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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 954 OF 1990**

The Registrar,  
University of Poona, Ganesh Khind,  
Pune 411 107

..Appellants

versus

M/s. Kelkar & Kelkar  
1194/30, Shivaji Nagar,  
Pune -411 005

..Respondents

Smt. Minakshi G. Kulkarni for the appellants  
Mr. Nitin Deshpande for the respondents

**CORAM : R.Y.GANOO, J.  
DATE : 30<sup>th</sup> JUNE, 2009.**

**ORAL JUDGMENT:**

1. The appellants, namely University of Poona entered into contract with the respondents, a partnership firm to have certain building constructed for benefit of the appellants. A

regular contract was entered into between the appellants and the respondents being contract dated 1.8.1979. The said contract ran in minor details including provisions as regards reference of disputes between the appellants and the respondents to an arbitrator. Clause 56 of the said contract speaks of reference of dispute between the appellants and respondents to the arbitrator.

2. It is seen that the architects who were appointed in the matter refused to grant and certify the final bill sent by the respondents. This was done by architects letter dated 15.2.1982. Being aggrieved by this decision the respondents decided to have the dispute as regards the settlement of bill and other disputes referred to the arbitrator in accordance with the provisions of the arbitration clause. This demand came to be made pursuant to the letter dated 18.3.1982. Subsequently the process of appointment of the arbitrator was followed and two arbitrators by

name Mr.Pundalik and Mr. Gandhe took charge of the matter and conducted the arbitration proceeding. The appellants and respondents appeared before the learned Arbitrators. Evidence was led by the appellants through their two witnesses. One of them was by name Mr. Gosavi who was then working as Scientific Officer. The respondents did not examine any witness. It is seen that certain documents came to be relied upon by the respondents in support of their case.

3. The claim of the present appellants was in the nature of receiving damages as according to them the respondents delayed the project which resulted in causing financial loss as set out in the claim. The claim of the respondents related to certain items such a steel price escalation, compensation for price rise, compensation for other overheads etc. All those claims were considered by the learned Arbitrators and the claim of the appellants came to be rejected. The claim of the respondents came to be granted in terms of money

more particularly set out in the award dated 26.9.1983.

4. The respondents wanted to have the said award converted into a decree in accordance with the provisions of Arbitration Act, 1940 (hereinafter referred to as the said Act). For that steps were taken by the present respondents and ultimately the application of the respondents to have the decree in terms of award came to be numbered as Special Civil Suit No.549 of 1983 and that the said suit was assigned to learned Civil Judge, Senior Division, Pune (hereafter referred to as the said Judge). The appellants were aggrieved by the decision of the Arbitrators in the nature of rejection of the claim of the appellants. Hence the appellants filed objections to the said award and that is how they lodged their protest and naturally wanted that the award should not be converted into a decree. The said Judge by his judgment and Order dated 12.10.1990 decided the said suit and passed a decree in terms of an award

i.e. to say the award which was passed by the learned Arbitrator got converted into a decree thereby directing the appellants to make payments in terms of money to the respondents as also the claim of the appellants came to be rejected.

5. Being aggrieved by this judgment and decree dated 12.10.1990 the University of Bombay has filed the present first appeal.

6. I have with the assistance of learned Advocate Mrs. Kulkarni for the appellants and Mr. Deshpande for the respondents, perused the entire record. It is required to be noted that no evidence was placed before the learned Arbitrator by the present respondents. The learned Arbitrator did not give any reasons for passing the award. At this stage, it need be observed that non giving of reasons by itself will not result into making the award illegal or nonest. Non giving reasons is not the point raised by any of the parties before this Court.

7. It was sought to be argued by learned Advocate Mrs. Kulkarni that the said Judge went through the record and framed as many as 9 issues and that he was required to give his findings on the said issues by giving reasons. Learned Advocate Mrs. Kulkarni submitted that the impugned judgment and decree dated 12.10.1990 if considered closely will go to show that the said judge merely narrated the evidence led by the parties in the nature of oral evidence or the documentary evidence. She further pointed out that the said Judge has stated that he has gone through the written arguments submitted by both the parties and ultimately the learned Judge has accepted the arguments advanced by the respondents and came to the conclusion that the respondents have proved their case and converted the award into decree by passing impugned judgment. She pointed out that in the entire judgment no reasons are given by the said Judge as to why he wanted to accept the case of the present respondents. She also pointed out

that the said Judge has not given any reasons as regards the objection raised by the present appellants.

