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UNITED INDIA INSURANCE CO. LTD.

v

J.A. INFRASTRUCTURE PVT. LTD.

AUGUST 30, 2006

B

[DR. AR. LAKSHMANAN AND TARUN CHATTERJEE, JJ.]

Arbitration and Conciliation Act, 1996; Ss. 34 and 43/Limitation Act, 1963; S.14:

C *Arbitration Clause in the Insurance Agreement—Dispute between Insurer and Insured—Appointment of Arbitrators by the parties and Presiding Officer/Umpire by Arbitrators—Insurer filing Arbitration Petition—Dismissed by High Court on ground of jurisdiction—Filing of petition before the District Court with application for exclusion of time spent before the wrong forum in terms of Section 14 of the Limitation Act—Dismissed by trial Court—Challenge to—Dismissed by High Court—On appeal, Held: Limitation Act could be applied to arbitration as it applies to the proceedings in the Court—1996 Act does not expressly exclude the applicability of Section 14 of the Limitation Act—Time spent in prosecuting the remedy before wrong Forum could be excluded in terms of Section 14 of the Limitation Act—E Hence, matter remitted back to trial Court to decide the case on merits.*

F **Respondent-Assured invoked arbitration clause as per Condition No.7 of the Insurance Policy and appointed an Arbitrator. The appellant-Insurance Company also appointed another Arbitrator. Both the Arbitrators appointed Presiding Arbitrator. The Majority Award was passed by the Presiding Arbitrator and Co-Arbitrator as appointed by the insured awarding a sum of Rs. 2,12,49,336 with future interest in favour of the assured. The Minority Award was passed by the other Co-Arbitrator, as appointed by the Insurance Company who awarded a sum of Rs. 1,23,08,104/- with interest. Aggrieved by both the Awards, the appellant filed an Arbitration Petition, which was dismissed by the Single Judge of the High Court for want of jurisdiction. Later, the Insurer filed a fresh petition before the District Court along with application under Section 14 of the Limitation Act, which was dismissed by the District Court. Aggrieved against the order passed by the District Court, the appellant filed a Writ Petition before the High Court which was also**

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dismissed. Hence the present appeal. A

Disposing of the appeal, the Court

HELD: 1.1. Arbitration and Conciliation Act, 1996 does not expressly exclude the applicability of Section 14 of the Limitation Act and that the prohibitory provision has to be construed strictly. Besides, the respondent has not seriously opposed the applicability of Section 14 of the Limitation Act which deals with exclusion of time spent in prosecuting the remedy before the wrong forum bona fide. Therefore, the order passed by the High Court is set aside and the matter is remitted back to the District Court to decide the case on merit after affording opportunity to the respondent. Pending disposal of the matter by the District Court, the appellant-Insurance Company is directed to deposit the amount awarded by the Co-Arbitrator appointed by the Insurance Company to the credit of Arbitration Petition on the file of the District Court. On such deposit, the District Court shall invest the same in a nationalized bank in a short term deposit. [641-G; 642-B-C; E-F] B

State of Goa v. M/s. Western Builders, JT (2006) 6 SC 125, relied on. C

1.2. It is clarified that the objections and other issues raised have not been decided on merits. D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3870 of 2006. E

From the Judgment and Order dated 21.12.2005 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No. 5454/2005. F

A.K. De and Ashok K. Mahajan for the Appellant.

Rameshwar Prasad Goyal, Jay Savla and Reena Bagga for the Respondent. G

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted. H

Heard learned counsel appearing on behalf of both sides.

This appeal is directed against the final judgment and order dt. 21.12.2005 passed by the High Court of Judicature at Bombay, Nagpur Bench in Writ Petition No.5454 of 2005. The respondent is the insured. The respondent

A invoked arbitration as per Condition No.7 of the Policy. The respondent appointed one Shri V.P.Shah as Arbitrator. The appellant-Insurance Company appointed Shri A.Sankaran as Arbitrator. Both the Arbitrators appointed Shri B.R.Mehta as Presiding Arbitrator. On 10.10.2003, the Majority Award was passed by the Presiding Arbitrator, Shri B.R.Mehta and Co-Arbitrator Shri V.P.Shah awarding Rs.2,12,49,336.00 (Rupees two crore twelve lakh forty nine thousand three hundred thirty six only) with future interest @ 18%. The Minority Award was passed by Co-Arbitrator Shri A.Sankaran who awarded a sum of Rs.1,23,08,104/- and interest of Rs.43,57,066/- upto 10.10.2003 and cost of arbitration of Rs.4 lacs and further interest on the aggregate of all these amounts @ 15% from the date of Award till the date of payment of decree whichever is earlier.

