

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 283 OF 2024

Purabi Telefilms

.....*Petitioner*

: *Versus* :

Chandramohan s/o. Naraindas Dhanwani

....*Respondent*

WITH

ARBITRATION PETITION NO. 303 OF 2024

Chandramohan Naraindas Dhanwani

.....*Petitioner*

: *Versus* :

Purabi Telefilms

....*Respondent*

Mr. Karl Tamboly (Through VC) with Mr. Aurup Dasgupta, Ms. Drshika Hemnani and Ms. Prapti Bhadra i/b. M/s. Jhangiani Narula & Associates, *for the Petitioner in ARBP-283 of 2024 and for Respondent in ARBP-303 of 2024.*

Mr. Anuj Desai with Mr. Chittesh Dalmia, *for the Petitioner in ARBP-303 of 2024 and for Respondent in ARBP-283 of 2024.*

CORAM : SANDEEP V. MARNE, J.

JUDG.RESD. ON : 7 NOVEMBER 2025.

JUDG. PRON. ON : 13 NOVEMBER 2025.

JUDGMENT :

1) These are cross petitions filed under the provisions of Section 34 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) challenging the Award of the learned Sole Arbitrator dated 6th February 2024. By the impugned Award, the learned Arbitrator has dismissed the Counterclaim filed by Purabi Telefilms (**Purabi**) on the ground of the same being barred by limitation. Accordingly, Purabi Telefilms has filed Arbitration Petition No. 283 of 2024 challenging the Award. While dismissing the Counterclaim, the Learned Arbitrator has directed both the parties to bear the costs of the arbitration equally. The Respondent in the Counterclaim is aggrieved by the direction of the learned Arbitrator to bear the cost of arbitration equally and has accordingly filed Arbitration Petition No.303 of 2024.

2) The dispute between the parties relate to three cinematographic films titled 'Khanjar', 'Woh Jo Hasina' and 'Adalat'. Mr. Chandramohan N. Dhanwani is the sole proprietor of Tirupati Creations (both are referred to as **Tirupati** in the judgment) and claims to own copyrights in respect of three films. Purabi Telefilms, which is engaged in the business of acquisition and exploitation of copyrights in motion pictures in various media, expressed interest in acquiring rights in respect of the three films. By Deed of Assignment dated 23 July 2008, Tirupati agreed to convey and assign copyrights and negative rights of the film 'Khanjar' and 'Woh Jo Hasina' in favour of Purabi Telefilms for a period of 99 years for the territory of entire world. The agreed consideration between the parties was

Rs.4,25,000/- for the film 'Khanjar' and Rs. 3,25,000/- for the film 'Woh Jo Hasina' out of which Rs.1,25,000/- for the film 'Khanjar' and Rs. 75,000/- for the film 'Woh Jo Hasina' was paid in advance and balance payment was agreed to be made within 30 days from public notice subject to settlement of objections and settlement of delivery of Sound and Picture negatives, betacam/digi betacam etc. Purabi Telefilms paid further amount of Rs.50,000/- to Tirupati on 8 August 2008 thereby leaving balance amount payable in respect of the two films at Rs.5,00,000/-. Another Deed of Assignment dated 8 August 2008 was executed between Tirupati and Purabi Telefilms in respect of the film 'Adalat' for agreed consideration of Rs. 40,000 out of which Rs.10,000/- was paid on signing the Deed of Assignment and balance payment was agreed to be made within 30 days of public notice subject to settlement of claims and delivery of negatives etc. Purabi Telefilms issued public notice dated 12 September 2008 and received certain objections. On 29 January 2009, Purabi Telefilms terminated the assignment due to default in delivery of materials and requested for refund.

3) On 3 March 2009, parties executed Addendum to the first Deed of Assignment dated 23 July 2008 for films 'Khanjar' and 'Woh Jo Hasina' under which the total consideration for both the films was reduced from Rs.7,50,000/- to Rs.6,50,000/- in view of various objections received. The balance payment was agreed to be paid to Tirupati on receipt of sound and picture negatives and betacam of acceptable quality. Parties executed further Addendum to the Deed of Assignment in relation to films 'Khanjar' and 'Woh Jo Hasina' on 4

June 2012, under which the consideration payable for both the films was further reduced to Rs.5,00,000/-. Further payment of Rs.1,00,000/- was made to the producer of the film at the request of Tirupati, leaving the balance amount of Rs.1,50,000/- which was agreed to be paid upon handing over sound and picture negatives of the film 'Khanjar'. It appears that negatives in respect of the film 'Woh Jo Hasina' were received and the outstanding payment was only in respect of the film 'Khanjar'.

