

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 20.11.2024

+ **FAO (OS)(COMM) 81/2024**

MOHD AMIN DECEASED THROUGH LRS Appellant

versus

MOHD IQBAL DECEASED THROUGH LRS Respondent

Advocates who appeared in this case:

For the Appellant : Mr S.S. Jauhar, Advocate.

For the Respondent : Mr Sanjay Bansal, Mr Pushkar Sood, Ms Swati Bansal, Ms Vaishali Gupta and Ms Ayushi Bansal, Advocates.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE SACHIN DATTA

JUDGMENT

VIBHU BAKHRU, J

1. The appellants have filed the intra court appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning a judgment dated 05.04.2024 (hereafter *the impugned judgment*) passed by the learned Single Judge of this Court in O.M.P.(COMM) 250/2021 captioned *Mohd. Amin (Deceased) through LRs & Ors. v. Mohd. Iqbal (Deceased) through LRs & Ors.*

2. The appellants had preferred the said application under Section 34 of the A&C Act impugning an arbitral award dated 18.05.2021



(hereafter *the impugned award*). The learned Single Judge found no grounds to interfere with the impugned award and consequently, rejected the application preferred by the appellants to set aside the impugned award.

3. The impugned award was rendered in the context of the disputes that had arisen in connection with the Compromise Agreement (hereafter *the Agreement*) dated 25.02.1991 entered into between Mohd. Amin (represented through the appellants being the legal representatives) and Mohd. Iqbal (represented through the respondents being the legal representatives). For the purposes of the present appeal, we would refer to deceased Mohd. Amin and his successors as the appellant, and Mohd. Iqbal and his legal representatives as the respondents, unless the context indicate otherwise.

4. The appellant is the owner and is in possession of the property known as Nasim Bagh [described as “land comprising bearing Khasra No. 138 (5 Bigha, 3 Biswa), 139 (11 Biswa), 140 (2 Bigha, 6 Biswa) and 141 (2 Bigha, 1 Biswa) comprising of an area measuring about 8430 sq. metres land, which at the material time included residential houses, servant quarters and outhouses constructed thereon. The appellant decided to develop an area approximately 6000 square meters of the aforesaid property (referred to as *the Project Land*) into a Multi-storeyed Group Housing Complex. For the said purposes, the appellant had entered into an agreement with the developer (M/s Unitech Ltd.). However, at the material time the respondent was allegedly in illegal and unauthorized possession of piece of land measuring 435 (four



hundred and thirty-five) square yards. Accordingly, the appellant and the respondent entered into the Agreement dated 25.02.1991. The recitals of the Agreement also indicates that the respondent had raised illegal construction on the said portion of appellant's property.

5. In this regard, the appellant had instituted an action in this Court (Suit bearing no.331/1989 captioned *Mohd. Amin v. Mohd. Iqbal*), *inter alia*, seeking a decree of permanent injunction restraining the respondent from raising any illegal construction. This Court had also passed an order dated 27.11.1989 restraining the respondent from raising any construction on the said plot of land during the pendency of the suit. At the time of the Agreement, the said injunction was in operative.

6. Since the piece of land measuring 435 square yards was included in the Project Land and was required for the purposes of the project, the parties entered into the Agreement whereby the appellant agreed to deliver 6% of the total land built-up area in the aforesaid project to the respondent. The respondent agreed to pay to the appellant all development and betterment charges as may be levied by Land and Development Office, Delhi Development Authority or any such government authority for permitting construction of group housing on the Project Land, in proportion to his share of 6% of the developed project.

7. The respondent also agreed to pay any compounding fees or other charges that may be levied and to bear all taxes that may be chargeable



proportionate to his share of the developed project.

8. The Agreement also provided that in the event for any reason, the Multi-Storey Group Housing project is abandoned, the area of the plot measuring 435 square yards (subject land) which was in possession of the respondent, would be reverted to him and the Agreement would be rendered null and void. The parties also agreed to withdraw the suit (being Suit No.331/1989).

9. Apparently, the project in question – construction and development of Multi-Storey Group Housing project – was abandoned. However, the subject land was not returned to the respondent.

10. This gave rise to the disputes between the parties. The Agreement in question contained an Arbitration Clause.

11. The dispute between the parties were referred to arbitration by the Supreme Court in Civil Appeal No.6936/2011. The respondent was the claimant before the Arbitral Tribunal and raised three Claims – Claim no.1 for possession of the subject land in compliance with Clause 10 of the Agreement; Claim no.2 for compensation and damages for removing the construction existing on the subject land, quantified at ₹25,00,000/-; and Claim no.3 for awarding of cost and expenses of litigation.

