

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

NOTICE OF MOTION NO.119 OF 2016
IN
COMMERCIAL SUIT NO.133 OF 2018

V Hotels Limited ... Applicant/Defendant
(Original Defendant No.1)

In the matter between :

Siddhivinayak Realities Pvt. Ltd. ... Plaintiff
Versus
V. Hotels Limited And Others ... Defendants

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Mr. Iqbal Chagla, Senior Advocate with Tehaan Mehta, Parimal K. Shroff, D.V. Deokar, Sachin Panda and D. Parikh i/b Parimal K. Shroff & Co. for the Plaintiff.

Mr. Darius Khambata, Senior Advocate with Karan Rukhana i/b Rajesh Mirchandani for the Applicant/Defendant No.1.

CORAM : S.C. GUPTE, J.

RESERVED ON : 8 JANUARY 2021

PRONOUNCED ON : 30 APRIL 2021

ORDER :

. This Notice of Motion has been taken out by original Defendant No.1 for a summary judgment of dismissal of the Commercial Suit under Order XIII-A of the amended Civil Procedure Code, 1908 on the ground of bar of limitation.

2 The motion raises an important question concerning interpretation of sub-section (4) of Section 43 of the Arbitration and Conciliation Act, 1996 (“Act”), which provides for exclusion of the period between the commencement of arbitration and the date of the order of the court setting aside an arbitral award, for computing limitation period for commencement of proceedings (including arbitration) with respect to the dispute submitted to arbitration. According to the Applicant/Defendant, the expression “the order of the court” in Section 43(4) implies the first order of the original or the appellate court, as the case may be, setting aside the arbitral award, whereas, according to the Respondent/Plaintiff, it is the final order in a challenge petition setting aside an arbitral award or confirming such setting aside of the award, as the case may be.

3 The facts of the case, so far as they are relevant for the purpose of deciding this controversy, may be briefly stated as follows :

The Commercial Suit is for specific performance of an agreement

for sale between the parties. The agreement, termed as ‘Master Asset Purchase Agreement’, was executed on 31 March 2005 (‘MAPA’). The MAPA was for sale of the suit property, which consisted of (i) a hotel property, both land and structure, by the name of ‘Tulip Star Hotel’ (formerly known as ‘Centaur Hotel’) at Juhu in Mumbai, (ii) eleven flats described in the Schedule to MAPA and (iii) movables including plant and machinery, fittings and fixtures described in MAPA, by Defendant No.1 to the Plaintiff. It is common ground that by a notice dated 6 October 2005, termed as an arbitration notice, addressed by Defendant No.1 to the Plaintiff, the former *inter alia* claimed that the MAPA had stood frustrated or become impossible of performance and the former had stood discharged from fulfilling its obligations to the latter thereunder. It is this notice, which has given rise to the cause of action for filing of the present Commercial Suit. Before filing of the present suit, in pursuance of an arbitration application filed by the Defendants under Section 11 of the Act, the disputes between the parties were referred by the Court to arbitration by a sole arbitrator. The arbitrator had before him the claim of Defendant No.1 herein, and the written statement and Counter Claim of the Plaintiff herein, for adjudication. On 13 July 2011, the arbitrator passed an award in favour of Defendant No.1, holding that the MAPA had stood frustrated on account of its repudiation by the Plaintiff and acceptance of such repudiation by Defendant No.1. The learned arbitrator in his award also dismissed the counter claim of the Plaintiff. The Plaintiff challenged the award before this court,

who, by its order dated 10 May 2013, set aside the same. As a result, by its notice dated 4 July 2013, the Plaintiff invoked a *de novo* arbitration. Defendant No.1, for its part, filed an appeal on 6 July 2013 challenging the order of 10 May 2013 setting aside the award. This appeal has been admitted by a Division Bench of this court and is presently pending hearing and final disposal. Pending this appeal, the Plaintiff proceeded to file an application for appointment of arbitrator for such *de novo* arbitration. That application, however, came to be withdrawn by the Plaintiff on 17 September 2014, with liberty to file a fresh application, if so advised. In the backdrop of these facts, on 12 February 2016, the Plaintiff filed the present Commercial Suit.