4) On 29 December 2016, Tirupati Creations terminated the Deed of Assignment pertaining to the films 'Khanjar' and 'Woh Jo Hasina'. Purabi Telefilms responded to the notice on 19 January 2017. On 12 December 2018, Tirupati filed Arbitration Application No.16 of 2019 for appointment of Arbitrator under Section 11 of the Arbitration Act. By order dated 27 March 2019, this Court appointed sole Arbitrator with the consent of both the parties. Tirupati filed Statement of Claim *inter alia* seeking a declaration of termination of Deeds of Assignment. Purabi Telefilms filed Written Statement disputing the Claim and Counterclaim for specific performance of the Deeds of Assignment. Tirupati withdrew the Claim which was dismissed on 6 August 2019 as withdrawn and the Counterclaim was directed to proceed. Tirupati filed Written Statement to the Counterclaim. Parties led evidence in support of the respective cases. On 6 February 2024, the learned sole Arbitrator delivered Award dismissing the Counterclaim filed by Purabi on the ground of the same being barred by limitation. The learned Arbitrator directed both the parties to bear the cost of arbitration equally. It appears that

Purabi had borne the entire cost of arbitration and accordingly the Arbitrator has directed payment of sum of Rs.4,56,562 being 50% share of the cost of arbitration by Tirupati to Purabi Telefilms.

5) Purabi Telefilms is aggrieved by the Award dated 6 February 2024 dismissing its Counterclaim and has accordingly filed Arbitration Petition No.283 of 2024. Tirupati though its proprietor Mr. Dhanwani is also aggrieved by the impugned Award to the limited extent of direction by the Arbitrator to bear 50% costs of arbitration and has accordingly filed Arbitration Petition No. 303 of 2024.

6) Mr. Tamboly, the learned counsel appearing for the Claimant would submit that the learned Arbitrator has grossly erred in holding that the Counterclaim filed by Purabi Telefilms is barred by limitation. He would rely upon the provisions of Article 54 of the Limitation Act, 1963 and would submit that since no time was agreed for performance of the contract, the period of limitation would begin to run from the date of notice and refusal by Purabi Telefilms. The refusal to perform the contract was communicated by Mr. Dhanwani to Purabi Telefilms for the first time by issuance of termination notice dated 29 December 2016. Prior to the issuance of the said notice, Mr. Dhanwani had not communicated to Purabi Telefilms in any manner that he was not willing to perform the contract. That therefore the Counterclaim filed by Purabi Telefilms was perfectly within limitation. Mr. Tamboly would further submit that under the Deed of Addendum, the balance payment was required to be made upon

delivery of negatives of the film. That admittedly negatives of the film have not been delivered to Purabi Telefilms nor Purabi Telefilms was communicated refusal by Mr. Dhanwani to handover the negatives. That therefore Purabi Telefilms was justified in awaiting delivery of negatives until it was communicated vide termination notice dated 29 December 2016 that Mr. Dhanwani was not willing to perform his part of contract.

7) Mr. Tamboly would further submit that the deed of assignment relating to the film 'Adalat' provided for payment of balance consideration within 30 days. The Addendum dated 3 March 2009 altered the conditions of payment and provided for payment of balance consideration only on receiving Betacam/Digi Betacam of acceptable quality of the film 'Adalat' from Tirupati. Ignoring the said modification of the term of payment, the learned Arbitrator erroneously referred to the original timeline for payment for the purpose of holding that failure on the part of Tirupati to perform his part of obligation under the second Deed read with Addendum occurred at the end of 30 days of Deed of Addendum i.e. 3 March 2009. That the findings of the learned Arbitrator about liability to make payment within 30 days of execution of Addendum amounts to adding terms of contract. Since the Arbitrator has rewritten contract between the parties, this would be a fit ground for setting aside of impugned Award.

