CASE NO.:
Appeal (civil) 1457 of 2004

PETITIONER:
State of Goa

RESPONDENT:
M/s. Western Builders

DATE OF JUDGMENT: 05/07/2006

BENCH:
H. K. SEMA & A.K. MATHUR

JUDGMENT:
J U D G M E N T
With

(CA. Nos1458, 1459-1460, 1461, 1462, 1463, 1464, 1465/2004)

A.K. MATHUR, J.

All these batch of appeals are disposed of by a common judgment as same question of law involves in these appeals

The basic question which involves in these appeals is applicability of Section 14 of Limitation Act, 1963 in The Arbitration and Conciliation Act, 1996.

However in order to appreciate the controversy involve in these appeals it is necessary to give few facts for that purpose the facts given in the C.A. No. 1457 of 1004 are taken into consideration.

A dispute arose between M/s. Western Builders Bito's Compound & The State of Goa, represented by The Executive Engineer, Works Division XX (PHE), Public Works Department, Fatorda, Margoa, Goa. Mr. P.K. Mohan, Ex-Executive Engineer, Goa P.W.D. residing at House No. 1505, Dr. Rego Bag, P.O. Barbolim Complex, Goa \026 403202 was appointed as the Sole Arbitrator. He gave an award on 7th February, 1995 in favour of claimant and against the State of Goa and directed that the claimant is entitled to a sum of Rs. 89763/- and he further directed the State to pay simple interest on Rs. 75553/- from 4th January, 1993 at the rate of 15% per annum. This interest was payable till the date of decree of the award and till payment whichever is earlier.

Aggrieved against this award, a petition was filed before Civil Court, Civil Judge, Margao under sections 30 and 53 of the Arbitration Act, 1940 for making rule of the Court. Objection was raised that since The Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act of 1996) has come into force therefore, Civil Court had no jurisdiction to entertain the proceedings under the Arbitration Act, 1940. The Civil Judge, Senior Division held that under the Arbitration and Conciliation Act, 1996 there is no provision for making the award as a Rule of the Court. He observed that as per new Act of 1996 the award can be executed as decree. The learned Judge held that in view of the decision of the apex court given in the case of Thyseen Stahlunion SMBH vs. Steel Authority of India and in view of the decision of the Goa Bench in the case of Reshma Construction vs. State of Goa the Act of 1940 is not applicable and present proceedings shall be governed by the Act of 1996 and accordingly he disposed of the proceedings.

Thereafter the State of Goa filed a petition before the

District Judge, South Goa along with the application under Section 14 read with Section 5 of The Limitation Act, 1963 for condoning the delay as the Civil Judge, Senior Division has held that he had no jurisdiction, therefore, the time which is spent in these proceedings before the Civil Judge, Senior Division may be condoned and the petitions filed by the State of Goa for setting aside the award under Section 34 be considered. This application of State of Goa for condonation of delay under Section 14/5 of Limitation Act, 1963 was rejected by IInd Addl. District Judge, Sourth Goa on the ground that there is no provision for extension of time under the Act of 1996 & Section 14 of Limitation Act, 1963 is not applicable by the order dated 7th March, 2002. Likewise the application under Section 34 was also rejected.

Aggrieved against this order an appeal was preferred by the State of Goa before the High Court of Bombay, Panaji Bench at Goa under Section 37(1b) of The Arbitration and Conciliation Act, 1996. This appeal came to be dismissed by the Ld. Single Judge by order dated 26.9.2002, in view of his detail reasons given in of the judgment delivered on 26.9.2002. It was held that Section 14 of the Limitation Act is not maintainable in view of sub-section 3 of Section 34 of the Act, 1996. Hence the present appeal.

In this background a common question of law arises in all these appeals, whether Section 14 of the Limitation Act, 1963 is applicable to the Arbitration Act, 1996 or not.

The learned counsel for the appellant has submitted that since the Arbitration proceedings are of civil nature & in view of Section 43 of 1996 Act Limitation Act 1963 is applicable to the Act of 1996. Learned counsel for appellant submitted that in the Arbitration and Conciliation Act, 1996 there is no provision which prohibit the applicability of the Limitation Act 1963 therefore wherever it is not prohibited by Act, 1996 the provisions of Limitation Act, 1963 may be made applicable mutatus mutandi. As against this, learned counsel for respondent has submitted that this is special enactment & legislature in its wisdom has provided for every eventuality and therefore the operation of Limitation Act is ousted by virtue of Sub-section (2) of Section 29. In this connection our attention was invited to Section 34 of the Act which lays down the ground on which award can be set aside & period within which it can be set aside. Therefore, it is a complete code in itself and the operation of Section 14 & Section 5 of Limitation Act stands excluded. However in order to appreciate the submission of learned counsel it would be necessary to reproduce the Section 34 of the Act:-

34. Application for setting aside arbitral award. \026
(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 \026
(a) the party making the application furnishes proof that \026
(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 \026

(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- Without prejudice to the generalityof sub-clause (ii) it is hereby declared, for the avoidance of any doubt, than 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 or 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."

