

CASE NO.:
Appeal (civil) 2461 of 2008

PETITIONER:
CONSOLIDATED ENGG.ENTERPRISES

RESPONDENT:
PRINCIPAL SECY. IRRIGATION DEPTT. & ORS.

DATE OF JUDGMENT: 03/04/2008

BENCH:
CJI K.G. BALAKRISHNAN & J.M. PANCHAL

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C) No.10311 of 2005)
With

CIVIL APPEAL NO. 2462 OF 2008
(Arising out of SLP(C) No.15619 of 2005)

HATTI GOLD MINES COMPANY LTD. \005.. APPELLANTS

Versus

M/S VINAY HEAVY EQUIPMENTS \005.. RESPONDENT

J.M. PANCHAL, J.

Civil Appeal No.2461 of 2008 @ SLP(C) NO.10311/2005
Leave granted.

2. The instant appeal is directed against judgment dated April 4, 2005 rendered by the Division Bench of the High Court of Karnataka at Bangalore in Misc. First Appeal No.4465 of 2003, by which, decision dated October 24, 2002 passed by the learned District Judge, Bangalore Rural District, Bangalore in A.S. No.2 of 2000 dismissing the application submitted by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act\022 for short) as time barred has been set aside and the matter is remanded to the District Court with a direction to proceed further with the matter in accordance with law.

3. The appellant is an enterprise engaged in civil engineering construction as well as development of infrastructure. It entered into an agreement dated January 20, 1989 with the respondent for construction of earthen bund, head sluices and the draft channel of the Y.G. Gudda tank. During the subsistence of the contract, disputes arose between the parties. Therefore, the appellant invoked Arbitration clause No.51 of the agreement pursuant to which the disputes were referred to the sole arbitrator for adjudication. The sole arbitrator made his award on April 10, 1999 in favour of the appellant. Feeling aggrieved by the said award, the respondents preferred an application dated July 5, 1999 to set aside the award as contemplated by Section 34 of the Act in the court of learned Civil Judge (Senior Division), Ramanagram, Bangalore Rural District. The said application was registered as A.C. No.1 of 1999. It was realized by the respondents that an application for setting aside the award should have been filed before the learned Principal District Judge, Bangalore District (Rural). Therefore, the respondents submitted an application on July 26, 2000 in the Court of

learned Civil Judge (Senior Division), Ramanagaram with a request to transfer the application made for setting aside the award to the court of learned Principal District Judge (Rural), Bangalore. The learned Civil Judge (Senior Division), Ramanagaram passed an order directing return of the suit records for presentation before the proper court. The respondents collected the papers from the court of learned Civil Judge (Senior Division), Ramanagaram and presented the same in the court of learned Principal District Judge, Bangalore (Rural) on August 21, 2000. The present application for setting aside the award, filed by the respondents, was numbered as A.S. No.2 of 2000. The District Court framed preliminary issue for determination which was as under:

\023Whether the defendant proves that the present suit is barred by the limitation under Section 34(3) of the Arbitration and Conciliation Act, 1996\024.

The respondents examined one witness and produced certain documents whereas on behalf of the appellants one witness was examined. After appreciating the evidence and hearing the learned counsel for the parties, the learned District Judge held that the suit /application for setting aside the award, was time barred and dismissed the same by his judgment dated October 24, 2002.

4. Thereupon the respondents invoked appellate jurisdiction of the High Court of Karnataka at Bangalore by filing Misc. First Appeal No.4465 of 2003 under Section 37 of the Act. The issue, namely, whether the provisions of Sections 12 and 14 of the Limitation Act, 1963 are applicable to an application filed under Section 34 of the Act was pending for consideration in other matters also. The appeal filed by the respondents was, therefore, taken up for hearing with other matters. The Division Bench of the High Court of Karnataka was of the view that the learned District Judge, Bangalore Rural District, Bangalore committed an error in holding that Section 14 of the Limitation Act was not applicable to an application submitted under Section 34 of the Act and, therefore, the time taken during which the respondents had been prosecuting in the court of learned Civil Judge (Senior Division), Ramanagaram was not excludable. On facts, the High Court held that there was no lack of bona fide on the part of the respondents and that the respondents had diligently prosecuted the matter before the other court. In view of these conclusions, the High Court by Judgment dated April 4, 2005 set aside the decision dated October 24, 2002 rendered by the learned District Judge Bangalore (Rural) in A.S. No.2 of 2000 and has directed the learned District Judge to proceed further with the matter in accordance with law, giving rise to the instant appeal.