8) So far as the first Deed of Assignment relating to the films 'Khanjar' and 'Woh Jo Hasina' is concerned, Mr. Tamboly

would submit that the learned Arbitrator has erred in invoking the concept of 'reasonable time' for making balance payment of consideration, ignoring the position that the balance consideration was payable only on receipt of negatives in respect of the film 'Khanjar' under the last Addendum dated 4 June 2012. That the learned Arbitrator has erroneously referred to commercial and market practice for the purpose of rewriting the terms of contract which clearly provided for payment of balance amount only on delivery of negatives of the film 'Khanjar'. That there is no pleading by Tirupati about existence of any such market practice of delivery of negatives within reasonable time of execution of an agreement. That since the finding is based on *ipse dixit* of the Arbitrator, the Award is liable to be set aside.

9) Mr. Tamboly would further submit that the learned Arbitrator erred in entering into merits of the Claim after dismissing the Counterclaim on the ground of limitation. That even otherwise, his finding about failure to challenge termination notice is factually incorrect. The termination notice is challenged by Purabi Telefilms in Commercial IP Suit No.134 of 2020. In support of his contentions, Mr. Tamboly has relied upon following judgments :

- i. *Food Corporation of India vs. Chandu Construction & Anr.*¹
- ii. *PSA Sical Terminals (P) Ltd Vs. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin & Ors.*²
- iii. *Indian Oil Corporation Limited vs. Shree Ganesh Petroleum Rajgurunagar*³
- iv. *State of Manipur vs. T.H. Haridas Singh & Anr.*⁴

¹ (2007) 4 SCC 697

² (2023) 15 SCC 781

³ (2022) 4 SCC 363

⁴ AIR 2016 MANI 23

- v. *Panchanan Dhara & Ors. vs. Monmataha Nath Maity (Dead) through Lrs & Anr.*⁵
- vi. *Madina Begum & Anr. vs. Shiv Murti Prasad Pandey & Ors.*⁶
- vii. *Rathnavathi & Anr. vs. Kavita Ganashamdas*⁷
- viii. *Ahmadsahab Abdul Mulla Vs. Bibijan & Ors.*⁸
- ix. *State of Goa vs. Pravin Enterprises*⁹

10) *Per contra*, Mr. Desai, the learned counsel appearing for Tirupati would oppose the Arbitration Petition filed by Purabi Telefilms submitting that Purabi's Counterclaim has rightly been dismissed by the learned Arbitrator on the ground of limitation. That the last Addendum between the parties was executed in the year 2012 after which Purabi did absolutely nothing towards completion of transaction. That Purabi Telefilms secured negatives/Betacam of the film from the market and continued exploitation of the films. That its Counterclaim filed in the year 2019 has rightly been held to be barred by limitation. That the Award is not so unconscionable which warrants interference by this Court under the provisions of Section 34 of the Arbitration Act. That the findings recorded by the learned Arbitrator are plausible and therefore no ground is made out under Section 34 of the Arbitration Act for interfering in the Award. That the Arbitrator has merely construed the terms of the contract and merely because another construction of terms and conditions of contract is possible, the same cannot be a ground for setting aside the Award. He would accordingly pray for dismissal of the Arbitration Petition No. 283 of 2024 filed by Purabi Telefilms.

⁵ (2006) 5 SCC 340

⁶ (2016) 15 SCC 322

⁷ (2015) 5 SCC 223

⁸ (2009) 5 SCC 462

⁹ (2012) 12 SCC 581

11) So far as Arbitration Petition No. 303 of 2024 filed by Tirupati is concerned, Mr. Desai would submit that after dismissal of the time barred Counterclaim of Purabi Telefilms, Tirupati cannot be made to bear 50% costs of arbitration. That no reasons are recorded by the learned Arbitrator as to why it has directed Tirupati to bear 50% costs of arbitration. He would accordingly pray for setting aside direction for payment of 50% costs of arbitration by Tirupati.

12) I have considered the submissions canvassed by the learned counsel appearing for the parties and have gone through the findings recorded by the learned Arbitrator in the impugned Award. I have also perused the records of the case filed along with both the Arbitration Petitions.