4 It is the case of the Applicant (Defendant No.1) that the suit is barred by the law of limitation. It is submitted that the Plaintiff is entitled, under Section 43 (4) of the Act, to merely exclude the period between 30 September 2006 (i.e. the date of commencement of arbitration) and 10 May 2013 (i.e. the date of the court order setting aside the award); the present suit, filed on 12 February 2016, is, thus, barred by limitation, computing the periods between (i) 6 October 2005 (i.e. the accrual of cause of action) and 30 September 2006 (i.e. the date of commencement of arbitration) and (ii) 10 May 2013 (i.e. the court order setting aside the award) and 12 February 2016 (i.e. filing of the present suit). In answer, it is submitted by the Respondent (Plaintiff) that the appeal filed by Defendant No.1

challenging the order setting aside the arbitral award is but a continuation of the original challenge petition and the exclusion period under Section 43(4) can end only after the appeal is finally rejected by the Division Bench of this court or the Supreme Court, as the case may be; the suit, filed during the pendency of the appeal, is, thus, within time, computing only the period between 6 October 2005 (accrual of cause of action) and 30 September 2006 (commencement of arbitration).

5 Mr. Khambata, learned Senior Advocate of Defendant No.1, relying on the decision of this court (Per Chhagla CJ and Dixit J) in **Purshottamdas Harsoram Sabnani Vs. Impex (India) Ltd.**¹, submits that the applicable statutory provision (Section 43(4) of the Act) provides for exclusion of time taken up in arbitration proceedings, that is to say, the period between commencement of the arbitration and the date of the court order setting aside the award; and that the analogy of Section 14 of the Limitation Act, generally providing for execution of time taken in prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, did not apply to the case on hand. Relying on the concurring judgment of Raveendran J in **Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department**², learned Counsel submits that the special law (here, Section 43(4) of the Act) having made a provision for particular exclusion in computing the period of

1 AIR 1954 Bom 309

2 (1975) 4 SCC 22

limitation (here, the period between the commencement of arbitration and the order of the court setting aside an award), the general exclusion under Section 14 of the Limitation Act (which not only excludes time taken before the court of first instance, but also before the court of appeal) cannot be applied for computing the limitation period. Learned Counsel also relies on the case of **Sita Ram Goel Vs Municipal Board, Kanpur**³, in support of his submission that when the original decree or order is only affirmed by the court of appeal, one would really be concerned with the original decree or order, which was always operative, for computing the period of limitation (or its exclusion) and not the order of the court of appeal affirming it. Relying on the case of **State of Uttar Pradesh Vs. Mohammad Nooh**⁴, learned Counsel submits that merely because the court order setting aside the award is in appeal before a higher court, it cannot be said that the order is not final; the original order, if there were no inherent infirmities in it, is operative on its own strength and does not gain any greater efficacy as a result of the appeal court affirming it. Learned Counsel, thus, contends that the only exclusion that could be made was of the period upto the date of the order of the court of the first instance setting aside the arbitral award, and not of any further period taken up in an appeal from that order.

6 Mr. Chhagla, learned Senior Advocate of the Plaintiff, submits that every appeal is a continuation of the original proceeding filed

3 AIR 1958 SC 1036

4 AIR 1958 SC 86

before the court of first instance; the order of the first court in our case setting aside the arbitral award being in appeal, the same has not achieved finality. Learned Counsel submits that the appellate court may either set aside that order, in which case, the award may survive, or affirm the order, in which case it may stand set aside; it is only the final order affirming such setting aside, which makes it final and stops running of the exclusion period provided under Section 43(4) of the Act. Learned Counsel relies on the cases of **Lachmeshwar Prasad Shakul Vs. Keshwar Lal Chaudhuri**⁵ and **Union of India Vs. Varindera Constructions Limited**⁶ in support of his submission. Learned Counsel contends that the case of **Mohammed Nooh** (supra) relied upon by Mr. Khambata was only in the context of a departmental order passed by a domestic authority, which could not be equated to a civil court of first instance. Learned Counsel relies on the cases of **Madan Gopal Rungta Vs. Tata Iron and Steel Co. Ltd.**⁷, **Collector of Customs, Calcutta Vs. East India Commercial Co. Ltd.**⁸ and **Gojer Bros (Pvt) Ltd Vs. Shri Ratal Lal Singh Ltd.**⁹, in support of his submission that **Mohammad Nooh** was a special case, which stands on its own facts. Learned Counsel relies on direct authorities of the High Courts of Rajasthan, Punjab & Haryana and Andhra Pradesh in the cases of **Babulal Vs. Ramswaroop**¹⁰, **The State**

