
**BRIEF ANALYSIS ON THE APPLICABILITY OF LIMITATION ACT AT
VARIOUS STAGES OF AN ARBITRAL PROCEEDING BEFORE THE COURT IN
INDIA**

*Ruhini Dey & Parnika Medhekar

INTRODUCTION

The applicability of the Limitation Act, 1963 (hereinafter referred to as ‘Limitation Act’) as applicable to the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘Arbitration Act’) has brought with it many complexities. The Limitation Act prescribes a time period for bringing claims and bars legal actions after a certain set time period. Section 43(1) of the Arbitration Act stipulates that the Limitation Act, 1963 “*shall be applicable to arbitrations as it applies to proceeding of the court*”. This entails that the Limitation Act will be applicable to arbitration proceedings in a similar manner as applicable to court proceedings. The proceeding referred to under section 43 is the original proceedings which can be equated to a suit in a court.

**COMMENCEMENT OF CAUSE OF ACTION FOR THE PURPOSES OF
CALCULATING THE LIMITATION PERIOD**

Article 137 of the Limitation Act expressly stipulates “Any other application for which no period of limitation is provided elsewhere in this division, the limitation period is three (3) years from the date when the right to apply accrues”. The Arbitration act does not prescribe any time limit to commence arbitration proceedings or invocation of the same. In that case, Article 137 of the Limitation Act comes into play which is in the form of a residual clause. Therefore, arbitration has to be commenced within a period of three years from the date when the claims of the Claimant have been rejected for the first time.

For bringing an action against a party in an appropriate court of law for any civil wrong, the term “cause of action” is used. It is precarious to define ‘*cause of action*’ but **Russell on Arbitration**¹ simplifies the same when he states that the period of limitation for commencing an arbitration runs from the date on which the cause of arbitration accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require than an arbitration take place upon the dispute concerned. Cause of action becomes important for the purposes of calculating the limitation period for bringing an action. It is imperative that a party realize when a cause of action arises. If a party simply delays sending a notice seeking reference under the Arbitration Act because they are unclear of when the cause of action arose, the claim can become time-barred even before the party realizes the same. In construction arbitrations, as the projects are for a few years, many times the contractor or the owner will not raise any dispute in furtherance of cooperation. However, once they actually intend to do so, they are well beyond the period of limitation. The Hon’ble Supreme Court has

*The authors are Associates of Law Senate Arbitration Law Firm having offices at New Delhi & Mumbai.

¹Russell on Arbitration by Anthony Walton (19th Edn.) at pp. 4-5

reiterated the same in *Panchu Gopal Bose v. Board of Trustees for port of Calcutta*² wherein it was held that the Cause of action corresponds to “cause of arbitration” for the purposes of limitation in invoking the arbitration clause in arbitrations. The Period of limitation for commencing arbitration runs from the date on which the cause of arbitration accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration takes place upon the dispute concerned. Therefore, the period of limitation for the commencement of arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued. Just as in the case of civil actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued. However, the cause of action should not be de hors the contract which encompasses the arbitration clause.

PERIOD OF LIMITATION FOR SEEKING REFERENCE TO ARBITRATION UNDER SECTION 8 OF THE ARBITRATION ACT:

Next question which needs to be dealt with is “*Whether there is a limitation period prescribed for filing of an application under Section 8 of the Arbitration and Conciliation Act?*” and secondly, *whether the limitation for filing of the written statement as prescribed in the Civil Procedure Code, 1908 as also the Commercial Courts Act, 2015 would be applicable for filing of a Section 8 application under the newly amended act?*

The said question came up for consideration in a recent judgment of the Hon’ble High Court of Delhi in *SSIPL Lifestyle Private Limited and Ors. Vs. Vama Apparels (India) Private Limited and Ors.*³. The Hon’ble court while taking note of the ratios of the several judgments of the Hon’ble Apex court concluded that in view of the amended language in Section 8, the limitation for filing of the written statement under CPC for non-commercial suits and under the Commercial Courts Act for commercial suits would be applicable for filing of an application under Section 8. In view thereof, the Court concluded that the maximum period would be 90 days for ordinary civil suits and 120 days for commercial suits.