13) The arbitration was initiated by Tirupati by filing petition under Section 11 of the Arbitration Act. In its Statement of Claim, Tirupati claimed sum of Rs.1.25 crores by way of damages and also sought a declaration that Purabi Telefilms has no rights in respect of the three films. It also sought a restraint order against Purabi Telefilms from exploitation of the rights in the three films. Purabi Telefilms filed Statement of Defense contesting the claim of Tirupati. Additionally, Purabi Telefilms also filed Counterclaim seeking specific performance of Deed of Assignment dated 23 July 2008 read with Addendums dated 3 March 2009 and 4 June 2012 for delivery of sound and picture negatives in respect of the film 'Khanjar'. Purabi Telefilms also sought specific performance of the Deed of Assignment dated 8 August 2008 read with Addendum dated 3 March 2009 in

respect of the film 'Adalat' by delivery of Betacam/Digi Betacam of acceptable quality in respect of that film. Purabi Telefilms also sought amount of Rs.1 lakh from Tirupati towards expenses incurred in defending title/claim in respect of the film 'Woh Jo Hasina'.

14) After filing of Counterclaim by Purabi Telefilms, Tirupati withdrew its Claim, which was dismissed as withdrawn by order dated 6 August 2019. However, the Counterclaim was directed to be proceeded.

15) Accordingly, the learned Arbitrator was required to adjudicate only the Counterclaim filed by Purabi Telefilms for specific performance of the Deeds of Assignment and various Addenda. One of the defenses raised by Tirupati to oppose Purabi Telefilms' Counterclaim was limitation. The learned Arbitrator has decided the aspect of limitation *qua* the Deeds of Assignment in respect of the films 'Khanjar'/'Woh Jo Haseena' and 'Adalat' separately.

16) While holding the Counterclaim in respect of the second Deed of Assignment in respect of the film 'Adalat' dated 8 August 2008 read with Addendum dated 3 March 2009 as barred by limitation, the learned Arbitrator has recorded following findings in the Award:

13. In this regard now, I will examine the Claimant's contention that the Addendum indefinitely extended the Respondent's obligations under the second Deed. The contents of the Addendum clearly show that the parties have only varied the amount of consideration payable by the Claimant and there is no change to the timeline prescribed for the Respondent's

obligations under the second Deed. In fact, the Addendum contains a specific clause that except the terms modified by the Addendum, the remaining provisions of the second Deed would remain unchanged. In view of this position, I am unable to accept the Claimant's contention that the Addendum indefinitely extended the timeline for the Respondent's obligations. In fact, the contents of the Addendum show that the Respondent had already failed in performance of his obligations and thus, the Claimant had notice and knowledge of the said failure at that time itself. Even if it is to be accepted that the Addendum extended the timeline for the Respondent's obligations, it has to be construed that the Respondent was required to perform his obligations within 30 days of the date of the Addendum as per the original timeline prescribed in the second Deed. Considering the nature of commercial transaction which is assignment of rights in a film, it is commercially inconceivable and unacceptable that the intention of the Claimant was to indefinitely extend the timeline for the counter party's obligations. No prudent business person/entity would have such an intention while entering into a commercial contract. Accordingly, I hold that the failure on the part of the Respondent to perform his obligations under the Second Deed read with the Addendum occurred at the latest at the end of 30 days from the date of Addendum i.e. 3rd March 2009. Accordingly, I hold that the claim for specific performance of the Second Deed filed in the year 2019 is barred by limitation.

17) The learned Arbitrator has thus held that though Addendum dated 3 March 2009 varied the amount of consideration payable by the claimant, there was no change to the timeline prescribed for Tirupati's obligations under the Deed of Assignment. He has held that the Addendum did not indefinitely extend the timeline for the performance of Tirupati's obligations and even if it is assumed that the Addendum had the effect of extending the timeline, Tirupati was to perform its obligations within 30 days of execution of the Addendum. The Arbitrator has accordingly proceeded to hold that failure on the part of Tirupati to perform his obligations occurred at the latest at the end of 30 days from the date of Addendum of 3 March 2009.

18) The above finding recorded by the learned Arbitrator appear to be contrary to the contractual terms agreed between the parties. Under clause 4 of the Addendum dated 3 March 2009, parties had agreed for following timeline for making of payment of balance consideration:

4. The ASSIGNOR hereby confirms that the ASSIGNEE will be liable to make a payment of Rs. 40,000/- as full and final payment of the Hindi film “Adalat” only on receiving Betacam/Digi Betacam of acceptable quality of the Hindi film “Adalat” from the ASSIGNOR.