5 [1940] Federal Court Reports 84

6 (2020) 2 SCC 111

7 1962 Supp (3) SCR 906

8 (1963) 2 SCR 563

9 (1974) 2 SCC 453

10 AIR 1960 Raj 240

of **Uttar Pradesh Vs. Pearl Hosiery Mills¹¹**, **State of Punjab Vs. Nand Kishore¹²** and **S. Seshadri Vs. H.N. Narasihmadass¹³**, in support of his submission that the expression “the date of the order of the court” used in connection with setting aside of an arbitral award would cover the date of the final order of the appellate or revisional court, as the case may be, and the plaintiff is entitled to exclusion of the period spent in such appeal or revision against the order of the court setting aside the award. Learned Counsel implores this court to take the same view as these High Courts. He relies on the dicta of our court in the case of **Commissioner of Income Tax, Bombay City-II Vs T. Maneklal Mfg. Co. Ltd.¹⁴**, to contend that uniformity in construction of all-India statutes (here, the Act) is eminently desirable and considered opinions of these High Courts should ordinarily be followed, unless of course there are overriding reasons for taking a divergent view.

7 There is no dispute between the parties as to the starting point of the exclusion period provided under Section 43(4) of the Act. It is the date of filing of the counter-claim by the plaintiff in the arbitration proceedings, on which date the arbitration can be said to have commenced so far as the Plaintiff is concerned. (See the case of **State of Goa Vs. Praveen Enterprises¹⁵**.) The dispute concerns the end

11 1973 SCC OnLine P&H 33

12 2003 SCC OnLine P&H 1288

13 SA No.261/1977 Decided on 24.11.1978 MANU/AP/0256/1978

14 1977 SC OnLine Bom 247

15 (2012) 12 SCC 581

point of this period – whether it is the date of the order by which the court firstly set aside the arbitral award or is it the date of the final order confirming such setting aside. No doubt, for reckoning the exclusion period, as observed by our High Court in **Purshottamdas Harsoram Sabnani's** case (supra), we have to go by the special provision of Section 43(4) of the Act and not the general provision of Section 14 of the Limitation Act or its analogy.

8 Let us, therefore, at the outset note the terms of Section 43(4) of the Act and analyse them on first principles. Section 43 (4) provides as follows :

Section 43(4) – Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

Section 43(4) of the Act is in *pari materia* with Section 37(5) of the old Arbitration Act, i.e. Arbitration Act, 1940, the only difference between the two being that the end date of the exclusion period is signified, under the 1940 Act, either by an order of the court setting aside an award or declaring the arbitration agreement to have ceased to have effect with reference to the difference referred, unlike the Act

which talks about only the date of the order setting aside the award. (The difference is attributed to the fact that the Act does away with the application under the 1940 Act to have the existence, validity or effect of the arbitration determined at any time before passing of the arbitral award.)

9 It is next important to note that the order setting aside an arbitral award may be passed by either the court of first instance hearing a challenge to the award or the court of appeal (first or second, as the case may be). So also, it is possible for an order setting aside an award passed by the court of first instance being reversed by the first court of appeal and again restored by the second court of appeal. In either case, the order of the original court would have merged into the order of the higher court on the principle of law stated by the Supreme Court in **Kunhayammed Vs. State of Kerala**¹⁶. The doctrine of merger, as observed by the court in **Kunhayammed**, is a common law doctrine founded on the principle of priority in the hierarchy of justice delivery system, the logic of it being inconceivability of more than one decrees or operative orders governing the same subject matter at any given point of time. When a decree or order passed by an inferior court is subjected to a remedy available under the law before a superior forum, though such decree or order continues to be effective and binding, its finality is nevertheless put in jeopardy; once the superior forum disposes of the

16 (2000) 6 SCC 359

lis one way or the other, whether by setting aside or modifying or simply confirming the decree or order, it is the decree or order of the superior forum which alone is final, binding and operative, the former order having merged with it.

