



Applicability of limitation act to arbitration proceedings: A critical study

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Abstract

The present research paper attempts to examine the applicability of the provisions of Limitation Act, 1963 to the arbitration proceedings under the Arbitration and Conciliation Act, 1963 (36 of 1963). The paper investigates the problematic question whether the limitation Act shall apply to arbitrations as it applies to proceedings in court? The concepts like Date of Commencement, Extension of Time and Exclusion of Time have also been covered. The legislative and judicial trends have also been examined in the conceptual and applied aspects.

Keywords: arbitration, conciliation act, legislative, judicial, trends

1. Introductory Reflections

Section 43 provides that- (1) The Limitation ^[1] 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 further 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, if it 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.

2. Will limitation act apply to arbitration proceedings?

The notion of limitation is linked with the fixing or prescribing of period to bar legal actions. The principal law relating to the Law of Limitation in India is the Limitation Act, 1859 and subsequently Limitation Act, 1963 was enacted on October 5, 1963 and came into force on January 1, 1964 for the purpose of consolidating and amending the legal principles relating to limitation of suits and other legal proceedings. Section 43 of the Arbitration and Conciliation Act, 1996 is analogous to Section 37 of the Arbitration Act, 1940.

i) Limitation Law Applicable To Arbitration Proceedings

In Halsbury's Laws of England, the objectives of the Law of Limitation have been mentioned in the following words: "The

Courts have expressed at least three different reasons supporting the existence of statutes of limitation, i.e.,- (a) That long dormant claims have more of cruelty than justice in them; (b) That a defendant might have lost the evidence to dispute the State claim; (c) That persons with good causes of actions should pursue them with."

The doctrine of LAP-Limitation and Prescription is based on two extensive considerations, i.e. (a) That the right not exercised for a long time is non-existence; (b) That the rights in property and rights in general should not be in a state of constant uncertainty, doubt and suspense.

Section 43(1) provides that for the purposes of Part I, arbitration proceedings are similar to court proceedings, therefore, Section 43(1) makes provisions of the Limitation Act, 1963 applicable to arbitration proceedings in the same manner as they apply to the proceedings of a court.

ii) Date of Commencement

Section 43(2) provides that for the purposes of this section and the Limitation Act, 1963 arbitration shall be deemed to have commenced on the date referred in Section 21. The date, on which the cause of arbitration accrued, the period of limitation begins to run ^[2]. The claim made by the claimant is the accrual of the arbitration cause ^[3]. The needless communication or reminders cannot postpone this accrual of cause of action nor stop the limitation period to begin not even if there is no mention of limitation period in arbitration clause.

iii) Extension of Time

Section 43(3) confers power on the court to extend the period up to a proper and reasonable period as the justice of the case may require. Section 43(3) is invoked where an arbitration agreement to submit further 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, if it is of opinion that in the circumstances of the case undue hardship would

otherwise be caused. The court is required to take a liberal view of the expression undue hardship and all the relevant circumstances should be taken into consideration. In *Sterling General Insurance Co. Case* ^[4] it was held that the expression 'undue' in undue hardship means something which is not permitted by the conduct of the claimant or is very much disproportionate to it. Undue should not be taken in the sense of excessive because it simply means undeserved or unmerited ^[5]. The position is quite clear after *Dr. E. Murlidharan Case* ^[6] that an application for extension of time under Section 43(3) can be made even after the time mentioned in agreement to refer the case for arbitration has ended however such application should be forwarded only before any step is taken to begin the arbitration proceedings and not thereafter.

iv) Exclusion of Time

Section 43(4) 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 (including arbitration) with respect to the dispute so submitted. The expression 'Court' in this sub-section includes the appellate court and in view of the decision in *Babulal Case* ^[7] the plaintiff has a right to get the deduction of the period taken by him for filing the appeal.

v) Limitation Act, 1963-Applicability

Section 3 of the Limitation Act ^[8] commands that the court must consider the question of limitation whether it is pleaded or not ^[9]. Where the application for arbitration is barred by time-limit, such request can be turned down by the court ^[10]. In the Case of *Momin Construction Co.* the right to apply for arbitration accrued on 11-8-1965 but the application for arbitration was made on 26-2-1971 and that was beyond the time limit of three years and consequently the request was rejected. Delhi High Court has already declared a clause in arbitration agreement in a government construction contract as valid and not opposed to public policy which provided that if the arbitration is not asked within the stipulated time, it will be deemed to have been waived.

The provisions of time limit of limitation law will apply to only Part I of 1996 Act and not to Part II which deals with foreign awards. Before 1996 Act, Article 119 of the Limitation Act was relevant in this context but now there is no filing of award in the court, and hence Article 119 has become irrelevant ^[13]. It is also to be noted that 1996 Act does not exclude the Section 14 of the Limitation Act, 1963 ^[14] which deals with the exclusion of time proceeding bona fide in court without jurisdiction.