19) Thus, there was specific agreement between the parties for payment of consideration on receipt of Betacam/Digi Betacam of acceptable quality of the film ‘Adalat’. There is no clause in the Addendum providing for delivery of Betacam/Digi Betacam of the film by Tirupati within 30 days of execution of the Addendum. The learned Arbitrator has rewritten the contract between the parties by adding a covenant therein that the material was required to be delivered within 30 days of execution of the Addendum. This exercise of rewriting the terms of the contract is undertaken by the learned Arbitrator by holding that it was commercially inconceivable and unacceptable that the intention of the Claimant was to indefinitely extend the timeline for Tirupati’s obligations since the nature of commercial transaction was for assignment of rights in a film and that no prudent business person/entity would have such an intention while entering into a commercial contract. The learned Arbitrator has thus exceeded his mandate and had travelled beyond the scope of agreement making its Award susceptible to challenge under Section 34 of the Arbitration Act.

20) The learned Arbitrator has also ignored Clause-4 of the Addendum dated 3 March 2009 and has recorded a perverse finding that there was no change in the timeline prescribed under the original Deed of Assignment. Ignorance of clause-4 of the Addendum would also constitute a ground for setting aside the impugned Award. There is no dispute to the position that Betacam/Digi Betacam of the film 'Adalat' has not been delivered by Tirupati to Purabi Telefilms. Prior to termination notice dated 29 December 2016, Tirupati never communicated to Purabi Telefilms in any manner that he was not willing to hand over Betacam/ DG Betacam of the film 'Adalat'. Thus, Purabi Telefilms noticed refusal on the part of Tirupati to perform contract for the first time on 29 December 2016. The Counterclaim in respect of the film 'Adalat' was thus perfectly within limitation.

21) So far as the first Deed of Assignment dated 23 July 2008 *qua* films 'Woh Jo Hasina' and 'Khanjar' is concerned, the learned Arbitrator has recorded following findings for holding that the Counterclaim is barred by limitation:

14. Now I will deal with the point of limitation related to the First Deed. It is to be noted that unlike the Second Deed of assignment, the schedules to the First Deed do not contain a specific timeline of 30 days or otherwise. It is therefore to be considered as to when the Respondent's obligations to perform its part of the contract arose. In this regard, it is necessary to consider the nature of the transaction involved. Since the transaction involves assignment of rights in films, it is evident that the Claimant intended to utilize the said rights immediately or within a reasonable time. This is vindicated by the Claimant's conduct of sending notices dated 18th September 2008, 18th October, 2008 and 25th October 2008 (marked as Exhibit C-14, Exhibit C-15 colly, Exhibit C-16 in evidence) in which the Respondent's failures were set out. It is thus clear that the Claimant itself expected the Respondent to perform his obligations immediately or within a reasonable time. The Addendums dated 3rd March 2009 and 4th June

2012 narrate various instances of non-performance on the part of the Respondent. This itself shows that it was the intention of the parties that obligations of the Respondent were required to be performed within a reasonable time. In this regard, I may also note that there is another Deed of Assignment dated 24th July 2008 (marked as Exhibit C-34) produced in the course of cross-examination of the Claimant's witness. Schedule I to the said Deed which is in respect of various films provides the timeline for delivery is not the subject matter of the present claim, I am referring of material as "on signing of this Deed". Although this Deed is not the subject matter of the present claim, I am referring to it to derive the usual timelines in such transactions between the parties. This further shows that as a commercial and market practice, the obligations regarding delivery of material was expected to be immediate or within a reasonable time. Even if the date of the Second Addendum i.e. 4th June 2012 is to be considered, that would only mean that the time for performance of the Respondent's obligations was to be within a reasonable time of the said Addendum. There is nothing in the two Addendums that indefinitely extends the timeline for performance of the Respondent's obligations. As I have stated in the foregoing paragraph, no prudent business entity/person would have such an intention. The Addendums specifically provide that except the clauses modified by the Addendum, the remaining provisions of the Deed would remain unchanged. It is evident that it was the intention of the parties that the Respondent's obligations under the First Deed read with the two Addendums was to be discharged at the latest within a reasonable time of the date of the Second Addendum. Thus, on the Respondent's failure to discharge its obligations to the satisfaction of the Claimant, the Claimant naturally had a notice of the said failure. It is to be noted that the term "notice" used in the second part of Article 54 of the Limitation Act refers to 'knowledge' by a party and not issuance of a formal written notice. It cannot be disputed that on the Respondent's failure to discharge its obligations within a reasonable time from the date of the Second Addendum, the Claimant naturally had the knowledge of such failure. Accordingly, I hold that the claim filed in the year 2019 for specific performance of the First Deed is also barred by limitation.

