1956.

63. In view of the fact that it is not the case of the respondent that the said Bye-law 252(2) of the Bye-laws framed by the Stock Exchange, Mumbai applied with retrospective effect, the judgment of Madras High Court in case of ***The Project Director, National Highways Authority of India*** (supra) would not assist the case of the appellant. The question now arises for consideration of this Court is, as to what is the effect of amendment of Bye-law 252(2) amended by the Stock Exchange, Mumbai providing that the provision of Limitation Act, 1963 would be applicable.

64. Allahabad High Court in case of ***Mt. Begam Sultan*** (supra) relied upon by the learned counsel for the respondent held that the law of limitation applicable to a suit or the proceeding is the law in force at the date of the institution of the suit or the proceeding unless there is a distinct provision to the contrary. It is held that there was no vested right in the decree holder to wait for an indefinite period of time in order to apply for execution. Supreme Court in case of ***Ramprasad Dagaduram*** (supra) has held that the respondent had no vested right in the law of procedure for enforcement of mortgage though the period of

limitation was abridged for the enforcement of the mortgage by Article 132 of the Indian Limitation Act, 1908. Such abridgment did not take away any vested right.

65. In our view, Mr. Purohit, learned counsel for the respondent is right in his submission that since the appellant had not filed any arbitral proceedings prior to the date of amendment to Bye-law 252(2) inserting the provision of Limitation Act, 1963 to arbitral proceedings, no right had been vested in favour of the appellant. The principles of law laid down by the Supreme Court in case of **Ramprasad Dagaduram** (supra) and the judgment of Allahabad High Court in case of **Mt. Begam Sultan** (supra) would apply to the facts of this case.

66. Allahabad High Court in case of **The Allahabad Bank Ltd.** (supra) has held that if the Limitation Act, 1963 did not prescribe any period of limitation for an application than it was an unlimited period. If the Act of 1963 prescribed any period of limitation for such an application, than it will be a case where the period of limitation is shorter than the period of limitation prescribed by the Limitation Act, 1908 and the application in that case would be required to be made within a period of 90 days after the commencement of the Limitation Act, 1963. In our view, the principles laid down by the Allahabad High

Court in the said judgment apply to the facts of this case.

67. In view of Section 2(4) of the Arbitration and Conciliation Act, 1996, period of limitation was not applicable to the transactions entered into between the appellant and the respondent prior to 29th August, 1998 when the provisions of Limitation Act, 1963 were extended to the arbitral proceedings under the Stock Exchange Bye-laws. However, there would be no merit in the contention of the appellant that even after applicability of the provisions of the Limitation Act, appellant would be continued to be governed by no period of limitation in view of Section 2(4). In our view, since the period of limitation was prescribed by inserting Article 252(2) amended on 29th August, 1998, the appellant ought to have filed arbitral proceedings within three years from the date of amendment to Article 252 (2) of the Bye-laws framed by the Stock Exchange, Mumbai which are statutory bye-laws. The alleged rights if any in favour of the appellant in view of Section 2(4) of the Arbitration Act to file claim without period of limitation stood abrogated in view of the amendment to Bye-law 252(2). The appellant would be thereafter governed by the amended Bye-law 252(2) for filing any claim in respect of cause of action having arisen prior to the date of amendment.

68. The question now that arises for consideration is that if the provisions of Limitation Act, 1963 apply to the transactions in question, whether the proceedings were filed by the appellant within a period of three years from 29th August, 1998 or not ?

69. In this respect, it would be apposite to refer to a judgment of the Supreme Court in case of **Vinod Gurudas Raikar** (supra) relied upon by the learned counsel for the respondent. The Supreme Court in the said judgment had considered a Civil Appeal arising out of the order passed by the High Court dismissing the appeal arising out of the order passed by the Motor Accident Claim Tribunal. The Accident had taken place on 22nd January, 1989. The Motor Vehicle Act, 1988 came into force on 1st July, 1989. The period of limitation for filing a claim petition both under the old Act and the new Act was six months. The limitation period of six months expired on 22nd July, 1989 under the unamended provision. The claim petition was however filed on 15th March, 1990 with a prayer for condonation of delay. The Motor Accident Claim Tribunal rejected the claim on the ground that in view of provision of sub-Section 3 of Section 166 of the Motor Vehicles Act, 1988, delay of more than six months could not be condoned. The High Court also dismissed the appeal filed by the claimant.

