A UTKAL COMMERCIAL CORPORATION

v.

CENTRAL COAL FIELDS LTD.

JANUARY 20, 1999

B [MRS. SUJATA V. MANOHAR AND R.C. LAHOTI, JJ.]

Arbitration Act, 1940 : Section 8.

Arbitrator—Appointment of—Limitation—Reckoning of.

C *Limitation Act, 1963 : Article 137—Applicability of.*

Contract between appellant—Corporation and respondent on 7.9.1974—Contract operative till 22.8.75—Dispute between parties—Notice for appointment of Arbitrator under Section 8 given by appellant on D *12.9.1976—Respondent gave no response to the appellant—On 22.12.1977 appellant filed on application under Section 8 before Calcutta High Court—As the High Court lacked jurisdiction it gave direction to file the application before appropriate Court—Thereafter application filed before Sub-ordinate Judge, Ranchi on 9.8.1978 which appointed Arbitrator—On respondent's application in Revision High Court held application for appoint-* E *ment of Arbitrator was barred by limitation—Appeal before Supreme Court—Held High Court was not right in coming to the conclusion that the application under Section 8 of the Arbitration Act was barred by limitation—Requirements of Section 8 Discussed.*

F *Major (Retd.) Inder Singh Rekhi* **v.** *DDA,* **[1988] 2 SCC 338, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1215 of 1986.

From the Judgment and Order dated 21.3.94 of the Patna High Court G in Civil Revision Application No. 116/80.

Arvind Kumar and Laxmi Arvind for the Appellant.

Anip Sachthey for the Respondent.

H The following Order of the Court was delivered :

The only question which requires to be determined in this appeal is whether the application of the appellant under Section 8 of the Arbitration Act for appointment of an Arbitrator was barred by limitation. A few dates may be noted in this connection. The term 'respondent' occurring hereinafter applies also to predecessors-in-interest of the respondent.

On 7th September, 1974 the appellant entered into a contract, with the respondent under which the appellant agreed to supply Allumina Ferric of I.C.I. specification to the respondent. The contract was operative till 22.8.1975. On account of certain disputes and differences which arose between the parties the appellant, on 12.9.1976, gave a notice to the respondent. The notice is not on the record of the proceedings. From the judgment of the High Court which refers to this notice, it seems that under that notice, the appellant stated that huge amounts were due to it under the said contract and it appointed one Sohan Lal Saraf, Barrister-at-Law as its Arbitrator and called upon the respondent to concur in that appointment. No response was given to the notice.

Thereafter negotiations seem to have taken place between the parties for settlement of the disputes. Ultimately since the negotiations did not fructify, the appellant on 22.12.1977 filed an application before the Calcutta High Court under Section 8 of the Arbitration Act. The Calcutta High Court by its judgment and order dated 26.4.1978 held that it had no jurisdiction to entertain the application and directed the appellant to file an application before the appropriate Court. Accordingly on 9.8.1978 the appellant filed an application under Section 8 of the Arbitration Act before the Subordinate Judge, Ranchi. Its application was allowed on 18.9.1979 and the Court appointed one A.N. Singh, Retired District & Sessions Judge to act as an Arbitrator.

The Arbitrator has given a reasoned award dated 16.6.1980. The award is for a small amount of Rs. 41,342 with interest. And we are surprised at the costly litigation indulged in by the respondent for this small amount. Be that as it may, the respondent had filed a revision before the High Court at Ranchi from the order of the Subordinate Judge granting the application under Section 8 of the Arbitration Act. The High Court has, by the impugned order, held that the application of the appellant under Section 8 of the Arbitration Act was barred by limitation. Hence no Arbitrator could have been appointed. In the present appeal we have to

A consider whether the application of the appellant under Section 8 of the Arbitration Act was barred by limitation.

The relevant Article of the limitation Act is Article 137 which provides as follows :

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"Description of suit	Period of Limitation	Time from which period begins to run
Any other application for which no period of limitation is provided elsewhere in this Division.	Three year	When the right to apply accrues."