10 In that view of the matter, there is nothing in principle to treat the original order of the court of first instance or, for that matter, of the first appellate court, setting aside the award, as final, binding and operative for reckoning the exclusion period under Section 43(4) of the Act or to disregard the further period spent before the superior court/s in challenge to that order for computing such exclusion period. If one were not to hold so, anomalous results may well follow. Take, for instance, our own case here. The award of the arbitrator, which rejected the plaintiff's claim, was set aside on the plaintiff's challenge petition by a learned Single Judge of this court under Section 34 of the Act. The appeal filed by Defendant No.1 from that order is presently pending before a Division Bench. In the event the Division Bench sets aside the order of the Single Judge, thereby reviving the award, there is no way the plaintiff could file or prosecute any suit or arbitration proceedings on the referred dispute, such dispute having been decided against him on merits in the award which is sustained by the Division Bench. The plaintiff, if he persists, would then have to challenge the Division Bench order before the Supreme Court. Now if the Supreme Court were to restore the original order of the Single Judge, would the plaintiff not get exclusion of time upto the

date of the Supreme Court order? Or is it that such exclusion is available only till the order of the Single Judge? The answer would obviously have to be in the affirmative for the former question and negative for the latter. After all, till the Supreme Court restores the award, the plaintiff has no cause for filing of any suit or *de novo* arbitration proceeding, except may be during the brief interlude pending the first appeal before the Division Bench. It's another matter that in our case, the original limitation period has expired during this interlude, but in another case, where the Division Bench reverses the order of the Single Judge setting aside the award, during the period of limitation, obviously the plaintiff would have an extended period of limitation upto the date of the final order of the Supreme Court restoring the order of the Single Judge setting aside the award. The availability of limitation period cannot depend upon the fortuitous circumstance of the timing of the Division Bench (i.e. the first appellate court) order – whether within or without the original period of limitation reckoned from the date of the order of the Single Judge (i.e. the court of first instance) setting aside the award.

11 In the case of **Mohammad Nooh** (supra) relied upon by Mr. Khambata, the original order of dismissal was passed against the respondent, a police constable, by the District Superintendent of Police under the applicable police regulations. The order was passed on April 20, 1948. The respondent challenged that order first in appeal

before the Deputy Inspector General and then in revision before the Inspector General of Police, also under the same regulations. The last order, passed by the Inspector General, was on April 22, 1950. Having exhausted all departmental remedies, the respondent challenged his dismissal in a writ petition before the Allahabad High Court under Article 226 of the Constitution. The appellant-State raised a preliminary objection to the High Court exercising powers under Article 226 in the matter. The original order of dismissal, so argued the state, was passed before the Constitution came into force and was not amenable to a challenge under Article 226 of the Constitution. In reply, the respondent claimed that what was challenged was the last order (of the Inspector General) passed on April 22, 1950, i.e. after the Constitution was brought into force. The Supreme Court (per majority) repelled the respondent's contention. The court held that, firstly, there was no propriety in applying the doctrine of merger to departmental orders, since departmental tribunals, whether of the first instance or of appeal or revision, were not regular courts and their orders could not be equated with decrees of the first court or appellate or revisional orders of superior courts; secondly, there was nothing in the Indian law to warrant the suggestion that the decree or order of the court or tribunal of first instance become final only on the termination of all proceedings by way of appeal or revision. The court held that the original order of dismissal, absent any inherent infirmities in it, was operative on its own strength and did not gain any greater efficacy from the

subsequent orders in appeal or revision. The court held that the original order of dismissal, which always operated, having been passed before the Constitution and rights having accrued to the appellant state and liabilities correspondingly attached to the respondent before the Constitution came into force, the subsequent conferment of jurisdiction and powers on the High court would have no retrospective operation on such rights and liabilities. Mr. Khambata, relies on the latter proposition laid down in **Mohammad Nooh's** case, namely, that there was nothing in Indian law to warrant the suggestion that the decree of a court of the first instance becomes final only on the termination of all proceedings by way of appeal or revision.