70. Under the proviso to sub-Section 3 of Section 166 of the Motor Vehicles Act, 1988, maximum period of delay which could be condoned was six months which expired on 22nd January, 1990. The Supreme Court held that it is true that the appellant earlier could have filed an application for condonation of even more than six months after the expiry of limitation but can this be treated to be a right which the appellant had acquired. It is held that it would be treated to be a right. So far as the period of limitation for commencing a legal proceeding is concerned, it is adjudicable in nature and has to be governed by the Motor Vehicles Act, 1988 subject to two conditions. If under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, otherwise the result will be to deprive the suitor of an accrued right. The second exception is where the new enactment leaves a claimant with such a short period for commencing the legal proceeding so as to make it impracticable for him to avail of the remedy.

71. The Supreme Court adverted to the earlier judgment in case of ***New India Insurance Co. Ltd. v/s. Smt. Shanti Misra, AIR 1976 SC 237***. It is held in that matter that a period of two years was available to the respondent for instituting a suit for recovery of damages when the husband of the respondent had expired. In March, 1967, the claims

tribunal under Section 110 of the Motor Vehicles Act, 1939 was constituted, barring the jurisdiction of Civil Court and prescribed 60 days as the period of limitation. The respondent had filed an application in July 1967. It was held that not having filed a suit before March 1967, the only remedy of the respondent was by way of an application before the tribunal. It was held that new law of limitation providing for a shorter period cannot certainly extinguish a vested right of action. In view of the change of the law, it was held that the application could be filed within a reasonable time after the constitution of the tribunal and that the time of about four months taken by the respondent in approaching the tribunal after its constitution could be held to be either reasonable time for the delay of about two months can be condoned under proviso to Section 110-A(3).

72. The Supreme Court held that the period of limitation for lodging the claim under the old as well as the new Act was same six months which expired three weeks after coming in force of the new Act. It would be open to the appellant to file his claim within this period or even later by 22nd July, 1989 with a prayer to condone the delay. His rights to claim for compensation was not affected at all with substitution of one Act with another. Since, the period of limitation remained the same, there was no question of the appellant being taken

by surprise. In this background, the appellant's further default has to be considered. It is held that having actually initiated the proceedings when the old Act covered the field the claimant could say that his right which had accrued on the date of filing of the petition could not be taken away. The present case is different. The right or privilege to claim benefit of a provision for condonation of delay can be governed by the law in force at the time of delay. In our view, the principles laid down by the Supreme Court in case of **Vinod Gurudas Raikar** (supra) applies to the facts of this case.

73. If the appellant would have filed the arbitration proceedings under the unamended Bye-laws and if such rights would have been taken away by amendment subsequently with retrospective effect, the appellant could have urged that such rights which are vested in him in view of the appellant already having filed proceedings for recovery of his claim cannot be taken away. In this case, admittedly the period of limitation which was not applicable prior to 29th August, 1998 was restricted to a period of three years w.e.f. 29th August, 1998. The appellant admittedly not having filed the statement of claim prior to the date of such amendment, the case of the appellant would be governed by the period of limitation prescribed by the provision to Bye-law 252(2) framed by the Stock Exchange, Mumbai.

74. It is not the case of the alleged rights vested, if any in the appellant having been taken away by amendment to Bye-law 252(2) of the Stock Exchange, Mumbai. We are thus not inclined to accept the submission of Mr. Kumbhat, learned counsel for the appellant that though the period of limitation was introduced w.e.f. 29th August, 1998, the case of the appellant would be continued to be governed by the unamended provision and would have indefinite period of limitation even after 29th August, 1998 even though no such arbitral proceedings were filed by the appellant till the date of amendment.

75. Supreme Court in case of **R.C. Jall Parsi** (supra) held that the statute of limitation assumes the existence of a cause of action and does not define it or create one. This Court in case of **Gopaldas Ganpatdas and others** (supra) held that Act of limitation being a law of procedure governs all the proceedings to which in terms are applicable from the moment of its enactment, except so far as its operation is expressly excluded or postponed. The Act of limitation, like other laws relating to procedure, applies immediately to all the steps taken after they have come into force, except when some provision is made to the contrary. In our view, the principle laid down by this Court in the said judgment would apply to the facts of this case. The Act of limitation being a law of procedure, the amendment inserted by Bye-law 252(2) would apply

to the past transactions also however, w.e.f. the date of such amendment.

76. Supreme Court in case of ***Syed Yousuf Yar Khan and Ors. v/s. Syed Mohammed Yar Khan and Ors., AIR 1967 SC 1318*** considered a situation where the period of limitation prescribed for the suit by the corresponding law in Hyderabad was an unlimited period. Section 30 enabled the plaintiff to institute a suit within a period of two years after 1st April, 1951. The Part B States (Laws) Act, 1951 while extending the Indian Limitation Act, 1908 to Hyderabad allowed the plaintiff reasonable time to institute the suit for recovery of the property. The extension of the Indian Limitation Act, 1908 to Hyderabad and the consequential change in law prescribing a shorter period of limitation did not confiscate the existing cause of action and must be recorded as an alteration in the law of procedure for the enforcement of the cause of action.