We are primarily concerned with sub-section (3) of

Section 34 read with proviso. Reading of sub-section 3 alongwith the proviso of Section 34, it clearly transpires that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 should be made within 3 months and the period can be further extended on sufficient cause by another period of 30 days & not thereafter that means so far as application for making setting aside the award the period of limitation has been prescribed in sub-section (3) i.e. 3 months but it can be extended for another period of 30 days on sufficient cause be shown to the satisfaction of court. Therefore, the applicability of Section 5 of the Limitation Act stands excluded & the application for condonation of delay upto a period of 30 days can be made by the court and not beyond that. Therefore, it was submitted that there is no scope for applicability of Section 14 of Limitation Act in these proceedings by virtue of sub-section (2) of Section 29 of the Limitation Act.

Sub-section (2) of Section 29 of the Limitation Act reads as under -

" (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 provisions 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."

That means if special period of limitation has been prescribed for making application for any condonation of delay or for any other purpose then that period of limitation prescribed under the special law shall prevail and to that extent the provisions of Limitation Act shall stand excluded. To this extent there is no dispute. But the question is whether there is any provision to cater for present controversy or not. The Limitation Act applies to the arbitral provisions because of Section 43 of the Arbitration and Conciliation Act, 1996. Section 43 reads as under:

"43.Limitation.- (1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in Court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963) an arbitration shall be deemed to have commenced on the date referred in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, it if is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper."

(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."

Therefore, as general proposition Limitation Act, 1963 applies but still question is as to what extent. Section 14 of Limitation Act which deals with exclusion of time spent in prosecuting the remedy before wrong forum bona fide reads as under:

"14. 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 diligences another civil proceeding, whether in a court of first instance or of 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 on the ground that the first suit must fail by reasons of a defect in the jurisdiction of the court or other cause of a like nature."

The question is whether Section 14 of the Limitation Act has been excluded by this special enactment i.e. Arbitration and Conciliation Act, 1996. Section 43 of the Arbitration and Conciliation Act, 1996 clearly says that The Limitation Act, 1963 shall apply to arbitration as it applies to the proceedings in court.

Therefore, general proposition is by virtue of Section 43 of the Act of 1996 The Limitation Act 1963 applies to the Act of 1996 but by virtue of sub-section (2) of Section 29 of the Limitation Act, if any other period has been prescribed under the special enactment for moving the application or otherwise then that period of limitation will govern the proceedings under that Act, and not the provisions of the Limitation Act. In the present case under the Act of 1996 for setting aside the award on any of the grounds mentioned in Sub-Section (2) of Section 34 the period of limitation has been prescribed and that will govern. Likewise, the period of condonation of delay i.e. 30 days in proviso.

But there is no provision made in The Arbitration and

Conciliation Act, 1996 that if any party has bona fidely prosecuted its remedy before the other forum which had no jurisdiction then in that case whether the period spent in prosecuting the remedy bona fidely in that Court can be excluded or not. As per the provision sub-section (3) of Section 34 which prescribes the period of limitation (3 months) for moving the application for setting aside the award before the court then that period of limitation will be applicable and not the period of limitation prescribed in schedule under section 3 of the Limitation Act, 1963. Thus the provision of moving the application prescribed in Limitation Act, shall stand excluded by virtue of sub-section (2) of Section 29 as under this special enactment the period of limitation has already been prescribed. Likewise the period of condonation of delay i.e. 30 days by virtue of proviso.

Therefore, by virtue of sub-section (2) of section 29 of the Limitation Act what is excluded is the applicability of Section 5 of the Limitation Act & under Section 3 read with Schedule which prescribes the period for moving application.

Whenever two enactments are overlapping each other on same area then courts should be cautious in interpreting those provisions. It should not exceed the limit provided by statute. The extent of exclusion is however, really a question of construction of each particular statute & general principles applicable are subordinate to the actual words used by legislature.

There is no provision in whole of the Act which prohibit discretion of the court. Under section 14 of the Limitation Act if the party has been bona fidely prosecuting his remedy before the court which has no jurisdiction whether the period spent in that proceedings shall be excluded or not. Learned counsel for the respondent has taken us to the provisions of the Act of 1996; like section 5, section 8(1), section 9, section 11 sub-section (4), (6), (9) and sub-section (3) of section 14, section 27, sections 34, 36, 37, 39 (2) (4), section 41, sub-section (2) section 42 & 43 and tried to emphasis with reference to the aforesaid sections that the legislature wherever wanted to give power to the Court that has been incorporated in the provisions, therefore, no further power should lie in the hands of the court so as to enable to exclude the period spent in prosecuting remedy before other forum. It is true but at the same time there is no prohibition incorporated in statute for curtailing the power of the court under Section 14 of the Limitation Act> Much depends upon the words used in statute & not general principles applicable. By virtue of section 43 of the Act of 1996, the Limitation Act applies to the proceedings under the Act of 1996 and the provisions of Limitation Act can only stand excluded to the extent wherever different period has been prescribed under the Act, 1996. Since there is no prohibition provided under Section 34, there is no reason why Section 14 of Limitation be read in Act of 1996, which will advance the cause of justice. If statute is silent and there is no specific prohibition then statute should be interpreted which advances the cause of justice. Our attention was invited to various decisions of this Court but we shall refer to a few of them which has some relevance.