It is necessary to extract the observation made by the Hon’ble court while discussing whether limitation period is prescribed for filing an application under section 8 of the Arbitration Act (as amended). In the words of the Hon’ble court, “*A perusal of the various amendments brought about in 2016 Amendment Act show that the intention was to tighten the time limit within which arbitration proceedings should commence and conclude. For example, under Section 9, previously, no limitation was fixed for commencement for invoking arbitration after seeking interim relief. However, in the amended provision, within 90 days after the interim order is passed, the arbitral proceedings have to be commenced. Similar amendments have been brought about in Section 11. Section 29A provides that the award in matters other than international commercial arbitration may be made as expeditiously as possible and an*

²(1993)4SCC338

³2020 (2) RCR (Civil) 707

endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings. Section 29 B provides for the adoption of a fast-track procedure and the award under this section shall be made within a period of six months from the date of the arbitral tribunal enters upon the reference. Thus, the entire emphasis in the 2016 amendments has been to speedup arbitral proceedings. It is in this context that the change of language in Section 8 from "when" to the "date of" is to be construed. In the opinion of this Court, the words 'not later than the date of submitting' means that the date of submitting the statement on the substance of the dispute i.e. the written statement in a civil suit, is the outer limit for filing of a Section 8. Hence, in effect, there is a limitation period which is prescribed.". But the Courts have held that filing of incidental applications and appeals over them cannot be treated as 'statement on the substance of the dispute'.

LIMITATION IN REGARD TO APPOINTMENT OF ARBITRATOR UNDER SECTION 11 OF THE ARBITRATION ACT

Delhi High court in a recent judgment of *Golden Chariot Recreations Pvt. Ltd. v. Mukesh Panika & Anr*⁴ has held that the limitation for filing an application for appointment of arbitrator in a court with jurisdiction under section 11 of the Arbitration Act, is 3 years. The same cannot be extended even if the party making the application issues a second/fresh notice. The Hon'ble High court while citing the Division Bench judgment in *Prasar Bharti v. Maa Communication*⁵ proceeded to note that while preferring an application under Section 11(4) or under Section 11(6) of the arbitration act, it is mandatory to follow the procedure of giving a notice prior to the same and without such procedure being followed and failure thereof, there would be no cause of action for the petition under Section 11(4) or 11(6) of the Act. The limitation for filing an application under Section 11(4) would commence running only from the expiry of 30 days from the receipt of request mentioned in Section 11(4)(a) or (b) and the limitation for an application under Section 11(6) would commence running from the happening of the contingencies mentioned in sub-clause (a) or (b) or (c) thereof. The Hon'ble Supreme Court in a very recent judgment of *Geo Miller & Co. Pvt. Ltd. Vs. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd.*⁶ reiterated the same saying that the limitation period under section 11 of the Arbitration Act has to be seen as per Article 137 of the Limitation Act, and therefore for filing an application under section 11, the party has to do so within 3 years.

Recently, the Supreme Court in *Bharat Sanchar Nigam Ltd & Anr. Vs. M/s Nortel Networks India Pvt. Ltd.*⁷ categorically held that the period of limitation for filing an application under Section 11 would be governed by Article 137 of the First Schedule of the Limitation Act, 1963 i.e. 3 years and that the period of limitation would begin to run from the date when there is failure to appoint the arbitrator. In this matter, the Hon'ble Bench has also suggested that the Parliament consider amending Section 11 of the Arbitration Act to provide a period of

⁴2018 SCC Online Del 10050

⁵AIR 2011 (Delhi) 26

⁶ AIR 2019 SC 4244

⁷ 2021 (5) SCC 738

limitation for filing an application under Section 11. This recommendation by the Hon’ble Supreme Court sheds light on the fact that courts in India are in favor of expeditious disposal of arbitration proceedings.

FILING OF COUNTER CLAIMS BEYOND LIMITATION

The Hon’ble Supreme Court in *Gopal Bose Vs Board of Trustees of Port of Kolkata*⁸ held that as per Section 3 (2)(b) of the Limitation Act, 1963 a counter claim has to be treated as a separate suit and as such the limitation period would commence from the date of accrual of cause of action for filing the cross claims as per Article 137 of the Limitation Act. This means that a counter claim should be filed within 3 years from the date of accrual of the cause of action. However, in certain circumstances as in the case of *State of Goa Vs Parveen Enterprises*⁹ the Hon’ble Supreme Court held that *“Where the respondent against whom a claim is made, had also made a claim against the claimant and sought arbitration by serving a notice to the claimant but subsequently raises that claim as a counter claim in the arbitration proceedings initiated by the claimant, instead of filing a separate application under section 11 of the Act, the limitation for such counter claim should be computed, as on the date of service of notice of such claim on the claimant and not on the date of filing of the counter claim.”* The Supreme Court has thus made an exception for those parties who had served notice seeking arbitration in relation to their unresolved disputes prior to appointment of the Arbitrator. However, the limitation period could not be extended if the notice sent was ambiguous. The same was further upheld in *Voltas Limited Vs. Roltas India Limited*¹⁰ wherein the Hon’ble Supreme Court laid down twin tests that needed to be satisfied i.e. that the party has made a claim against the claimant and that the party has sought arbitration by serving a notice to the claimant.