22) Thus, the learned Arbitrator has held that there was no specific timeline of 30 days in respect of the Deed of Assignment dated 23 July 2008. However, he has held that since the transaction involved assignment of rights in the films and since Purabi Telefilms intended to utilise the rights immediately/in a reasonable time, the intention of the parties was to perform their respective obligations 'within a reasonable time'. The Arbitrator took note of some other

Deed of Assignment in relation to another film which provided for delivery of material on signing of the Deed. On the basis of that Deed of Assignment, the learned Arbitrator held that it was the 'industry practice' to deliver the material within reasonable time. This is how the learned Arbitrator held that failure of Tirupati to discharge his obligations had occurred within reasonable time of execution of the Addendum and this is how the Counterclaim *qua* the film 'Khanjar' is also held to be barred by limitation.

23) While recording the above findings in respect of the Assignment Deed dated 23 July 2008 and Addenda dated 3 March 2009 and 4 June 2012, the learned Arbitrator has not even taken pains to take into consideration the terms and conditions of the two Addenda. Under the Addendum dated 3 March 2009, the balance amount was agreed to be paid on delivery of sound and picture negatives of acceptable quality of the film 'Khanjar' and Betacam of acceptable quality of the film 'Woh Jo Hasina'. Clause 4 of the Addendum dated 3 March 2009 reads thus :

4. The ASSIGNOR further confirms that the ASSIGNEE will be liable to make a payment of Rs. 3,00,000/- on receipt of Sound & Picture Negatives of acceptable quality of the Hindi film "Khanjar" & Betacam of acceptable quality of the Hindi film "Woh Jo Haseena" subject to the No Objection Certificate as mentioned in clause no.3 herein above.

24) It appears that the digital Betacam of the film 'Woh Jo Hasina' has been delivered and what remained to be delivered was only the sound and picture negatives of the film 'Khanjar' in respect

of which second Addendum dated 4 June 2012 was executed, in which the timeline for payment was further extended in Clause-4 as under :

4. The ASSIGNOR hereby confirms that the ASSIGNEE will be liable to make the balance payment of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) to him only on the ASSIGNOR handing over the Sound & Picture Negatives of acceptable quality of the film "Khanjar".

The balance payment of Rs. 1,50,000 was thus required to be paid only against delivery of sound and picture negatives of the film 'Khanjar'.

25) Once the Addenda to the first Deed of Assignment specifically provided for making of balance payment on delivery of sound and picture negatives of the film 'Khanjar', the finding of the learner Arbitrator that delivery of negatives was required to be made either simultaneously or within reasonable time of execution of Deed of Assignment, would clearly tantamount to rewriting of contract between the parties. The learned Arbitrator completely glossed over the position that Tirupati had consistently failed in his obligation of delivering the negatives of the film 'Khanjar' right since 23 July 2008 when the original Deed of Assignment was executed. Even after execution of the first Addendum dated 3 March 2009, he had failed to deliver the negatives of the film 'Khanjar', which was a reason why second Addendum dated 4 June 2012 was executed between the parties. The fact that there was consistent failure on the part of Tirupati to deliver negatives of the film 'Khanjar' requiring execution of the two Addenda in 2009 and 2012 which would in fact negate

existence of any industry practice of delivery of materials simultaneously with execution of assignment. It is another thing that Tirupati did not plead existence of any such industry practice. Thus, the finding recorded by the learned Arbitrator *qua* the first Deed of Assignment about failure on the part of Tirupati to discharge its obligations occurred within reasonable time of execution of the second Addendum is clearly contrary to the express contract between the parties.