Civil Appeal No.2462 of 2008 @ SLP(C) NO.15619/2005

5. Leave granted.

6. This appeal is directed against the judgment dated April 4, 2005 rendered by the Division Bench of the High Court of Karnataka in W.P. No.7089 of 2003 by which it is held that Sections 12 and 14 of the Limitation Act are applicable to and application submitted under Section 34 of the Act, but the appellant is not entitled to exclusion of time as contemplated by Section 14 of the Limitation Act, because the appellant had not prosecuted application for setting aside

the award made by the arbitrator, in other courts, with due diligence and in good faith.

7. The appellant is a public sector undertaking of the Government of Karnataka. It had invited tenders by way of public notification for mining and transporting ore from Ajjanahalli mine to Ingaldal. The tender submitted by the respondent was accepted on May 10, 1999 and an agreement was entered into between the parties. The respondent was directed to commence the work from May 26, 1999 and to deploy required number of vehicles etc. The respondent did not follow the instructions given by the appellants and, therefore, disputes arose between the parties. The appellant and the respondent mutually agreed to terminate the contract as per the clause mentioned in the contract. The respondent made claim with respect to the works done by it during the subsistence of the contract. The claim was not accepted by the appellant. Therefore the dispute was referred to the sole arbitrator for adjudication as stipulated by the contract. The arbitrator made his award on March 15, 2002. The appellant filed an application on June 6, 2002 in the court of learned Civil Judge (Senior Division), Chitradurga to set aside the award made by the arbitrator on the footing that the court of learned Civil Judge (Senior Division) was the Principal Civil Court of original jurisdiction in the District and that two other cases, namely, Arbitration Case No.1/97 and 1/2001 were also pending in the court of learned Civil Judge (Senior Division), Chitradurga. After sometime, the appellant realized that the appropriate court before which an application for setting aside the award should have been made was the court of learned District Judge, Chitradurga. Therefore, the appellant filed an application under order VII Rule 10A seeking prayer to return the application to it for presentation before the District Court, Chitradurga. The learned Civil Judge (Senior Division), Chitradurga after hearing the learned counsel for the parties directed the appellant to present the application made under Section 34 of the Act before the District Court, Chitradurga by an order dated October 29, 2002 and directed the parties to appear before the learned District Judge on November 21, 2002. In view of the directions given by the learned Civil Judge (Senior Division), Chitradurga the appellant presented the application filed under Section 34 of the Act before the District Court Chitradurga on November 21, 2002. The respondent raised a preliminary objection regarding jurisdiction of the learned District Judge, Chitradurga to entertain the application submitted under Section 34 of the Act on the ground that the agreement was entered into between the parties within the jurisdiction of city of Bangalore and, therefore, the City Civil Court, Bangalore had jurisdiction to entertain the application filed by the appellant. The learned District Judge, Chitradurga by an order dated February 3, 2003 held that he had no jurisdiction to entertain the application submitted by the appellant and accordingly returned the application, for presentation before the appropriate court. The appellant thereafter presented the application for setting aside the award, before the VIth Additional City Civil Court, Bangalore on February 10, 2003 which was registered as an appeal. Along with the appeal, the appellant also filed an application under Section 14 read with Section 5 of the Limitation Act and prayed to exclude the time taken in prosecuting the proceedings bona fide before the two courts which had no jurisdiction. The learned Judge of City Civil Court, Bangalore dismissed the application, as time barred, by an order dated July 17, 2003. Thereupon the appellant invoked extra-

ordinary jurisdiction of the High Court of Karnataka under Article 226 of the Constitution by filing Writ Petition No.7089 of 2003. The questions posed for consideration of the High Court was, whether the provisions of Sections 12 and 14 of the Limitation Act were applicable to an application filed under Section 34 of the Act and whether the appellant had prosecuted the matter in other courts with due diligence and in good faith. After hearing the learned counsel for the parties, the High Court by Judgment dated April 4, 2005 held that the provisions of Sections 12 and 14 of the Limitation Act are applicable to a proceeding under the Act. However, on appreciation of facts the High Court held that the appellant had not prosecuted the matter in other courts, with due diligence and in good faith. In view of the above-mentioned conclusion the High Court has dismissed the writ petition filed by the appellant vide Judgment dated April 4, 2005, giving rise to the instant appeal.

