



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ARBA No. 19 of 2022

- Raipur Municipal Corporation Through The Commissioner, Raipur Municipal Corporation, Raipur Chhattisgarh.

---- **Petitioner**

Versus

- M/s Associated Software Consultancy, A Registered Partnership Firm Having Its Registered Office At, Nagpur Road Camp, Amravati, Tehsil And District Amravati, Through Its Constituted Attorney Mr. Umesh Borkhade, Aged About 53 Years, S/o Mr. Krushnarao Borkhade, R/o Nagpur Road Camp Amravati, Tehsil And District Amravati (M.H.).

---- **Respondent**

For Appellant
For Respondent /State

Mr. Saurabh Sharma, Advocate
Mr. Harish Dangre and Vikram Dixit ,
Advocates

DB.: Hon'ble Mr. Justice Goutam Bhaduri &

Hon'ble Mr. Justice Deepak Kumar Tiwari

Judgment on Board by Goutam Bhaduri, J.

27/7/2022

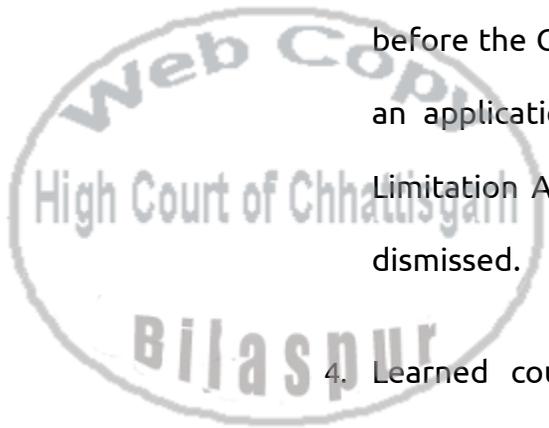
1. Heard.
2. The present appeal is against the order dated 7.5.2022 in an unregistered M.J.C/2021, whereby, the Commercial Court



(District Level), Nava Raipur, Chhattisgarh, has dismissed the appeal preferred by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (in short "the Act, 1996").

3. The brief facts of this case are that an award was passed by the Arbitrator on 7.4.2018. According to the appellant, the said award was received by the appellant on 9.4.2018. Initially, Arb.R. 11/2019 was filed before the High Court on 15.4.2019, which was eventually dismissed as withdrawn vide order dated 15.5.2019 with liberty to file a duly constituted appeal before the Commercial Court at Raipur. Thereafter, an appeal was filed before the Commercial Court at Raipur on 23.7.2021 along with an application under Section 14 read with Section 5 of the Limitation Act, 1963 (in short "the Limitation Act"), which was dismissed.

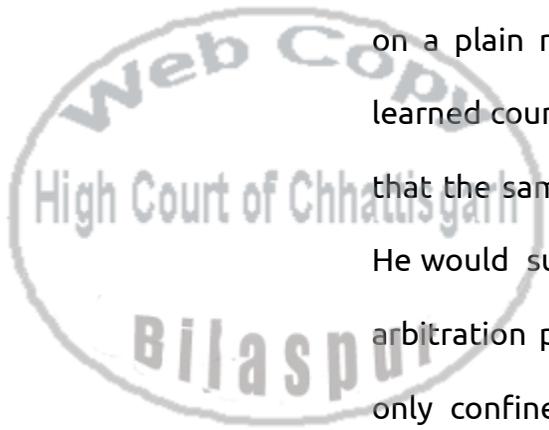
4. Learned counsel for the appellant would submit that the appellant could not know that the petition preferred before the High Court has been withdrawn and only when the notice of execution was served, they came to know about it. Thereafter, the appellant, after following due procedure, filed an appeal along with an application under Section 14 read with Section 5 of the Limitation Act for condonation of delay. He would submit that on reading of sub-section (1) of Section 43 of the Act, 1996, it is clear that the Limitation Act shall apply to arbitrations as it applies to proceedings in Court. Consequently, the Commercial Court should have taken notice of the facts enumerated in the application filed under Section 5 of the





Limitation Act, wherein, the reasons as to why the delay occurred, in detail, were explained. He further submits that when the first proceeding was withdrawn before the High Court, liberty was granted to the appellant to file an appeal before the Commercial Court and the limitation was automatically extended by the order of the Court and by subsequent proceeding of Hon'ble the Supreme Court in a Miscellaneous Application No.21 of 2022 and other connected application, including *suo motu* WPC No.3 of 2020.