26) Thus, the findings recorded by the learned Arbitrator *qua* both the Deeds of Assignment amount to rewriting the terms of contract between the parties. It is well settled position of law that the Arbitrator cannot rewrite the terms of contract as he derives authority from the contract and cannot act contrary thereto. Reliance in this regard by Mr. Tamboly on judgments of the Apex Court in ***Food Corporation of India*** (supra), ***PSA Sical Terminals*** (supra) and ***Indian Oil Corporation Limited*** (supra) is apposite. Since the learned Arbitrator has rewritten the terms of contract, the impugned Award is liable to be set aside. A fundamental error in application of limitation law by the Arbitrator also constitutes a good ground for interference under Section 34 of the Arbitration Act as held by the Division Bench of Manipur High Court in ***State of Manipur Vs. T.H. Haridas Singh*** (supra).

27) In the facts of the present case, Purabi Telefilms did not have any notice/knowledge of refusal to perform the contract on the part of Tirupati. There is absolutely no material on record to infer

acquisition of knowledge by Purabi Telefilms of refusal by Tirupati to deliver negatives of the film 'Khanjar' or Betacam of the film 'Adalat'. In the present case, the time for performance of the contract has been extended by the parties by execution of various Addenda. Therefore, the timeline agreed for performance in the Addendum would govern the contractual relation between them parties. The time to file Counterclaim started running only when Purabi Telefilms noticed refusal of performance to deliver the negatives of the film 'Khanjar' and Betacam of the film 'Adalat' as agreed in the Addenda

28) The learned Arbitrator has also committed a gross error in entering into the merits of the dispute by holding that Purabi Telefilms has failed to challenge the termination notice. Once the Counterclaim is held to be barred by limitation, it was imprudent on the part of the learned Arbitrator to inquire into the merits of the case. It is another matter that termination notice is a subject matter of Commercial IP Suit No.134 of 2020 instituted by Purabi Telefilms alongwith Goldmines Telefilms Pvt. Ltd. The effect of the prayer in the said suit on Counterclaim of Purabi Telefilms in arbitration proceedings is subject matter of merits which can be undergone if and when fresh arbitration is invoked by the parties under the provisions of Section 43(4) of the Arbitration Act.

29) I am therefore of the view that the impugned Award is liable to be set aside as the learned Arbitrator has clearly traveled beyond the terms of the agreement. He has rewritten the terms of the contract between the parties by substituting the timeline agreed in the

Addenda with the timelines determined by him at his *ipse dixit*. Purabi Telefilm has thus made out a case for interference in the impugned Award in exercise of power under Section 34 of the Arbitration Act. Therefore, the Award needs to be set aside to the extent of dismissal of the counterclaim on the ground of limitation. That part of the Award, which directs sharing of costs of arbitration, however, deserves to be sustained, for the reasons indicated in the paragraph to follow.

30) Turning to Arbitration Petition No. 303 of 2024 filed by Tirupati, the limited challenge therein is to the direction for sharing the costs of arbitration. The very premise for challenging the direction for sharing of costs of arbitration was dismissal of the counterclaim by the learned arbitrator. Now the award is being set aside, that premise would vanish. It would now be inequitable to make Purabi Telefilms to bear the entire costs of arbitration when it has succeeded in getting the Award set aside to the extent of dismissal of its counterclaim. It may have to initiate another round of arbitration all over again. Therefore, though the Award, to the extent of dismissal of counterclaim, is being set aside, the same needs to be upheld *qua* direction for sharing of costs of arbitration. The bad part of the award needs to be severed from the good part as per the judgment of the Apex Court in in **Gayatri Balasamy v. ISG Novasoft Technologies Ltd.**¹⁰ Therefore Arbitration Petition No. 303 of 2024 deserves to be dismissed

¹⁰ 2025 SCCOnline SC 986

31) Arbitration Petition No. 283 of 2024 accordingly succeeds. The impugned Award of the learned Arbitrator dated 6 February 2024 is set aside to the limited extent of dismissal of the Counterclaim filed by Purabi Telefilms. The Award is sustained to the extent of direction for sharing of costs. Arbitration Petition No. 283 of 2024 is accordingly allowed and Arbitration Petition No. 303 of 2024 is dismissed.

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[SANDEEP V. MARNE, J.]