77. It is held that the Court must therefore apply the normal rule that law of limitation applicable to the suit is the law in force at the date of the institution of the suit. The suit is therefore governed by the Indian Limitation Act, 1908. The plaintiffs not having instituted the suit within two years after 1st April, 1951 therefore could not avail

themselves of all the benefit of Section 30 of the unamended provision to Section 30 of the Limitation Act, 1908. The Supreme Court accordingly held that the suit was barred by law of limitation.

78. In our view, the principles of law laid down by the Supreme Court in the said judgment squarely apply to the facts of this case. The unlimited period of limitation prescribed prior to the date of amendment to Bye-law 252(2) was reduced by a shorter period of limitation by three years. Such amendment did not confiscate the existing cause of action but was only as and by way of alternative in the law of procedure for the enforcement of the cause of action. In our view, the provision of limitation applicable on the date of filing such arbitral proceedings would apply and not prior to the date of applicability of the provision of limitation since the appellant had not filed the arbitral proceedings prior to the date of such amendment.

79. Division Bench of this Court in the case of ***M/s. Delton Electricals Vs. Maharashtra State Electricity Distribution Company Limited & Ors., 2017 SCC OnLine Bom 9000*** adverted to various judgments of the Supreme Court and Privy Council in which it has been held that the Courts have expressed at least three reasons for supporting the existence of statutes of limitation; (1) that long dormant

claims have more of cruelty than justice in them; (2) that a defendant might have lost the evidence to disprove a stale claim; and (3) that persons with good causes of action should pursue them with reasonable diligence. A reference is also made to Halsbury, 4th Edn., Vol.28 Paragraph 605 and the judgment of the Supreme Court in the case of ***Nav Rattanmal and Ors. v. State of Rajasthan AIR 1961 SC 1704*** in which it was held that the Statutes of Limitation have been considered as Statutes of Repose and Statutes of Peace. The generally accepted basis for such statutes is that they are designed to effectuate a beneficent public purpose.

80. This Court also considered the judgment of the Supreme Court in the case of ***Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur, (1978) 1 SCC 44*** in which it was held that though a debt may be time- barred, it would still be a debt due. The right remains untouched and if a creditor has any means of enforcing his right other than by action or set-off, he is not prevented from doing so. This Court also considered the judgment of the Supreme Court in the case of ***Punjab National Bank and Ors. v. Surendra Prasad Sinha 1993 Supp. (1) SCC 499 at page 503- 504*** in which it was held that the rules of limitation are not meant to destroy the rights of parties. Section 3 of the Limitation Act only bars the remedy but

does not destroy the right which the remedy relates to. There are good reasons for supporting the existence of defence of limitation. One is that long dormant claims have more of cruelty than justice in them; that a defendant might have lost the evidence to disprove a stale claim and that persons with good causes of action should pursue them with reasonable diligence.

81. If the arguments of the learned counsel for the appellant is accepted that even after insertion of period of limitation under Bye-law 252 (2) of the Bombay Stock Exchange w.e.f. 29th August 1998, the appellant would still file his claim after any number of years, the respondent who has defence of limitation will lose his right of defence. The evidence that he would rely upon in such defence of period of limitation may be rendered nugatory and may be destroyed due to long duration during which the appellant had not filed the arbitration proceedings for recovery of the alleged dues. The whole purpose of enactment of the Limitation Act in public interest to dismiss the stale claims would be frustrated in such an event.

82. There is no substance in the submission made by the learned counsel for the appellant that the respondent had never denied the liability till the complaint was filed by the appellant before Investor's

Grievances Redressal Cell. There is also no substance in the submission made by the learned counsel for the appellant that no period of limitation would apply on the ground that there was fiduciary relation between the appellant and the respondent and that broker had acted as an agent of the appellant.

83. The appellant had placed reliance on various correspondence during the period between 1996 and 1998 in support of the plea that limitation period was extended in view of correspondence exchanged between the parties. In our view, limitation once starts does not stop unless there is acknowledgment of the liability or there is part payment and that also only if liability is acknowledged or part payment is made within the period of limitation.

84. Learned Single Judge has rightly held that by letter dated 29th May 1996 addressed by the respondent to appellant, the respondent had made its position absolutely clear. The respondent in the said letter had stated that the statement of account submitted by the appellant was incorrect and that the statement of account would actually show debit entry of Rs.18,379/- as enclosed and forwarded to the appellant by the respondent. The next submission of the learned counsel for the appellant that learned Single Judge has upheld the

arguments of the appellant that the arbitral reference filed in 2002 was not barred by law of limitation is factually incorrect.