8. This Court has heard the learned counsel for the parties at length and in great detail as well as considered the documents submitted by the parties.

9. The question posed for consideration before the Court is whether the provision of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside the award made by the arbitrator. In order to resolve the controversy it would be advantageous to refer to certain provisions of the Limitation Act and Section 34 of the Act of 1996. Section 14 and relevant part of 29(2) of the Limitation Act, necessary for the purpose of deciding the issue, read as under:

\02314. Exclusion of time of proceeding

bona fide in court without jurisdiction \026

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first or of an appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation\027For the purpose of this section,--

(a) in excluding the time during which a former civil proceeding was pending, the day on which that

proceeding was instituted and the day on which it ended shall both be counted.

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

(c) misjoining of parties or of cause of action shall be deemed to be a cause of a like nature with defect of jurisdiction.\024

\02329(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provision of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.\024
However, Section 34 of the Arbitration and Conciliation Act, 1996 reads as under:

\02334. Application for setting aside arbitral award.-

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application furnishes proof that-

(i) a party was under some incapacity; or
ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that\027

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation\027 Without prejudice to the generality of sub-clause (ii) of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 of section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.\024 10.

A bare reading of sub-section (3) of Section 34 read with the proviso makes it abundantly clear that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 will have to be made within three months. The period can further be extended, on sufficient cause being shown, by another period of 30 days but not thereafter. It means that as far as application for setting aside the award is concerned, the period of limitation prescribed is three months which can be extended by another period of 30 days, on sufficient cause being shown to the satisfaction of the Court. Section 29(2) of the Limitation Act, inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension upto specified time limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of

Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act.

11. However, merely because it is held that Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable to an application submitted under Section 34 of the Act of 1996.

12. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said Section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (5) Both the proceedings are in a court.

The policy of the Section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.

13. At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to

arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a suit in a court. Hence, Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section (4) of Section 43, inter alia, provides that 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, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Act of 1996 more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the powers under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised, suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of 4 months. From the scheme and language of Section 34 of the Act of 1996, the intention of the Legislature to exclude, the applicability of Section 14 of the Limitation Act, is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award.

14. We may notice that in similar circumstances the Division Bench of this Court in *State of Goa vs. Western Builders* 2006 (6) SCC 239 has taken a similar view. As observed earlier the intention of the legislature in enacting Section 14 of the Act is to give relief to a litigant who had approached the wrong forum. No canon of construction of a statute is more firmly established than this that the purpose of interpretation is to give effect to the intention underlying the statute. The interpretation of Section 14 has to be liberal. The language of beneficial provision contained in Section 14 of the Limitation Act must be construed liberally so as to suppress the mischief and advance its object. Therefore, it is held that the provisions of Section 14 of the Limitation Act are applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award.

15. The plea that in view of the decision rendered by three Judge Bench of this Court in *Commissioner of Sales Tax, Uttar Pradesh vs. Parson Tools and Plants, Kanpur* 1975 (3) SCR 743 the provisions of Section 14 of the

