

2025:PHHC:005146



**CM-20964-CII-2024 in/and RA-CR-143-2024 in
ARB-7-2022**

Bhagwan Dass and Sons vs. UOI and others

Present:- Mr. Anand Vardhan Khanna, Advocate,
for the review applicant.

Mr. B.S. Kanwar, Sr. Panel Counsel,
for UOI.

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The applicant through instant application under Section 151 CPC is seeking permission for exemption from filing certified copies of Annexures P-3 to P-5.

Allowed as prayed for.

RA-CR-143-2024

Mr. Anand Vardhan Khanna, Advocate appeared and filed his Power of Attorney on behalf of the review applicant. The same is taken on record. Registry is directed to tag the same at an appropriate place.

The review applicant through instant application under Order XLVII Rule 1 read with Section 151 CPC is seeking review of order dated 14.10.2024 passed by this Court whereby its application seeking appointment of Arbitrator under Section 11(6) of Arbitration and Conciliation Act, 1996 was dismissed. The operative part of order dated 14.10.2024 is reproduced as

below:-



“7. Having held that Article 137 of Limitation Act is applicable to proceedings under Section 11(6) of 1996 Act, the Supreme Court in **Arif Azim Company Limited v. Aptech Limited, (2024) 5 SCC 313**; **BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738** and **B&T AG v. Union of India, (2024) 5 SCC 358** has held that though limitation is an admissibility issue, yet it is duty of the Courts to prime facie examine and reject nonarbitrable or dead claims so as to protect the other party from being drawn into a time consuming and costly arbitration process. While considering the issue of limitation in relation to a petition under Section 11(6) of the 1996 Act, the Courts should satisfy themselves on two aspects by employing a twopronged test-first, whether the petition under Section 11(6) of the 1996 Act is barred by limitation and secondly, whether the claims sought to be arbitrated are ex facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of dispute to arbitration, the Court may refuse to appoint an Arbitral Tribunal. There are three principles of law regarding the manner in which the point in time when the cause of action arose may be determined. First, that the right to receive the payment ordinarily begins upon completion of the work. Secondly, a dispute arises only when there is a claim by one side and its denial/repudiation by the other and thirdly, the accrual of cause of action cannot be indefinitely postponed by repeatedly writing letters or sending reminders. It is important to find out the “breaking point” at which any



reasonable party would have abandoned the efforts at arriving at a settlement and contemplated referral of the dispute to arbitration. Such breaking point would then become the date on which the cause of action could be said to have commenced. A notice invoking arbitration after six years from the cause of action is barred by limitation. The claim after six years is ex-facie dead and time barred. The period of limitation for issuing notice of arbitration would not extend by mere exchange of letters or settlement discussions where a final bill is rejected by making deductions or otherwise.

8. In the case in hand, the dispute relates to 2011-12. The work was completed on 01.09.2010 and thereafter, final bill was prepared on 30.04.2011. The applicant issued no further claim certificate on 06.08.2011. Notice invoking arbitration clause was issued on 22.03.2021. In view of aforecited judgments of the Supreme Court, this Court finds that demand notice was served in 2021 with respect to a claim which on the said date was hopelessly barred by limitation and had become dead wood.

9. In the backdrop, this Court is of the considered opinion that present application deserves to be dismissed and accordingly dismissed.”

Mr. Anand Vardhan Khanna, Advocate submits that last payment was made in 2018. Thus, cause of action accrued in 2018 and this fact by mistake could not be brought in the knowledge of this Court while passing aforesaid order.



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Mr. B.S. Kanwar, Sr. Panel Counsel for Union of India submits that there was outstanding liability against applicant which was adjusted while making payment of another contract. It is not case of outstanding liability of respondent whereas it is a case of outstanding liability of the applicant which was recovered in 2018.

In the wake of statement of counsel for Union of India, this Court does not find any ground to recall its order dated 14.10.2024.

Review application stands dismissed.

14.01.2025
shivani

(JAGMOHAN BANSAL)
JUDGE