8. She also pointed out that the said judge had framed the issue at serial No.8 which was concerning reference of the dispute to the arbitrators beyond the period of limitation and in the entire judgment no reasoning is found as to why the said judge has answered the issue in the negative. In substance, learned Advocate Mrs.Kulkarni submitted that the impugned judgment dated 12.10.1990 is without reasons and therefore the same is required to be quashed and set aside and the said Civil Suit No.549 of 1983 is required to be remanded to the Court below for re-hearing and for passing an appropriate order by giving reasons.

9. Learned Advocate Mr.Deshpande for the respondents, tried to justify the impugned judgment dated 12.10.1990 by contending that the learned Judge

has framed appropriate issues and has given his answers to the said issues and in ultimate analysis has come to the conclusion that the award deserves to be converted into decree. He submitted that the learned Judge has discussed the evidence and has arrived at proper conclusions and therefore it cannot be said that the impugned judgment is without any reasons. The learned Judge has exhibited his mind by saying that he is accepting the arguments advanced by the respondents. Mr. Deshpande prays for dismissal of the appeal.

10.I have considered the rival submission. As regards reference of the said award to the said Judge in terms of special Civil Suit No.549 of 1993, there appears to be no difficulty. Once the Special Civil Suit No.549 of 1983 was before the said Judge, it was necessary for the said Judge to consider the entire record, consider the objections raised by the appellants as regards reference of the dispute to the arbitrators being

beyond the period of limitation and then discuss the entire evidence placed before the said Judge, marshall the evidence and then arrive at final conclusion for the purpose of giving answers to the various issues which came to be framed by him.

11.If one peruses the entire judgment, the said judge has not given specific reasons as to why he wanted to accept the arguments advanced by the learned advocate for the respondents. When the appellants had raised the point as regards the reference to the arbitrators being beyond the period of limitation it was absolutely necessary for the said judge to deal with that point first because the said point went to the root of the matter and after giving appropriate reasons he should have then proceeded to consider the entire evidence and decide the matter by giving reasons. He has not done so.

12.Even if the said Judge wanted to dismiss the objections raised by the appellants he could have

done so by giving reasons. The same has not been done. Infact, the operative order passed in the impugned judgment speaks as follows:

Decree in terms of award be passed

It was absolutely necessary for the said Judge to pass an Order as regards the objections raised by the appellants and if at all he was inclined to dismiss it, he should have added appropriate words in the operative part. In the absence of the appropriate words, so as to deal with the objections raised by the appellants this Court is unable to know whether the objections raised by the appellants have been decided or not. This in my view is material irregularity in deciding of the Special Civil Suit No.549 of 1983 and the objections filed by the appellants.

13. With the aforesaid discussion, the only course left open for this Court is to set aside the impugned judgment dated 12.10.1990 and remand the matter to the said court for determination in accordance with provisions of law with the

directions that the Judge who shall now be deciding the matter shall consider the question of limitation raised by the appellants as regards reference of the dispute to the arbitrators beyond the agreed period of 28 days. He shall also consider the entire matter afresh and decide the matter.

14. In view of the aforesaid discussion, the first appeal is being disposed of by passing the following order:

#### ORDER

- i. The judgment and decree dated 12.10.1990 passed by the learned Civil Judge Senior Division, Pune in Special Civil Suit No.549 of 1983 is set aside. The Special Civil Suit No.549 of 1983 is restored to the file of the Court of Civil Judge, Senior Division, Pune. The record and proceedings of this case be sent to the court of Civil Judge, Senior Division, Pune as expeditiously as possible and in any case before 31.7.2009.

ii. Upon receipt of the record and proceedings, the learned Civil Judge, Senior Division, Pune shall offer hearing to M/s, Kelkar & Kelkar being claimants in the Special Civil Suit No.549 of 1983 and the University of Poona being respondents in the said Civil Suit. The said Judge shall frame appropriate issues, consider all the points which may be argued before him, and then decide the matter in accordance with the provisions of law i.e. the said judge shall decide whether the decree is required to be passed in terms of the award or any other suitable order is required to be passed. He shall also decide the objections raised by the present appellants-University of Poona.

iii. In the facts and circumstances of the case there shall be no order as to costs.

iv. Upon receipt of the record and proceedings the Civil Judge, Senior Division, Pune shall hear and

dispose of the aforesaid suit as expeditiously as possible. It is clarified that no views are expressed on the merits of the suit which is required to be decided by the learned Judge.

**(R.Y.Ganoo, J.)**