Limitation Act should not be held to be applicable to an application filed under Section 34 of the Act, has no substance. The question determined in the Commissioner of Sales Tax, Uttar Pradesh (supra) was whether under the circumstances of the case, Section 14 of the Limitation Act extended the period for filing of the revisions by the time during which the restoration application remained pending as being prosecuted bona fide. In the said case, Sales-Tax Officer had made two assessment orders. The assessee had filed appeals before the Appellate Authority. The appeals were dismissed in default as the assessee did not remain present on the specified date. The assessee filed two applications for setting aside such dismissal, under Rule 68(6) of the U.P. Sales Tax Rules. During the pendency of the application a Single Judge of Allahabad High Court declared Rule 68(5) of the Rules ultra vires under which the appeals were dismissed for default. In view of the ruling of High Court, the Appellate Authority dismissed the appeals. The assessee, therefore, filed two revision petitions. They were filed more than 18 months after the dismissal of the appeals. The revisions were accompanied by two applications in which the assessee had prayed for exclusion of time spent by him in presenting the aborting proceedings under Rule 68(6) for setting aside the dismissal of his appeals. The revisional authority excluded the time spent in those proceedings from computation of limitation by applying Section 14 of the Limitation Act. The High Court dismissed the Reference made on the motion of the Commissioner of Sales-Tax. In appeal, this Court held that (1) if the legislature in a special statute prescribes a certain period of limitation, then the Tribunal concerned has no jurisdiction to treat within limitation, an application, by excluding the time spent in prosecuting in good faith, on the analogy of Section 14(2) of the Limitation Act and (2) the Appellate Authority and Revisional Authority were not courts but were merely administrative Tribunals and, therefore, Section 14 of the Limitation Act did not, in terms, apply to the proceedings before such Tribunals. From the judgment of the Supreme Court in Commissioner of Sales Tax, U.P. (supra), it is evident that essentially what weighed with the Court in holding that Section 14 of the Limitation Act was not applicable, was that the Appellate Authority and Revisional Authority were not courts. The stark features of the revisional powers pointed out by the court, showed that the legislature had deliberately excluded the application of the principles underlying Sections 5 and 14 of the Limitation Act. Here in this case, the Court is not called upon to examine scope of revisional powers. The Court in this case is dealing with Section 34 of the Act which confers powers on the Court of the first instance to set aside an award rendered by an arbitrator, on specified grounds. It is not the case of the contractor that the forums before which the Government of India undertaking had initiated proceedings for setting aside the arbitral award are not courts. In view of these glaring distinguishing features, this Court is of the opinion that the decision rendered in the case of Commission of Sales Tax, Uttar Pradesh, Lucknow (supra) did not decide the issue which falls for consideration of this Court and, therefore, the said decision cannot be construed to mean that the provisions of Section 14 of the Limitation Act are not applicable, to an application submitted under Section 34 of the Act of 1996.

16. The contention that in view of the decision of Division Bench of this Court in Union of India vs. Popular Constructions Co. 2001 (8) SCC 470 the Court should hold that the provisions of Section 14 of the Limitation Act would

not apply to an application filed under Section 34 of the Act, is devoid of substance. In the said decision what is held is that Section 5 of the Limitation Act is not applicable to an application challenging an award under Section 34 of the Act. Section 29(2) of the Limitation Act inter-alia provides that where any special or local law prescribes, for any application, a period of limitation different from the period prescribed by the schedule, the provisions contained in Sections 4 to 24 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. On introspection, the Division Bench of this Court held that the provisions of Section 5 of the Limitation Act are not applicable to an application challenging an award. This decision cannot be construed to mean as ruling that the provisions of Section 14 of the Limitation Act are also not applicable to an application challenging an award under Section 34 of the Act. As noticed earlier, in the Act of 1996, there is no express provision excluding application of the provisions of Section 14 of the Limitation Act to an application filed under Section 34 of the Act for challenging an award. Further, there is fundamental distinction between the discretion to be exercised under Section 5 of the Limitation Act and exclusion of the time provided in Section 14 of the said Act. The power to excuse delay and grant an extension of time under Section 5 is discretionary whereas under Section 14, exclusion of time is mandatory, if the requisite conditions are satisfied. Section 5 is broader in its sweep, than Section 14 in the sense that a number of widely different reasons can be advanced and established to show that there was sufficient cause in not filing the appeal or the application within time. The ingredients in respect of Section 5 and 14 are different. The effect of Section 14 is that in order to ascertain what is the date of expiration of the prescribed period, the days excluded from operating by way of limitation, have to be added to what is primarily the period of limitation prescribed. Having regard to all these principles, it is difficult to hold that the decision in Popular Construction Co. (supra) rules that the provisions of Section 14 of the Limitation Act would not apply to an application challenging an award under Section 34 of the Act.

17. As this Court holds that Section 14 of the Limitation Act, 1963 is applicable to an application filed under Section 34 of the Act, 1996 for setting aside an award made by an arbitrator, the appeal arising from Special Leave Petition (C) No.10311 of 2005 will have to be dismissed because the Division Bench of the High Court of Karnataka has in terms held that there was no lack of bona fide on the part of the respondents and that the respondents had diligently prosecuted the matter before the other court and had also immediately after coming to know the lack of jurisdiction of the court had filed the memo seeking withdrawal of the appeal and presented the same before the lower court which had the jurisdiction.