5. Per contra, learned counsel for the respondents submits that on a plain reading of Section 43 of the Act, 1996, on which, learned counsel for the appellant has placed reliance, it appears that the same would not be applicable in the case of appeals. He would submit that the limitation would be applicable to the arbitration proceeding alone and Section 21 of the Act, 1996 only confines to arbitral proceeding and not the appellate proceeding. It is stated that the challenge to award would be governed by a separate proceeding provided under Section 34 of the Act, 1996. It is further pleaded that it is not disputed that the benefit of Section 14 can be given under the Limitation Act, but not beyond the period mentioned under Section 34. He also submits that if the time was spent on account of prosecuting a proceeding before a wrong Court, the period of 30 days can be excluded from 15.4.2019 to 15.5.2019 subject to limitations of Section 34 of the Act, 1996. He would submit that the benefit also cannot be extended to the appellant for the reason that the appeal should have been preferred as per the





time prescribed under Section 34 of the Act, 1996, which has already expired even before 15.4.2019 in an earlier round of litigation before this Court. Therefore, the instant appeal is liable to be dismissed.

6. We have heard learned counsel for the parties and perused the record of the appeal.
7. The date of award which was subject matter of challenge is '7.4.2018'. According to the appellant, the date of receipt of the award by the appellant is '9.4.2018'. As per Section 34 of the Act, 1996, the prescribed period for setting aside the award is 3 months, which would mean that the initial date would be 8.7.2018 and subsequently, the extended period of 30 days as per proviso to sub-section (3) of Section 34 of the Act, 1996 would end on 7.8.2018.
8. Submission was made by learned counsel for the appellant that by virtue of Section 43(1) of the Act, 1996, the application under the Limitation Act has been made operative. In this context, sub-section (2) of Section 29 of the Limitation Act would be relevant, the extract of which is reproduced hereunder :

"29 Savings (The Limitation Act, 1963)

(1) xxx

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of





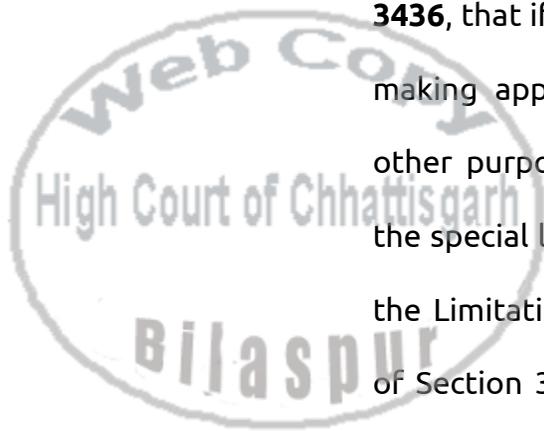
determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) xxx

(4) xxx”

9. As has been already held by Hon'ble the Supreme Court in the matter of **State of Goa Vs. Western Builders, 2006 AIR SCW 3436**, that if special period of limitation has been prescribed for making application for any condonation of delay or for any other purpose then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. Hence, sub-section (2) of Section 34 along with the proviso to Section 34 of the Act, 1996, would exclude the applicability of Section 5 of the Limitation Act by virtue of sub-section (2) of Section 29 of the Limitation Act.