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Therefore, the time for the purposes of limitation begins to run from the date when the right to make an application under Section 8 accrues. Section 8 of the Arbitration Act, which is relevant for our present purposes, is reproduced below :

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"Section 8. Power of Court to appoint arbitrator or umpire. - (1) In any of the following cases -

(a) where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not, after differences have arisen, concur in the appointment or appointments; or

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(b) xxx xxx xxx

(c) xxx xxx xxx

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any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy.

(2) If the appointment is not made within fifteen clear days after service of the said notice, the Court may, on the application

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of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties."

Therefore, under Section 8 before an application can be made to the Court under that section the following requirements should be satisfied :-

(1) The arbitration agreement should provide for appointment of arbitrator/s by consent.

(2) Parties do not concur in the appointment of an arbitrator.

(3) One party serves notice on the other party to concur in the appointment.

(4) No appointment is made within 15 day of the service of the notice.

Thereupon the court may, on the application of the party who gave the notice and after giving the other party an opportunity of being heard, appoint an Arbitrator.

In view of the express language of Section 8, it is quite clear that unless a party who desires to apply has resorted to the process set out in Section 8, and has failed to secure the concurrence of the other party to the appointment of an Arbitrator within the prescribed period, the Court will not intervene under Section 8. The right to apply under Section 8, therefore, would accrue when, within 15 clear days of the notice, the other parties do not concur in the appointment of an Arbitrator.

In this connection one may refer to a decision of this Court in *Major (Retd.) Inder Singh Rekhi* v. *DDA,* [1988[2 SCC 338. In that case the Court had to consider the application of Article 137 of the Limitation Act to a petition under Section 20 of the Arbitration Act. The Court considered when the period of limitation under Article 137 would begin to run. The Court said that in order to be entitled to an order of reference under Section 20 of the Arbitration Act, it is necessary that there should be an arbitration agreement and secondly difference must arise as to which this agreement applies. In the case before the Court, a dispute had arisen regarding non-payment of the alleged dues of the appellant. The Court said :

"The question is for the present case when did such dispute arise. The High Court proceeded on the basis that the work was completed in 1980 and, therefore, the appellant became entitled to the payment from that date and the cause of action under Article 137 arose from that date. But in order to be entitled to ask for a reference under Section 20 of the Act there must not only be an entitlement to money but there must be a difference or dispute must arise. It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on February 28, 1983 and there was non-payment, the cause of action arose from that date, that is to say, February 28, 1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders. But where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under Section 8 or a reference under Section 20 of the Act."

Applying the same reasoning in the present case, the notice was served by the appellant asking the respondent to concur in the appointment of an Arbitrator on 12.9.1976. The application before the Calcutta High Court under Section 8 was made on 22.12.1977 and the application before the Subordinate Judge, Ranchi under Section 8 of the Arbitration Act was made on 9.8.1978. Both these applications are within the period prescribed under Article 137. The High Court was, therefore, not right in coming to the conclusion that the application under Section 8 of the Arbitration Act was barred by limitation. Since even the second application was within the period prescribed under Article 137, we have not considered the question of exclusion of the time spent before the Calcutta High Court from the period of limitation.

It has been submitted before us by the respondent that since the contract expired on 28.2.1975, that is the date from which the period of limitation under Article 137 would start. We do not see any merit in this contention, because the requirements of Section 8 of the Arbitration Act have to be met before limitation would start under Article 137 of the

Limitation Act for an application under Section 8. A

If the submission is that the claims filed before the Arbitrator are barred by limitation, we cannot examine such a contention without the relevant particulars and details of the disputes between the parties being placed before us. These particulars and even the documents have not been filed before us because such a contention has not been raised in these B proceedings at all. One cannot assume that the cause of action arose on the date of expiry of the contract. As pointed out by this Court in *Major (Retd.) Inder Singh Rekhi's* case (supra) in the passage cited above, cause of action can arise later, depending on the facts of the case. Whether the claims were or were not barred by limitation before the Arbitrator can be C examined only on the basis of the relevant material, which material has not been produced. We, therefore, decline to examine this contention.

In the premises we set aside the impugned order of the High Court and restore the order of the Sub-Judge, Ranchi. Since the Award has already been made and we are informed that it is also filed in Court, the D concerned court/the parties will now have to take appropriate steps in connection with that award in accordance with law. The appeal is allowed accordingly. No order as to costs.

T.N.A. Appeal allowed.