\Aggrieved by both the Awards, the appellant filed Arbitration Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') in the High Court of Judicature at Bombay. The petition was listed before a learned Single Judge of the High Court who after hearing the parties D dismissed the petition for want of jurisdiction. The appellant-Insurance Company thereafter filed a fresh petition under Section 34 of the Act before the District Court, Nagpur along with application under Section 14 of the Limitation Act on 17.01.2005. The District Court, Nagpur dismissed the application filed by the appellant-Insurance Company under Section 14 of the Limitation Act and consequently, the application filed under Section 34 of the E Act also stood dismissed. Aggrieved against the order passed by the District Court, the appellant filed again a Writ Petition before the High Court of Bombay at Nagpur Bench which was also dismissed on 21.12.2005. Aggrieved by the said Judgment dt.21.12.2005, the appellant preferred the above appeal.

F The High Court by the impugned judgment dismissed the Writ Petition No.5454 of 2005 following the earlier judgment of the Bombay High Court in *H.M.P. Engineers Ltd. and Ors. v. Ralies India Ltd. and Ors.*, reported in 2003(4) MH.L.J.931. Learned counsel for the appellant submitted that in view of the recent judgment of this Court in *State of Goa v. M/s. Western Builders*, reported in JT (2006) 6 SC 125, the view taken by the Bombay High Court in G *H.M.P.Engineers Ltd. and Ors. v. Ralies India Ltd. and Ors.* (supra) and followed by the High Court in the impugned judgment is not correct.

H This Court in the Judgment in *State of Goa v. M/s. Western Builders*, (supra) was considering the question as to what extent Section 14 of the Limitation Act, 1963 which deals with exclusion of time spent in prosecuting

the remedy before wrong forum is applicable to the Arbitration and Conciliation Act, 1996 or not. Section 14 of the Limitation Act reads thus :-

“14 Exclusion of time of proceeding bona fide in court without jurisdiction - (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, D 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 of other cause of a like nature.” E

This Court also in para 13 of the said Judgment has observed that Section 14 of the Limitation Act has been excluded by this special enactment i.e. Arbitration and Conciliation Act, 1996 and that 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. This Court has also followed few other Judgments of this Court in support of the view taken by them. In the concluding portion this Court has observed that in the present context, there is no two opinion in the matter that the Arbitration and Conciliation Act, 1996 does not expressly excluded the applicability of Section 14 of the Limitation Act and that the prohibitory provision has to be construed strictly. F G

In the result, this Court was of the opinion that the view taken by the court below excluding the applicability of Section 14 in the said proceeding was not correct. This Court held that Section 14 of the Limitation Act, 1963 H

- A was applicable in the Arbitration and Conciliation Act, 1996 and accordingly this Court set aside the judgments and order and remanded the matters back to the District Court for deciding the application under Section 14 of the Limitation Act on merit. In view of the Judgment in *State of Goa v. M/s. Western Builders* (supra), the counsel for the respondent has not seriously opposed to the applicability of Section 14 of the Limitation Act which deals with exclusion of time spent in prosecuting the remedy before the wrong forum bona fide. Therefore, we set aside the order passed by the High Court and remit the matter back to the District Court, Nagpur to decide the objections raised by the appellant-Insurance Company under Section 34(3) of the Arbitration and Conciliation Act, 1996 and decide the same on merit after
- B affording opportunity to the respondent herein.

Since the matter is pending for very long time before one forum or the other, we direct the District Court, Nagpur to dispose of the matter within six months from today.

- D We make it clear that we have not decided the objections and other issues raised on merits.

The Civil Appeal stands disposed of accordingly with the above observation. However, pending disposal of the matter by the District Court, we direct the appellant-Insurance Company to deposit the amount awarded

- E by the Arbitrator Shri A.Sankaran to the credit of Arbitration Petition No.164/2005 on the file of the District Court, Nagpur. The Appellant-Insurance Company shall now deposit Rs.1,70,65,170/- (Rupees one crore seventy lakhs sixty five thousands, one hundred seventy only) to the credit of Arbitration Petition No.164/2005 within one month from today. On such deposit, the
- F District Court shall invest the same in a nationalised bank in a short term deposit.

We also reserve liberty to the respondent to move an application for withdrawal of the said amount before the said court and if such an application is filed, the District Court is directed to dispose of the same on merits and

- G in accordance with law.

S.K.S.

Appeal disposed of.