

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**ARBITRATION APPEAL NO.01 TO 2022
WITH CIVIL APPLICATION NO.317 OF 2022
WITH CIVIL APPLICATION NO.9837 OF 2022
WITH CIVIL APPLICATION NO.7020 OF 2023
IN ARBITRATION APPEAL NO.01 TO 2022**

Godavari Marathwada Irrigation
Development Corporation, Aurangabad
Through The Executive Engineer,
Majalgaon Canal Division Bo.7, Gangakhed,
District- Parbhani

... Appellant

Versus

M/s. Reddy Associates,
Laxmi Nagar, Old Pedgaon road,
Parbhani.

...Respondent

...

Mr. A.C. Dharmadhikari, Advocate a/w Mr. S.G. Bhalerao, Advocate
for Appellant

Mr. J.N. Singh, Advocate for Respondent

...

**ARBITRATION APPEAL NO.02 TO 2022
WITH CIVIL APPLICATION NO.318 OF 2022
WITH CIVIL APPLICATION NO.9836 OF 2022
WITH CIVIL APPLICATION NO.7019 OF 2023
IN ARBITRATION APPEAL NO.02 TO 2022**

Godavari Marathwada Irrigation
Development Corporation, Aurangabad
Through The Executive Engineer,
Majalgaon Canal Division Bo.7, Gangakhed,
District- Parbhani

... Appellant

Versus

1. M/s J.J.L.B. (Engineering and Contractors)
Plot No.51, Jai Cottage,
Vedant Nagar, Station Road,
Aurangabad.

2. Mr. Santosh Ramkishan Tirmanwar
Age: 51 years, Occu: Service,
As Superintendent Engineer,

} Deleted as per
Court order dated
12/01/2022

& Dy. Secretary, Water Resources
Department, Mantralaya,
Mumbai-32

...Respondents

...

Mr. A.C. Dharmadhikari, Advocate a/w Mr. S.G. Bhalerao, Advocate
for Appellant
Mr. J.N. Singh, Advocate for Respondent No.1

...

**ARBITRATION APPEAL NO.03 TO 2022
WITH CIVIL APPLICATION NO.320 OF 2022
WITH CIVIL APPLICATION NO.9834 OF 2022
WITH CIVIL APPLICATION NO.7018 OF 2023
IN ARBITRATION APPEAL NO.03 TO 2022**

Godavari Marathwada Irrigation
Development Corporation, Aurangabad
Through The Executive Engineer,
Majalgaon Canal Division Bo.7, Gangakhed,
District- Parbhani

... Appellant

Versus

1. M/s J.J.L.B. (Engineering and Contractors)
Plot No.51, Jai Cottage,
Vedant Nagar, Station Road,
Aurangabad.
2. Mr. Santosh Ramkishan Tirmanwar
Age: 51 years, Occu: Service,
As Superintendent Engineer,
& Dy. Secretary, Water Resources
Department, Mantralaya,
Mumbai-32

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12/01/2022

...Respondents

...

Mr. A.C. Dharmadhikari, Advocate a/w Mr. S.G. Bhalerao, Advocate
for Appellant
Mr. J.N. Singh, Advocate for Respondent No.1

...

**ARBITRATION APPEAL NO.04 TO 2022
WITH CIVIL APPLICATION NO.321 OF 2022
WITH CIVIL APPLICATION NO.9835 OF 2022
WITH CIVIL APPLICATION NO.7017 OF 2023
IN ARBITRATION APPEAL NO.04 TO 2022**

Godavari Marathwada Irrigation
Development Corporation, Aurangabad

Through The Executive Engineer,
Majalgaon Canal Division Bo.7, Gangakhed,
District- Parbhani

... Appellant

Versus

1. M/s J.J.L.B. (Engineering and Contractors)
Plot No.51, Jai Cottage,
Vedant Nagar, Station Road,
Aurangabad.

2. Mr. Santosh Ramkishan Tirmanwar
Age: 51 years, Occu: Service,
As Superintendent Engineer,
& Dy. Secretary, Water Resources
Department, Mantralaya,
Mumbai-32

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...Respondents

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Mr. A.C. Dharmadhikari, Advocate a/w Mr. S.G. Bhalerao, Advocate
for Appellant

Mr. J.N. Singh, Advocate for Respondent No.1

...

**ARBITRATION APPEAL NO.05 TO 2022
WITH CIVIL APPLICATION NO.322 OF 2022
WITH CIVIL APPLICATION NO.9833 OF 2022
WITH CIVIL APPLICATION NO.7021 OF 2023
IN ARBITRATION APPEAL NO.05 TO 2022**

Godavari Marathwada Irrigation
Development Corporation, Aurangabad
Through The Executive Engineer,
Majalgaon Canal Division Bo.7, Gangakhed,
District- Parbhani

... Appellant

Versus

1. M/s J.J.L.B. (Engineering and Contractors)
Plot No.51, Jai Cottage,
Vedant Nagar, Station Road,
Aurangabad.

2. Mr. Santosh Ramkishan Tirmanwar
Age: 51 years, Occu: Service,
As Superintendent Engineer,
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Mumbai-32

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Mr. A.C. Dharmadhikari, Advocate a/w Mr. S.G. Bhalerao, Advocate
for Appellant
Mr. J.N. Singh, Advocate for Respondent No.1

...
CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 04th SEPTEMBER, 2023
PRONOUNCED ON : 01st DECEMBER, 2023

ORDER :

1. Since all these appeals raise similar question of law and fact, they were heard together and are being decided by this common order.
2. These appeals filed under Section 37 of the Arbitration and Conciliation Act, 1966 (for short 'the said Act'), challenge awards passed by Arbitrator dated 15/11/2017, 31/05/2017, 22/05/2017, 22/05/2017 and 31/05/2017, respectively and orders dated 22/10/2021 and 21/10/2021 passed by learned District Judge-2, Beed, in Civil Misc. Application Nos. 27/2018, 142/2017, 141/2017, 143/2017 and 144/2017, respectively, filed by appellant under Section 34 of the said Act, thereby rejecting the applications challenging said awards.
3. The issue raised in these appeals is, "whether appellant is entitled to challenge the interim awards passed by the Arbitral Tribunal, thereby rejecting objection of limitation raised by appellant along with final award, after the period of limitation prescribed under Section 34".