10. The principle as laid down in the matter of **Union of India Vs. Popular Construction Co., (2001) 8 SCC 470**, which was reiterated by Hon'ble the Supreme Court in the matter of **Western Builders (supra)**, with regard to the applicability of Section 5, Hon'ble the Supreme Court, while interpreting the provisions of sub-section 3 of Section 34, has clearly observed that the words “but not thereafter” used in Section 34 indicates that applicability of Section 5 of the Limitation Act is prohibited

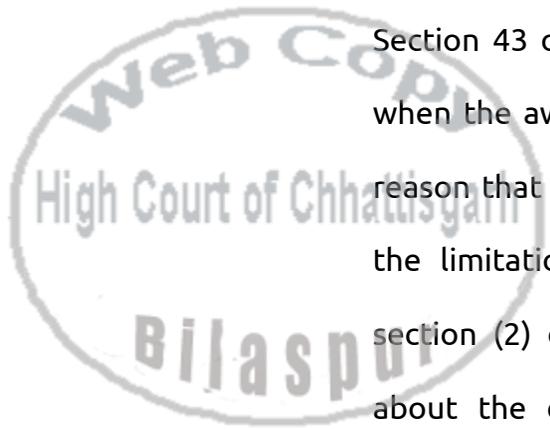




to that extent. Further, in a recent judgment rendered in the matter of **Mahindra and Mahindra Financial Services Limited Vs. Maheshbhai Tinabhai Rathod and others, (2022) 4 SCC 162**, Hon'ble the Supreme Court held that if a petition is filed under Section 34 beyond the prescribed period of three months, the Court has discretion to condone the delay only to the extent of thirty days provided sufficient cause is shown and Section 5 would not be applicable to condone the delay beyond the period prescribed under Section 34(3) of the Act, 1996.

11. The submission of learned counsel for the respondents that Section 43 of the Act, 1996, even otherwise, is not applicable when the award is under challenge, cannot be shelved for the reason that the language used in Section 43 would show that the limitation would be applicable to arbitrations and sub-section (2) of Section 43 refers to Section 21, which speaks about the commencement of arbitral proceedings and not appeal.

12. Here in the instant case, after the arbitral proceedings, the award was passed and the same was challenged under Section 34 of the Act, 1996. Therefore, it appears that Section 43 excludes the applicability of the Limitation Act in its entirety to challenge the award, which is an outcome of arbitration proceedings. The facts of the case would show that the award was passed on 7.4.2018 and it was said to be received on 9.4.2018. The same was under challenge before the High Court in ARB R No.11/2019. Perusal of the memo of application filed





in such ARB R No.11/2019, would show that no whisper has been made as to the reason why the award was challenged after a long period i.e. on 15.4.2019, which only goes to show the fact that the limitation to challenge the award dated 7.4.2018 already stood expired mainly after the extended date of 8.7.2018 as per Section 34(3) of the Act, 1996. In the result, the benefit granted by Hon'ble the Supreme Court in Miscellaneous Application No.21 of 2022 and other connected application, including *suo motu* WPC No.3 of 2020, wherein, the limitation was extended in cases in which it was expiring between 15.3.2020 to 28.2.2022, cannot be granted to the appellant in the present case.

13. For the foregoing, this Court is of the view that the impugned order of the Commercial Court is well-merited, which does not call for any interference.

14. This appeal being devoid of merits is liable to be and is hereby dismissed.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Deepak Kumar Tiwari)
Judge

**ARBA No. 19 of 2022****HEAD-NOTE**

- Applicability of Section 5 of the Limitation Act is excluded by virtue of sub-section (2) of Section 29 of the Limitation Act in arbitral appeal.
- Period of Limitation cannot be extended beyond the period prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996.

• माध्यस्थम् अपील में परिसीमा अधिनियम की धारा 05 की प्रयोज्यता को परिसीमा अधिनियम की धारा 29 की उपधारा 2 के आधार पर अपवर्जित रखा गया है ।

- माध्यस्थम् एवं सुलह अधिनियम, 1996 की धारा 34(3) के अंतर्गत परिसीमा की अवधि को निर्दिष्ट अवधि से अधिक विस्तारित नहीं किया जा सकता है ।

