

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 53 of 2018**

Richa Construction Co. Through its
Partner Greesh Agarwal

....Petitioner

V/s.

National Buildings Construction Corporation Ltd.

....Respondent

Mr. Ajit Anekar i/b Auris Legal for petitioner.
Mr. Ashok Singh for respondent.

**CORAM : K.R.SHRIRAM, J.
DATED : 5th APRIL 2021**

P.C. :

1 This is a petition under Section 34 of the Arbitration and Conciliation Act 1996 (the Act). The challenge, Mr. Anekar states, is under Section 34 (2)(b)(ii). i.e., award is conflict with the public policy of India.

2 Petitioner was engaged as civil contractor for modernizing the mint of the Indian Government at Mumbai, for respondent. After completing the work in question, petitioner raised certain claims on respondent. Respondent rejected those claims. Therefore, disputes arose and arbitration was commenced on 24th April 2010, which is the date, on which petitioner wrote a letter to respondent requesting them to refer the dispute to arbitration. Reference to arbitration was made by a Learned Single Judge of this court in a Section 11 application.

3 After the pleadings were filed, petitioner and respondent led evidence of one witness each. The witnesses were cross-examined by the other side.

Learned Arbitrator framed 20 issues, of which issue no.19 was, “whether respondent proves that the claims or that any claim of claimant is barred by law of limitation”? This issue, though mentioned at Sr. No.19, was decided as the first issue by the Arbitrator and the Arbitrator held that petitioner’s claim is barred by limitation and rejected the entire claim. Unhappy with this rejection of petitioner’s claim, petitioner has approached this court by this petition.

4 Mr. Anekar submits that the Arbitrator should have given his decision on all the remaining 19 issues as well and could not have simply closed the award by answering issue no.19, which is on limitation, and, therefore, the award is against public policy. Mr. Anekar also submitted that the interpretation of the Arbitrator on documents and pleadings was erroneous and, therefore, this court should interfere.

5 I am afraid, I cannot agree with Mr. Anekar on both these points. First of all, as stated by Mr. Anekar and rightly so, the provisions of Civil Procedure Code are not applicable to arbitration proceedings. Secondly, after the Arbitrator has held petitioner’s claim is hopelessly barred by limitation, I see no reason why the Arbitrator should spend time on answering the other issues.

6 On the point of misinterpreting the documents and pleadings, it is settled law that (a) if two views are possible, court should not interfere and (b) if the Learned Arbitrator has considered the documents and pleadings and given his view and opinion, unless findings are perverse or arbitrary or

shocks the conscience of the court, the court should not interfere.

7 Petitioner has in his written arguments relied upon the document which was marked as Exhibit R-3 to show that respondent had acknowledged its liability on 30th June 2007 and therefore, as the notice of arbitration was made on 24th April 2010, petitioner's claim is not time barred.

8 The document Exhibit R-3, had not been admitted by petitioner and was marked subject to proof. Moreover, this document at Exhibit R-3, which is an extract of a ledger account maintained by respondent, shows an amount of Rs.7,94,367/-, which was towards petitioner's mint project being paid against petitioner's another project, which is called MES Colaba Project and the amount is shown to have been transferred on 30th June 2007. According to Mr. Anekar, therefore, respondent had acknowledged that Rs.7,94,367/- was payable to petitioner but instead of paying it into right pocket, it is put it in petitioner's left pocket and, therefore, there is an acknowledgment of liability towards petitioner's mint project. But it is petitioner's case before the Arbitrator that respondent never transferred this amount of Rs.7,94,367/- to petitioner and this has been so stated in paragraph 28 of the statement of claim and in paragraph 19 of affidavit of evidence of petitioner's witness. The Arbitrator, therefore, rejected petitioner's submissions and rightly held that petitioner cannot change its pleaded case in his written submissions. Moreover, the document Exhibit R-3, has not been admitted because it was marked subject to proof and the

Arbitrator after considering the document Exhibit R-3, also concluded that evidence of respondent's witness is mere hearsay and, therefore, that document Exhibit R-3 cannot be even looked into for petitioner to save itself from getting hit under the Limitation Act.

9 The Apex Court in *Associate Builders Vs. Delhi Development Authority*¹ has held that interference is permissible only when findings of arbitrator are arbitrary, capricious or perverse or when the conscience of the court is shocked or when illegality is not trivial but goes to the root of the matter – not when merely another view is possible. The Apex Court further held that arbitrator being ultimate master of the quantity and quality of evidence while drawing the arbitral award, award based on little evidence or on evidence which does not measure up in quality to a trained legal mind cannot be held invalid. The Apex Court concluded that once it is found that the arbitrator's approach is neither arbitrary or capricious, no interference is called for on facts.

10 Having considered the award with the assistance of Mr. Anekar, I cannot gather myself to conclude that the findings of the Learned Arbitrator or that the approach of the Arbitrator was arbitrary or capricious. Hence, no interference is called for.

11 Petition dismissed with no order as to costs.

(K.R. SHRIRAM, J.)

¹ 2015 3 SCC 49