18. As far as the appeal arising from Special leave Petition (C) No.15619 of 2005 is concerned, this Court finds that the view taken by the High Court of Karnataka that the provisions of Sections 12 and 14 of the Limitation Act, 1963 are applicable to the proceedings under the Arbitration and Conciliation Act, 1996 is eminently just and is hereby upheld. However, this Court finds it difficult to uphold the finding recorded by the Division Bench of the High Court that the appellant had not prosecuted the matter in other courts with due diligence and in good faith and was, therefore, not entitled to exclusion of time taken in prosecuting the matter in wrong

courts.

19. To attract the provisions of Section 14 of the Limitation Act, five conditions enumerated in the earlier part of this Judgment have to co-exist. There is no manner of doubt that the section deserves to be construed liberally. Due diligence and caution are essentially pre-requisites for attracting Section 14. Due diligence cannot be measured by any absolute standards. Due diligence is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. The time during which a court holds up a case while it is discovering that it ought to have been presented in another court, must be excluded, as the delay of the court cannot affect the due diligence of the party. Section 14 requires that the prior proceeding should have been prosecuted in good faith and with due diligence. The definition of good faith as found in Section 2(h) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. It is true that Section 14 will not help a party who is guilty of negligence, lapse or inaction. However, there can be no hard and fast rule as to what amounts to good faith. It is a matter to be decided on the facts of each case. It will, in almost every case be more or less a question of degree. The mere filing of an application in wrong court would not prima facie show want of good faith. There must be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. In the light of these principles, the question will have to be considered whether the appellant had prosecuted the matter in other courts with due diligence and in good faith. As is evident from the facts of the case, initially the appellant had approached the court of learned Civil Judge, Senior Division, Chitradurga for setting aside the award made by the arbitrator. On direction dated October 29, 2002 issued by the learned Civil Judge (Senior Division), Chitradurga, the appellant had presented the application for setting aside the award before the learned District Judge, Chitradurga. Before the learned District Judge, Chitradurga an objection was raised by the respondent that the application was not maintainable before the said court and that the application was maintainable before the learned Judge, City Civil Court, Bangalore. The District Judge, Chitradurga by an order dated February 3, 2003 held that it had no jurisdiction to entertain the application submitted by the applicant and accordingly returned the application for presentation before the appropriate court. The question of jurisdiction was seriously contested between the parties not only before the court of learned Civil Judge (Senior Division), Chitradurga but also before the learned District Judge, Chitradurga. The question of jurisdiction had to be considered by the courts below because of establishment of City Civil Court, Bangalore under a special enactment and in view of the definition of the word 'court' as given in Section 2(e) of the Arbitration and Conciliation Act, 1996 which means the principal civil court of original jurisdiction in a district. The record does not indicate that there was pretended mistake intentionally made by the appellant with a view to delaying the proceeding or harassing the respondent. There was an honest doubt about the court competent to entertain the application for setting aside the award made by the arbitrator. The mere fact that the question of jurisdiction is an arguable one would not negative good faith because the appellant believed bona fide that the court in which it had instituted the proceeding had jurisdiction in the matter. By filing the application in the courts which had no jurisdiction to entertain the same, the

appellant did not achieve anything more particularly when the lis was never given up. Under the circumstances this Court is of the opinion that the Division Bench of the High Court of Karnataka was not justified in concluding that the appellant had not prosecuted the matter in other courts with due diligence and in good faith. The said finding being against the weight of evidence on record, is liable to be set aside and is hereby set aside. We, therefore, hold that the appellant had prosecuted the matter in other courts with due diligence and in good faith and, therefore, is entitled to claim exclusion of time in prosecuting the matter in wrong courts. Therefore, the appeal arising from SLP(C) No.15619 of 2005 will have to be allowed.

20. For the foregoing reasons civil appeal arising from SLP(C) No.10311 of 2005 fails and is dismissed. The judgment rendered by the Division Bench of the High Court of Karnataka on April 4, 2005, in W.P. No. 7089 of 2003 dismissing the application filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award of the arbitrator, is set aside, and civil appeal arising from SLP(C) No.15619 of 2005, is allowed. The Division Bench of the High Court of Karnataka is directed to proceed further with the matter in accordance with law. There shall be no order as to costs in both the appeals.