EXTENDING TIME DUE TO UNDUE HARDSHIP (SECTION 43(3) & 43(4) OF THE LIMITATION ACT, 1963):

Section 43(3) of the Arbitration Act provides that the claims arising out of an arbitration agreement has to be brought within the specified time limit, otherwise the same shall be barred by time unless, some sufficient cause is shown by the claimant that he was prevented by undue hardship, due to which he could not have brought the claim within time. In such a case, the claimant on proving the same, can seek extension of time for filing the claims. However, it is solely the discretion of the arbitrator to allow the claims filed beyond time and extend the time for such period as deemed fit. The said section can be said to have drawn inspiration from section 5 of the Limitation act, 1963 which similarly provides for condonation of delay on showing sufficient cause for filing an application or appeal beyond the prescribed time limit. *Russell on Arbitration*¹¹ states that *“An extension of time is not automatic and it is only granted if ‘undue hardship’ would otherwise be caused. Not all hardship, however, is ‘undue hardship’; it may be proper that hardship caused to a party by his own default should be borne by him,*

⁸(1993) 4 SCC 338

⁹(2012) 12 SCC 581

¹⁰(2014)4SCC516

¹¹Russell on Arbitration by Anthony Walton (19th Edn.) at page 80.

and not transferred to the other party by allowing a claim to be reopened after it has become barred.” This view has been upheld by the Hon’ble Supreme Court in various judgments.

SECTION 43(4) OF THE ARBITRATION AND CONCILIATION ACT, 1996 (AS AMENDED UPTO DATE) & SECTION 14 OF THE LIMITATION ACT, 1963- EXCLUSION OF TIME IN ARBITRAL PROCEEDINGS: -

Section 14 of the Limitation Act provides for exclusion of time of proceeding bona fide in a court without jurisdiction. The section elaborates that while computing the period of limitation for any suit or application, the time during which a party has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal and revision, 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 to or other cause of a like nature, is unable to entertain it.

Arbitration act nowhere excludes the application of the said provision in arbitrations and by virtue of section 43, it has given the Limitation Act a wide sweep over the arbitral proceedings. Exclusion of the said act only comes into play, when by express provision; stipulation with regard to time is otherwise made in the Act.

The Hon’ble Supreme Court has cemented the principle in *Simplex Infrastructure Limited vs. Union of India*¹². The Hon’ble Apex court held that while allowing appeals Section 34(3) of Act, along with proviso provided that an application for setting aside award on grounds mentioned in Section 34(2) of Act, could be made within 3 months and period could only be extended for a further period of thirty days on showing sufficient cause and not thereafter. Even if benefit of Section 14 of Limitation Act, was given to Respondent, there would still be a delay of 131 days in filing application. That was beyond the strict timelines prescribed in Section 34(3) of Arbitration Act read along with proviso to Section 34 of the Arbitration Act. The Hon’ble Supreme Court held that even if Respondent was given benefit of provision of Section 14 of Limitation Act, in respect of period spent in pursuing proceedings before District Judge, the petition for setting aside an Arbitral Award as under Section 34 of Act, was filed much beyond outer period of ninety days. The Hon’ble Apex court observed that in view of period of the limitation prescribed in Section 34 of Act, the High Court was not justified in condoning Respondent’s delay of 514 days in filing application and therefore, the Judgment passed by High Court was set aside and appeal was allowed. The Petition under Section 34 of the Arbitration Act that had been filed by the Respondent, stood dismissed on ground that it was barred by limitation.

APPLICABILITY OF SECTION 17 OF THE LIMITATION ACT, 1963 TO THE ARBITRATION ACT-WHETHER THE PLEA OF FRAUD OR MISTAKE CAN BE TAKEN FOR EXTENSION OF TIME:-

¹²2019 2 SCC 455



The Hon'ble Apex Court in a recent judgment of *P. Radha Bai & Ors. Vs. P. Ashok Kumar & Ors*¹³ has culled out the following rules: -

(i) Defense of Section 17 of the Limitation Act is not available to extend the time limit prescribed under Section 34. The same if made applicable will render the determination of time for making an application to set aside the arbitral award in Section 36 uncertain and create confusion in the enforcement of Award.