It is quite clear that for the purpose of Limitation Act, the civil proceedings in court also include proceedings before an arbitrator. Like courts of law, the plea of limitation should be available in arbitration cases also as matter of equity ^[15]. In the Cases of *Dudani Brothers* ^[16] and *Wazir Chand* ^[17] it has been established that Article 137 of the Limitation Act applies to arbitration however where the state law does not provide for the time limit for arbitration cases and there is neither the clarity on the application of Limitation Act, in that eventuality, Article 137 of the Limitation Act should not be

applied. In the Case of *Vulcan Insurance* ^[18] it has been settled that an agreement can prescribe a limitation in a clause itself and Article 137 of the Limitation Act will apply to such cases. Article 137 of Limitation Act provides that an application for which no period of limitation is provided elsewhere in the Second Division of the Schedule, the application may be made within three years from the date when the right to sue accrued. Hon'ble Apex Court in the matter of *Western Builders Case* ^[19] has held as under: There is no provision made in the Arbitration and Conciliation Act, 1996 that if any party has bonafidely prosecuted its remedy before the other forum which has no jurisdiction then in that case whether the period spent in prosecuting the remedy bonafidely in that Court can be excluded or not. As per the provisions, 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 the Schedule under Section 30f of the Limitation Act, 1963. Thus, the provision of moving the application prescribed in the 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 the proviso. 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 the Limitation 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 the Limitation Act not be read in the Act of 1996, which will advance the cause of justice. If the statute is silent and there is no specific prohibition then the statute should be interpreted in the manner which advances the cause of justice. The view taken by the Court below excluding the applicability of Section 14 in the proceeding is not correct. It will be apposite to immediately recall the dicta of *Popular Construction Company Case* ^[20] We can do no better than reiterate the words therein – "the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by Court under Section 5 of the Limitation Act".

The question whether the claim is within the time-limit or not is question within the purview of arbitrator ^[21]. In *Wazir Chand Case* ^[22] the Apex Court has held that the arbitrator is bound to apply Limitation Act. The purpose of Section 43 of Arbitration and Conciliation Act is to make the provisions of Limitation Act applicable to arbitrations ^[23].

3. Concluding observations

Since the time-limit for making a claim arising out of a contract is three years as prescribed by the Limitation Act, 1963 and the law of limitation shall apply to arbitration as it applies to the civil suits in a court, any arbitration agreement which provides a shorter time period than the one prescribed by the law of limitation, shall be void to that extent. Although, Arbitration and Conciliation Act, 1996 is a special law within the meaning of Section 29(2) of the Limitation Act, 1963 and hence it can provide different over-riding limitation period for certain purposes ^[24].

References

1. According to Section 2 (j) of the Limitation Act, period of limitation means the period of limitation prescribed for any suit, appeal or application by the Schedule, and prescribed period” means the period of limitation computed in accordance with the provisions of this Act, 1963.
2. Panchu Gopal Bose V. Board of Trustees for Port of Calcutta, AIR, 1994, 1615.
3. Inder Singh, Rakhi V. Delhi Development Authority, AIR SC, 1988, 1007.
4. Sterling General Insurance Co. v. Planters Airways, 1SCC. 1975, 603.
5. Consolidated Investment v. Saponaria Shipping, LR 16 The Virgo Case, 1978, 2.
6. Dr. Murlidharan E, Venkataraman V. Co. and Another, AIR Mad. 40 DB, 2009.
7. Babulal V, Ram Swarup, AIR, Raj, 1960, 240.
8. Section 3 of Limitation Act, 1963- Bar of limitation Section 3(1)-Subject to the provisions contained in sections 4 to 24 (inclusive) every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as defense.
9. State of Orissa v. Damodar Das, AIR SC 942, 1996.
10. Ranjan S, State of Kerala V. 2 Arb LR 386 (SC), 1992.
11. UOI v. Momin Construction Co., AIR SC, 1995, 1927.
12. Jai Chand Bhasin v. UOI, AIR 1983 Del. 508
13. Under the Arbitration Act, 1940, Article 119 clause (b) of Limitation Act provides that for the filing in court, of an award, the period is 30 days from the date of service of the notice of the making of the award and Article 119(b) provides that for setting aside an award or getting an award remitted for reconsideration, the period of limitation is 30 days from the date of the service of the notice of the filing of the award.
14. Section 14 of the Limitation Act, 1963-Exclusion of time of proceeding bona fide in court without jurisdiction-
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 instance or of the 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.
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 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.
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 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 of other cause of a like nature.
Explanation – For the purpose of this section, -
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;
Plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;
Misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.
15. Ram Dutta V. E.D. Sasso, AIR 1929, 103.
16. Dudani Brothers v. State of M.P. 2 Arb. LR 74 MP, 1990.
17. Wazir Chand V. Union of India, AIR, SC 990, 1967.
18. Vulcan Insurance v. Maharaj Singh, AIR 1976 SC 287.
19. State of Goa V. Western Builders reported in. 2007; 1:7.
20. Union of India V. Popular Construction Company. 2001; 8 SCC: 470.
21. Fertilizer Corporation of India v. Ravi Kumari Ohri, AIR Orissa, 1979, 19.
22. Wazir Chand V. Union of India, AIR SC 990, 1967.
23. Principal Secretary, Irrigation Deptt. & others and Hatti Gold Mines Co. Ltd. v. Vinay Heavy Equipments, AIR SC 1921, 2008.
24. Union of India v. Popular Construction Company 8 SCC, 2001, 470.