Union of India vs. Popular Construction Co. in 2001 (8) SCC 470. This is a case with regard to the applicability of section 5. His Lordship while interpreting the provision of sub-section 3 of section 34 has clearly observed that the words " but not thereafter" clearly indicate prohibition of applicability of Section 5 of Limitation Act to that extent. His Lordship

observed as follows:

" As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to subs-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result."

National Aluminum Co. Ltd. vs. Pressteel & Fabrication (P) Ltd. and Another reported in 2004 (1) SCC 540. In that case unilateral appointment of the arbitrator under the Arbitration Act 1940 was challenged. This Court in the said appeal after hearing the parties appointed a sole arbitrator. Before the sole arbitrator both the parties by consent agreed that the proceedings should be governed by the provisions of the Arbitration and Conciliation Act, 1996. The arbitrator proceeded on that basis and gave a final award. That final award was challenged. The question arose whether the proceeding shall be governed by the 1940 Act or of 1996 Act? And which is the appropriate Court. The dispute prolonged for nearly 16 years. This Court dismissed the appeal and held that in the present case proceedings should go on under the provisions of the Act, 1996 though the dispute arose prior to coming into force of the Act 1996, the appropriate forum for challenging the award under Section 34 was Principal Civil Court of original jurisdiction as contemplated under Section 2(e) of the Act, 1996.
However, with regard to delay in filing objection before the principal civil court of original jurisdiction , this Court directed that the petitioner shall file objection for setting aside the award before the Court concerned within 30 days from this date, the delay in regard to filing of the petition as contemplated under Section 34 of the Act, 1996 shall be condoned by the said Court since the time consumed was bona fide in prosecution of its remedy.
The exact observation of this Court is as under:
"This application fails and the same is dismissed with a direction to the applicant to file its objections to the award before the court concerned and if the same are filed within 30 days from this date, the delay in regard to the filing of the objections as contemplated under Section 34 of the 1996 Act shall be condoned by the said Court since the time consumed was in bona fide prosecution of the application in a wrong forum."

While interpreting the provisions of statute their Lordships in case of Nasiruddin and Others vs Sita Ram Agarwal in 2003 (2) SCC 577 have observed in this context as follows:

"In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom."

It further observed :
"Rent control statutes are welfare legislation not entirely beneficial enactments for the tenant but also for the benefit of the landlord. Therefore balance has to be struck while interpreting the provisions of Rent Acts."

Therefore, in the present context also it is very clear to us that there is no two opinion in the matter that the Arbitration and Conciliation Act, 1996 do not expressly excluded the applicability of Section 14 of the Limitation Act. The prohibitory provision has to be construed strictly. It is true that the Arbitration and Conciliation Act, 1996 intended to expedite the commercial issue expeditiously. It is also clear in the statement of objects and reasons that in order to recognize economic reforms the settlement of both of domestic & international commercial disputes should be disposed of quickly so that country's economic progress be expedited. The statement of objects and reasons also nowhere indicate that Section 14 of the Limitation act shall be excluded. But on the contrary intendment of legislature is apparent in the present case as Section 43 of the Arbitration and Conciliation Act, 1996 applies the Limitation Act, 1963 as a whole. It is only by virtue of sub-section (2) of section 29 of the Limitation Act, its operation is excluded to that extent of the area which is covered under the Arbitration and Conciliation Act, 1996. Our attention was also invited to the various decisions of this Court interpreting sub-section 2 of section 29 of Limitation Act with reference to other Acts like The Representation of Peoples Act or the provisions of Criminal Procedure Code where separate period of limitation has been prescribed. We need not over-burden the judgment with reference to those cases because it is very clear to us by virtue of sub-section (2) of section 29 of the Limitation Act that the provisions of Limitation Act shall stand excluded in Act of 1996 to the extend area which is covered by the Act of 1996. In the present case under section 34 by virtue of sub-section 3 only the application for filing and setting aside the award a period has been prescribed as 3 months and delay can be condoned to the extent of 30 days To this extent the applicability of section 5 of Limitation will stand excluded but there is no provision in the Act of 1996 which excludes operation of section 14 of the Limitation Act. If two Acts can be read harmoniously without doing violation to the words used therein, then there is no prohibition in doing so. As the result of the above discussion we are of the opinion that the view taken by the court below excluding the applicability of Section 14 in this proceeding is not correct. We hold that section 14 of the Limitation Act, 1963 is applicable in the Arbitration and Conciliation Act, 1996. We set aside all the judgments/Order and remand all these cases back to the Trial Court/District Court for deciding the application under Section 14 of Limitation Act on merit after hearing both the parties and in case the delay is condoned then the case should be decided on merits after hearing all the concerned parties. All the appeals are allowed. No order as to costs.