(ii) Section 34 of the Arbitration Act comes into play once a party receives the award and the Limitation period commences from the day the party has knowledge of the award. Section 17(1)(a) and (c) of Limitation Act may not even apply, if they are extended to Section 34, since they deal with a scenario where the application is based upon the fraud of the Respondent or if the application is for relief from the consequences of a mistake. Section 34 application is based on the award and not on the fraud of the Respondent and does not seek the relief of consequence of a mistake.

(iii) Once the Award is received by the aggrieved party, the time under Section 34(3) of Act commences and any subsequent disability even as per Section 17 or Section 9 of Limitation Act is immaterial.

SPECIAL PROVISION TO PREVAIL OVER SPECIFIC PROVISION OF LIMITATION ACT-APPLICABILITY OF LIMITATION ACT WHEN TIME LIMIT IS PRESCRIBED UNDER THE ARBITRATION ACT :-

The general proposition is that by virtue of section 43, the Limitation Act, 1963 is applicable to the Arbitration Act (as subsequently amended by various amendment acts), but by virtue of section 29 (2) of the Limitation Act, 1963 if any other period has been prescribed under a special enactment, then that period of Limitation would prevail and not the provisions of the Limitation Act. Section 34 of the Arbitration Act mentions the period of limitation for challenging an award under any of the grounds as mentioned therein. Similarly, the clause (2) of the same section also stipulates the provision for condonation of delay, i.e. 30 days. Limitation is prescribed in the particular section and hence section 34 stands independent of the provisions of the Limitation Act, 1963. Similarly, section 37 of the Arbitration Act which provides for appeals, has to be read with section 13 (1-A) (proviso to the same) of the Commercial Courts Act, 2015 which prescribes a period of 60 days for preferring an appeal against the judgment or order of a Commercial Court at the level of a District Judge exercising original civil jurisdiction or, commercial division of the High Court.

The same can be understood from the scheme of Section 34(3) of the Arbitration Act which gives jurisdiction to the court to entertain petitions challenging the award passed by an arbitrator on various grounds *inter alia* that the party was under some incapacity, the arbitration agreement was not valid and that the arbitral award deals with a dispute not contemplated under the terms of submission to the arbitration and other like grounds mentioned therein. Section 34 of the Arbitration Act expressly stipulates the time limit for bringing a challenge before a court

¹³AIR 2018 SC 5013

having jurisdiction to entertain the same. It is evident from the express words of section 34(3) of the Arbitration Act that an application to set aside an award may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award, or if a request had been made under section 33 of the Arbitration Act, from the date on which that request has been disposed of by the arbitral tribunal. However, as stated by the Hon'ble Bombay High court in *Anil Kumar Jinabhai V. Pravin Chandra Jinabhai*¹⁴ the limitation period would commence only when the party making the application for setting aside of the Arbitral Award had had received a signed copy of said Arbitral Award. The Arbitration Act provides for some leniency and the said time limit can further be extended for a period of 30 days, if the party can show that there is sufficient cause for bringing the challenge beyond the period of three months and also providing a cogent reason for the delay caused in approaching the court. The Arbitration Act specifically mentions that the period may not be extended beyond the period of 30 days and the same was reiterated by the Hon'ble Supreme Court in the case of *Union of India vs. Popular Construction Co.*¹⁵ wherein it was held that the time limit prescribed under section 34 of the Arbitration Act is absolute and not extendable by the court under section 5 of the Limitation Act, 1963.

CONCLUSION

Every step of arbitration is intertwined with set periods as stipulated under the Act, each being of great importance. Each step has a set time period within which a party must act on or forever lose one's right. The Limitation Act embodies within the latin maxim '*vigilantibus et nondormientibus, jura subveniunt*' which roughly translates to "the law assists those that are vigilant with their rights, and not those that sleep thereupon".

It has been rightly stated in *Yeshwant Deora v. Walchand*¹⁶ 'rules of equity have no application where there are definite statutory provisions specifying the grounds based on which alone suspension or stoppage of running of time can arise. While courts are necessarily astute in checkmating or fighting fraud, it should equally borne in mind that statutes of limitation are statues of repose.'

In all, it is imperative that one realizes the importance of the Limitation Act in arbitration proceedings for even though Arbitration proceedings tend to be more lenient than courts in terms of technicalities, the same is not true when it comes to the principles of limitation. When it comes to matters pertaining to statutory limitations, it is best that one doesn't sleep over their rights and takes a proactive approach towards their legal recourses

¹⁴2007 (3) BomCR 664

¹⁵(2001) 8 SCC 470

¹⁶AIR 1951 SC 16