

IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL UNDER ARBITRATION ACT NO. 5 OF 2002.

Goa University through
its Registrar, Taleigao
Plateau, Taleigao, Goa.

... Appellant.

Versus

M/s. N.K. Naik & Associates,
Engineers and Contractors,
Nanu House, Varde Valaulikar
Road, Margao, Goa.

... Respondents.

Mrs. A.A. Agni, Advocate for the Appellant.

Mr. M.S. Sonak and Mr. C.R.S. da Silva, Advocates for
the Respondents.

Coram: P.V. HARDAS, J.

Date: 29th August 2002.

ORAL JUDGMENT.

By consent of parties, this appeal is taken
up for final disposal at the stage of admission.

2. This is an appeal filed against the Order
dated 28th March 2002, passed by the IInd Additional
District Judge, Panaji, in Civil Miscellaneous
Application No. 71 of 2001, holding the objections
filed by the present appellant at Exhibit 1 as having
been filed beyond the prescribed period of limitation
and, hence, not maintainable. The records and
proceedings of the learned trial Court had been called
for and I have perused the records and proceedings of
the trial Court.

3. The brief facts necessary for the decision of the appeal are set out hereunder:-

The sole Arbitrator passed an Award on 15th November 2000. The appellant filed objections on 23rd April 2001. The objections were filed on the basis that the Award had been received by the appellant on 25th January 2001. Alongwith the objections, the copy of the Award was filed by the appellant. On notice being issued to the present respondents, the present respondents filed its reply/objections vide Exhibit 7. It was stated in the objections of the present respondents that the copy of the Award had been received by the present appellant on 6th December 2000. The present respondents in its reply/objections, therefore, raised a plea that the objections filed by the appellant were beyond the period prescribed by Section 34 of the Arbitration and Conciliation Act, 1996 for filing objections. Alongwith the reply/objections of the present respondents, the respondents had annexed two letters, one letter sent by the present respondents to the Arbitrator soliciting information regarding the date of receipt of the Award by the present appellant and the second letter was the reply by the sole Arbitrator intimating the present respondents that the present appellant had received a copy of the Award on 6th

December 2000. The present appellant then filed his counter to the reply/objections of the present respondents stating, inter alia, that no documents had been produced on record to substantiate the contention of the present respondents that the copy of the Award had been received by the present appellant on 6th December 2000.

4. On 8th January 2002 the arguments of the learned counsel for the parties were heard and the case was fixed for passing appropriate Orders on 29th January 2002. Meanwhile the present respondents filed an application, at Exhibit 9, for taking documents on record, namely, the endorsement of having received the copy of the Award on 6th December 2000. This endorsement is on the reverse of page 39 of the copy of the Arbitral Award. The endorsement is to the effect:

"Received one copy
Sd/-.
6/12/2000
(Shailesh Kamat)"

This certified xerox copy of the Award with the endorsement was furnished by the sole Arbitrator to the present respondents upon its request. In view of this additional material, the learned trial Court heard the parties afresh and by the Order impugned in the present Appeal dismissed the objections filed by the present appellant.

5. Mrs. Agni, the learned counsel appearing for the appellant, has urged before me that the appellant is a University and looking to the stakes involved, the learned trial Court be directed to decide the objections filed by the appellant on merits instead of non-suited the appellant on the ground that the objections had been filed by the appellant beyond the period prescribed by Section 34 of the Arbitration and Conciliation Act, 1996. It is not disputed by the learned counsel for the appellant that, in view of the decision of the Apex Court in **Union of India v. Popular Construction Co.**, (2001) 8 S.C.C. 470, Section 5 of the Limitation Act does not apply. According to the learned counsel for the appellant, the endorsement does not with any degree of clarity imply that the said Shailesh Kamat had received a copy of the Award. According to the learned counsel for the appellant, the endorsement records merely of having received one copy. The endorsement, according to the learned counsel for the appellant, does not speak about having received one copy of the Award. It was, therefore, urged by the learned counsel for the appellant that in view of this discrepancy, this is a fit case where the objections of the appellant ought to be examined on merits.

6. It is to be noted that the present respondents in its reply/objections had in clear terms

stated that the copy of the Award was received by the appellant on 6th December 2000. In support of its contention, the respondents had also enclosed the letter received from the sole Arbitrator informing the respondents about the date of receipt of the Award by the appellant. Subsequently in the proceedings the sole Arbitrator has also produced the certified xerox copy of the Award which shows that on the reverse of page 39 there is an endorsement of having received one copy. The signature is of one Shailesh Kamat. It was not disputed either before the learned trial Court or before me that the said Shailesh Kamat is an employee of the appellant. Similarly neither before the trial Court nor before me any affidavit of Shailesh Kamat is filed to show that Shailesh Kamat had not received the copy of the Award on 6th December 2000 as is depicted in the endorsement. The letter of the sole Arbitrator coupled with the endorsement are sufficient to hold that the appellant had received a copy of the Award on 6th December 2000 particularly in the absence of any affidavit to the contrary by the said Shailesh Kamat. The learned trial Court has by a reasoned Order taken into consideration the arguments advanced by the appellant and has concluded that the copy of the Award was received by the appellant on 6th December 2000. There is no perversity in the reasoning of the learned trial Court. It is true that the stakes involved in

the present proceedings are very high. However, since the objections to the Award have been filed beyond the period prescribed by Section 34 of the Arbitration and Conciliation Act, 1996, the high stakes in the proceedings should not impel the Court to shut its eyes and ignore the provisions regarding limitation. There is no perversity in the reasoning of the learned trial Court which would warrant any interference. The appeal is, thus, devoid of any merit and deserves to be dismissed.

7. Appeal under Arbitration Act is, thus, dismissed with no order as to costs. Records and Proceedings be remitted to the learned trial Court.

(P.V. HARDAS)
JUDGE.

ed's.