12 **Mohammad Nooh's** case is, in the first place, distinguishable on its own special facts and circumstances. In fact, in its subsequent judgments, the Supreme Court has itself said so. In **Madan Gopal Rungta** (supra), the Government of Orissa had rejected the appellant's application for a mining lease. A review of that order under the applicable rules was rejected by the Central Government. The appellant's challenge in that behalf under Article 226 of the Constitution was repelled by the Orissa High Court on the ground that it had no jurisdiction, since the final order in that case was passed by the Central Government, which was located beyond its territorial jurisdiction. The appellant cited **Mohammad Nooh** in support of his case that the order of the State Government operated on its own

strength and did not merge with the Central Government order. The Supreme Court did not accept the appellant's submission, holding that the principle of **Mohammed Nooh's** case would not apply to the case before it. The court was of the view that the facts in **Mohammed Nooh** were of a special kind and the reasoning in that case would not apply to the appellant's case. This observation was reiterated in the subsequent case of **East India Commercial Co. Ltd.** (supra). In **East India Commercial Co. Ltd.**, the question before the court was, whether the order passed by the Collector of Customs, Calcutta, which was taken in appeal before the Central Board of Revenue, which was not amenable to the jurisdiction of Calcutta High Court, could be interfered with by that High Court. The Supreme Court held that the order of the original authority must be held to have merged in the order of the appellate authority which alone operated after the appeal was disposed of. Apropos **Mohammad Nooh** (supra), which was cited against the application of the doctrine of merger, the Supreme Court, in terms, observed that as was pointed out in **Madan Gopal Rungta** case (supra), *"Mohammad Nooh case was a special case, which stands on its own facts."* The court held that in **Mohammad Nooh's** case, the fact that the dismissal of the employee was before the Constitution came into force meant that *"even if the principle of merger were applicable to an order of dismissal like the one in Mohammad Nooh case the fact would still remain that the dismissal was before the Constitution came into force and therefore, the person dismissed could not take advantage of the provisions of the Constitution, so far as*

that dismissal was concerned.” On the question of merger and the finality and operative nature of the appellate order, in particular, this is what the court had to say in **East India Commercial Co. Ltd.** :

“4. The question therefore turns on whether the order of the original authority becomes merged in the order of the Appellate Authority even where the Appellate Authority merely dismisses the appeal without any modification of the order of the original authority. It is obvious that when an appeal is made, the Appellate Authority can do one of three things, namely, (i) it may reverse the order under appeal, (ii) it may modify that order, and (iii) it may merely dismiss the appeal and thus confirm the order without any modification. It is not disputed that in the first two cases where the order of the original authority is either reversed or modified it is the order of the Appellate Authority which is the operative order and if the High Court has no jurisdiction to issue a writ to the Appellate Authority it cannot issue a writ to the original authority. The question therefore is whether there is any difference between these two cases and the third case where the Appellate Authority dismisses the appeal and thus confirms the order of the original authority. It seems to us that on principle it is difficult to draw a distinction between the first two kinds of orders passed by the Appellate Authority and the third kind of order passed by it. In all these three cases after the Appellate Authority has disposed of the appeal, the operative order is the order of the Appellate Authority whether it has reversed the original order or modified it or confirmed it. In law, the appellate order of

confirmation is quite as efficacious as an operative order as an appellate order of reversal or modification.”

The principle of merger was once again applied by the Supreme Court, after referring to the cases of **Madan Gopal Rungta** and **East India Commercial Co. Ltd.**, in **Gojar Bros. (Pvt.) Ltd.** (supra).

13 Defendant No.1, in the present case, thus cannot benefit from **Mohammad Nooh** case (supra), the principle of which must be restricted to the peculiar facts of that case. In any event, even **Mohammad Nooh** case acknowledges that the doctrine of merger does operate in full force for certain purposes, namely, for the purposes of computing the period of limitation for execution of a decree, or for computing the period of limitation for an application for final decree in a mortgage suit. As we have noted above, the principle of merger would most certainly operate for computing the exclusion period under Section 43(4) of the Act for reckoning the limitation period for a suit or arbitration proceeding in case of a dispute referred to arbitration where an award is set aside by the court. The provision would be unworkable, as noticed above, without invoking the principle of merger.