85. A perusal of Section 30 of the Limitation Act, 1963 makes it clear that any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be instituted within a period of seven years next after the commencement of the said Act, 1963 or within the period prescribed for such suit by the Indian Limitation Act, 1908 whichever period expires earlier. The said provision though takes cognizance of the hardship which may be caused to the litigant due to shorter period of limitation prescribed under the Limitation Act, 1963, then the period prescribed under the Indian Limitation Act, 1908 in Section 30 (a) of the said Limitation Act, 1963, safeguards are provided to such litigant. We are not inclined to accept the submission of the learned counsel for the appellant that by virtue of Section 2(4) read with Section 43 of the Arbitration and Conciliation Act, 1996, there would be no period of limitation even after amendment to Bye-Law 252(2) framed by the Stock Exchange, Mumbai.

86. There is no dispute in the proposition canvassed by the learned counsel for the appellant that till such time, the said Bye-law 252 (2)

was inserted, in view of Section 2(4) of the Arbitration and Conciliation Act, 1996, no limitation was applicable to the statutory arbitrations and more particularly it were governed by Bye-laws, Rules and Regulations of Bombay Stock Exchange. There is no merit in the submission of the learned counsel for the appellant that there was continuous cause of action in view of the respondent having failed to pay the sale proceeds of the shares to the appellant or to deliver the shares lying in the trust with the respondent. In our view, this submission of the learned counsel for the appellant is contrary to Bye-law 252 (2) brought into effect w.e.f. 29th August 1998.

87. Since this Court is of the view that limitation period of three years in this case would commence w.e.f. 29th August 1998, a question that arise for consideration is whether within the period of three years from 29th August 1998, the appellant had filed the claim before the Stock Exchange, Mumbai or not. It is not in dispute that the statement of claim was filed by the appellant on 1st July 2002. It is not in dispute that complaint filed by the appellant before the Investor's Grievances Redressal Cell was pending during the period between 29th April 1999 and 29th September 2000. In our view, time taken before the Investor's Grievances Redressal Cell for deciding the said complaint filed by the appellant is required to be excluded

for the purpose of computation of limitation. Even after the said period is excluded, statement of claim filed by the appellant in 26th October 2002 was ex facie barred by law of limitation. Cause of action would not commence only from the date of rejection of complaint by the Investor's Grievances Redressal Cell for the purpose of filing statement of claim for the first time.

88. Cause of action had already commenced w.e.f. 29th September 1998. Admittedly, there was no part payment made by the respondent during this period. In our view, there was no acknowledgment of liability after commencement of the period of limitation i.e. 29th August 1998 till expiry of 3 years thereafter. The period of limitation between 29th August 1998 and the date of filing complaint by the appellant with the Investor's Grievances Redressal Cell i.e. 29th April 1999 has to be excluded while computing the period of limitation of three years. The balance period after disposal of complaint by IGRC also has to be considered.

89. It is not in dispute that when Bye-law 252 (2) was amended extending the period of limitation to the arbitrations governed by the Bye-laws of Stock Exchange, Mumbai, Section 2(4) of the Arbitration and Conciliation Act was already in the Statute. No contrary intention

appears in the said amendment. The said amendment does not have any exception to the Arbitration Act that the past transactions prior to the date of such amendment where no proceedings were filed would not be governed by the said amendment.

90. The arbitral Tribunal has rendered various findings of facts after considering the pleadings, documents and the Bye-laws, Rules and Regulations framed by the Stock Exchange, Mumbai. Learned Single Judge while deciding the petition under Section 34 of the Arbitration and Conciliation Act, 1996 rightly did not interfere with the findings of facts and did not re-appreciate the evidence. The appellant did not make out any case for interference with the award rendered by the learned Single Judge. Scope of Section 37 of the Arbitration and Conciliation Act, 1996 is very limited. The appellant cannot expand the scope of Section 37 of the Arbitration and Conciliation Act, 1996 by advancing various arguments which are not advanced before the learned Single Judge while arguing the application under Section 34 of the Arbitration and Conciliation Act, 1996. We do not find any infirmity in the impugned award rendered by the arbitral Tribunal and also in the impugned judgment rendered by the learned Single Judge. Appeal is devoid of merit.

91. We accordingly pass the following order :-

- (i) Appeal No.989 of 2005 is dismissed.
- (ii) There shall be no order as to costs.

(V.G. BISHT, J.)

(R.D. DHANUKA, J.)