4. Brief facts necessary to decide present appeals are as follows:

Appellant challenged arbitral awards dated 15/11/2017, 31/05/2017, 22/05/2017, 22/05/2017 and 31/05/2017, respectively, passed by Arbitral Tribunal, thereby partly allowing claims of respondent and directing appellant to pay award amount of Rs.43,17,796/-, Rs.64,63,448/-, Rs.23,06,488/-, Rs.96,33,740/- and Rs.68,69,409/-, respectively, along with interest at the rate of 11.10 % per annum, by filing applications under Section 34 of the said Act, before District Court, Beed.

5. It appears from record that, issue of limitation was raised by appellant before Arbitral Tribunal. On 24/12/2016, Tribunal rejected said challenge. Appellant raised issue of limitation at the time of challenging final award under Section 34 of the said Act. District Court, by judgment and orders dated 22/10/2021 and 21/10/2021, rejected said applications.

6. Learned advocate for appellant assailed the awards on the ground of limitation contending that time barred and dead claims were raised by respondents. Though objection of limitation was raised, the same was rejected by the Arbitral Tribunal. He submits that though at that point of time rejection of objection was not impugned, since issue of limitation is mixed question of law and

facts, appellant is entitled to raise the same at the time of challenging final award.

Learned advocate further submits that the District Court has erred in relying on the decision in *Indian Farmers Fertilizers Co-operative Limited Vs. Bhadra Products, (2018) 2 SCC 534*. He submits that since issue of limitation goes to the root of the matter, appellant is entitled to raise the same under Section 16 of the said Act and appellant be permitted to challenge the order rejecting preliminary objection of limitation along with final award.

7. Per contra, learned advocate for respondents strongly opposed the appeals contending that in view of decision in *Indian Farmers Fertilizers Co-operative Limited* (supra), since appellant failed to challenge the interim awards passed on the objection of limitation within stipulated time, appellant is not entitled to challenge it now.

8. In *Indian Farmers Fertilizers Co-operative Limited* (supra), it is held that rejection of plea of limitation thereby adjudicating that the claim is not time barred is an interim award, within the meaning of Section 2(1)(c) of the said Act and when issue of limitation is decided as interim measure, it amounts to interim award and such interim award can be challenged under Section 34 of the said Act. The challenge of appellant that the

claims are time barred were rejected by the Arbitral Tribunal on 24/12/2016. Thus, interim awards in the present matters were passed by the Arbitral Tribunal on 24/12/2016. As per Section 34(3) of the said Act, limitation of three months is prescribed for making application to set aside arbitral award. Admittedly, appellant has failed to challenge the interim awards within the period of limitation prescribed under Section 34(3) of the said Act.

9. In view of these facts, the District Court has rightly held that appellant is not entitled to challenge the interim awards along with final award, in view of decision in *Indian Farmers Fertilizers Co-operative Limited* (supra).

10. There is no merit in argument of appellant that when interim award was passed on 24/12/2016 legal position at that point of time was that interim award could be challenged along with final award and as the question of limitation is mixed question of law and facts, appellant be permitted to challenge interim award along with final award. It is now well settled by various decisions of the Supreme Court that, law laid down by Supreme Court applies to all the proceedings and unless specifically stated in the decision, it would apply to all the pending cases.

11. In *A. S. Gauraya and Others Vs. S. N. Thakur and Others, AIR 1986 SC 1440*, it is held that "*There is nothing like any*

prospective operation alone of the law laid down by this Court. The law laid down by this Court applies to all the pending proceedings”.

12. In ***P. V. George and Others Vs. State of Kerala and Others, (2007) 3 SCC 557***, it is held that,

"The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term."

13. There is nothing in ***Indian Farmers Fertilizers Co-operative Limited*** (supra) to show that it would apply prospectively. In this view of the matter, since decision on the point of limitation rendered by Arbitrator amounts to an interim award, it has to be challenged under Section 34 of the said Act, within stipulated time. In these cases, interim award is passed on 24/12/2016 and appellant has failed to challenge it within a period of three months. Therefore, in view of ratio in ***Indian Farmers Fertilizers Co-operative Limited*** (supra), appellant cannot now raise issue of limitation in the challenge raised to the final awards.

14. For the aforesaid reasons, ground of limitation is not available to appellant even if question of limitation is held to be

mixed question of fact and law. District Court by giving cogent reasons has rightly held that ground of limitation is not available to appellant.

15. No ground is made out by the appellant to interfere in the impugned awards and decisions of the District Court while exercising jurisdiction under Section 37 of the said Act. The appeals being devoid of merit are dismissed.

16. Since appellant has already deposited the remaining amount in this Court, Civil Application Nos.9837/2022, 9836/2022, 9834/2022, 9835/2022, 9833/2022 are accordingly disposed of.

17. Civil Application Nos.7020/2023, 7019/2023, 7018/2023, 7017/2023, 7021/2023, are allowed. Respondents are permitted to withdraw the remaining amount deposited by appellant in this Court.

18. In view of dismissal of appeals, Civil Application Nos.317/2022, 318/2022, 320/2022, 321/2022, 322/2022 are hereby rejected.

(NITIN B. SURYAWANSHI, J.)