14 The case of **Sitaram Goel** (supra) cited by Mr. Khambata can also be explained with reference to its own distinguishable facts. That case concerned the dismissal of an officer of the Municipal Board, Kanpur by a special resolution of the Board. There was a provision

for appeal from the decision of the Board to the State Government. The dismissal was challenged by the officer before the State Government. After rejection of his appeal, he filed a suit challenging the dismissal. The suit was filed within 8 months of communication of the decision of the State Government in his appeal (including the period of two months' notice). Under Section 326 of the U.P. Municipalities Act, the period of limitation was 6 months after accrual of the cause of action. The officer's case before the court was that cause of action had accrued after the State Government order in appeal was communicated to him. With extension of 2 months for the statutory notice, he claimed that his suit was within time. The suit was dismissed by the trial court. His first appeal was also dismissed by the High Court. The Supreme Court, in his appeal upon special leave, rejected the officer's contention that the cause of action had accrued to him after communication of the State Government's appellate order. The Supreme Court held that mere filing of an appeal had not the effect of holding the order of the Board in abeyance or postponing the effect thereof until the decision of the appeal. The Court held that the cause of action had accrued to the appellant employee the moment the resolution passed by the Board was communicated to him and that was the date of the commencement of limitation; he had to file a suit within 6 months of such commencement with a notice of 2 months. These facts, again, are clearly distinguishable. There the court did not apply the analogy of the decree of the trial court merging into a decree of the appeal

court, since the order of dismissal was clearly operative pending the appeal; it was neither kept in abeyance nor its effect postponed until the decision of the appeal.

15 Having regard to the foregoing discussion, this court is clearly of the view that the “order of the court” referred to in Section 43(4) of the Act is the final order of the court – whether the first order setting aside the award, which is not subjected to further challenge or the order in appeal, if the original order setting aside the arbitral award is carried in appeal and affirmed. There is a clear case for treating such appeal as a continuation of the original proceeding for setting aside the award.

16 I am fortified in this view by the decisions of Rajasthan, Punjab and Haryana and Andhra Pradesh High Courts in **Babulal, Pearl Hosiery Mills, Nand Kishore** and **S. Seshadri** (supra). These cases were under Section 37(5) of the 1940 Act, which, as we have seen above, is in *pari materia* with Section 43(4) of the Act. In **Babulal’s** case (supra), the Rajasthan High Court came to a categorical conclusion, which was expressed in the following words :

“9. On a very careful consideration of the various aspects of the matter, I have no doubt that on a fair and reasonable construction of sec.37, the word ‘court’ should include the appellate and revisional court and that the plaintiff is entitled to the exclusion of the period taken by him in filing appeal and revision against the

order of the court setting aside the award.”

The Rajasthan High Court, whilst coming to this conclusion, considered, amongst other things, two important aspects of the matter bearing on the subject. The first was the obvious necessity of adequately recognizing and safe-guarding the rights of parties under Section 39 of the 1940 Act (comparable to Section 37 of the Act). Section 39 (like the present Section 37) gives a suitor a right of appeal against any order setting aside the award. The court was of the view that very naturally, he (the suitor) must be allowed to pursue his right without any kind of restriction or risk. The court observed that a view that in case of failure in appeal, he cannot claim exclusion of time taken in appeal for any subsequent litigation, could not but seriously restrict, if not altogether deprive him of his right. The court noted that this could never have been intended by the legislature. Secondly, the court observed that sub-section (5) of Section 37 corresponded to Section 14 of the limitation Act. Under Section 14, the time taken in conducting proceedings in appeal could be excluded on the wordings of the Section itself. The court was of the view that though Section 37(5) did not adopt the language of Section 14 for the purposes of an appeal, the difference need not be emphasized to infer a different legislative intent. The court noted that the general principles of Section 14 being well known, the legislature was presumably content with general language only whilst enacting Section 37(5). These are indeed vital considerations supporting the

conclusion drawn by the court. The view of Rajasthan High Court has been adopted by the Punjab and Haryana, and Andhra Pradesh High Courts in the cases referred to above.

17 As this court put it in **T. Maneklal Mfg. Co. Ltd.** case (supra), it is eminently desirable to follow the line of these High Court judgments, for that promotes the principle of uniformity in construction of an all-India statute such as the Act. There is not only no overriding reason to take a contrary view, but every reason to take the same view.

18 There is, in the premises, no case for a summary judgement of dismissal of the commercial suit under Order XIII-A of the amended Civil Procedure Code 1908 on the ground of bar of limitation. The Notice of Motion is, accordingly, dismissed. Costs to be costs in the cause.

(S.C. GUPTE, J.)