12. The arbitral proceedings culminated in the impugned award. The Arbitral Tribunal found in favour of the respondent and rendered the impugned award directing the appellant to handover the possession of



the subject land. The Arbitral Tribunal also directed that if the construction on the subject land – the construction as reflected in the report of the Local Commissioner dated 04.03.1989 filed in proceeding relating to Suit no.331/1989 – was not extant, the appellant would pay damages amounting to ₹15,00,000/-. Additionally, the Arbitral Tribunal also awarded costs quantified at ₹12,69,380/- as well as interest at the rate of 18% per annum for the period beyond sixty days from the date of the impugned award if the amounts were not paid within the said period. The dispositive extract of the impugned award is set out below:

- “i) Claim No.1 of the Claimants is allowed. The Respondents are hereby directed to redeliver to the Claimants, the possession of the disputed plot measuring 435 Sq.Yds, situated at 268, Naseem Bagh, Jamia Nagar, Okhla, New Delhi along with the constructions standing thereon as on 25.02.1991, as per Clause 10 of the Agreement, within thirty days herefrom.
- ii) In the event, the constructions standing on the disputed land, described hereinabove and evidenced by the Report of the Local Commissioner dated 04.03.1989 and the photographs accompanying the same and submitted in Suit No.331 of 1989, are not in existence as on date, the Respondents would pay to the Claimants. a sum of Rs,15,00,000/- (Rupees Fifteen Lakhs Only) as the money value thereof, by way of compensation/damages. Claim No. II is allowed to this extent.
- iii) If the amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) is payable on terms of Clause II, the Respondents would make the payment thereof to the Claimants, within 60 days herefrom.
- iv) Costs of arbitration assessed at Rs. 12,69,380/- (Rupees Twelve Lakhs Sixty Nine Thousand Three Hundred



and Eighty Only) would be payable by the Respondents to the Claimants within 60 days herefrom.

- v) Failing the payment of the money part of the Award within 60 days herefrom, the same would carry interest @18% per annum computed from beyond such 60 days, till the date of payment.”

13. The counter claim was also rejected.

14. The appellant filed an application under Section 34 of the A&C Act to set aside the impugned award being O.M.P.(COMM) 250/2021 but the same was rejected. Aggrieved by the same, the appellant has preferred the present appeal.

15. The present appeal was listed before this Court on 25.04.2024 and this Court had passed the following order:

“1. The Appellants are successors-in-interest of Mohd. Amin and have filed the present appeal under Section 37(1)(c) of the Arbitration & Conciliation Act, 1996 (hereafter the *A&C Act*) impugning a judgment dated 05.04.2024 (hereafter the *impugned judgment*) in OMP(COMM) No.250/2021 captioned *Mohd. Amin (Deceased) through LRs & Ors. v. Mohd. Iqbal (Deceased) through LRs & Ors.*

2. The Appellants had filed the above-captioned petition under Section 34 of the A&C Act impugning an arbitral award dated 18.05.2021 (hereafter *the impugned award*) delivered by the Arbitral Tribunal constituted by a Sole Arbitrator. The impugned award was rendered in the context of the disputes that has arisen between the parties in connection with an agreement dated 25.02.1991(hereafter *the Agreement*) entered into between Mohd. Amin and Mohd. Iqbal. The said individuals have since expired.



3. For the purposes of this appeal, Mohd. Amin and his successors-in-interest are referred to as the Appellant and Mohd. Iqbal and his successors-in-interest are referred to as the Respondent.

4. The recitals of the Agreement indicate that at the material time the appellant (Mohd. Amin) was the exclusive owner and in possession of the property known as Nasim Bagh, ad-measuring 8430 sq.mtrs, which included the residence, servant quarters and outhouse constructed thereon.

5. The Appellant desired to develop a Multi Storeyed Group Housing Complex (hereafter *the project*) on an area ad-measuring about 6000 sq. mtrs of the aforesaid property. He had for the said purpose entered into an agreement with a Developer (M/s Unitech Ltd.).

6. The Respondent (Mohd. Iqbal) was stated to be in unauthorized and illegal possession of a portion of the aforesaid property ad-measuring 435 sq. yds. since 1974. The said portion of land measuring 435 square yards is hereafter referred to as '*the subject property*'. The Respondent had also raised some construction on the subject property, which the recitals of the Agreement record as illegal.

7. The Appellant had filed a suit against the Respondent in regard to his occupation of the subject property (Suit No.331/1989 captioned *Mohd. Amin v. Mohd. Iqbal*), *inter alia*, seeking an order restraining the Respondent from raising any illegal construction. An interim order dated 27.11.1989 to the aforesaid effect was passed by this Court in the said suit.

8. The subject property was included in the 6000 sq. mtrs. of land to be developed for the project and the Respondent was in admitted possession of the subject property (parcel of land ad-measuring 435 sq. yds.). In the circumstances, the parties entered into the Agreement whereby the Respondent agreed to yield possession of the subject property and in consideration for the same,



Appellant agreed to deliver 6% of the total built up area of the project to the Respondent. The Respondent also agreed to pay development or betterment charges proportionate to his 6% share that may be payable or levied by Land & Development Office, Delhi Development Authority and other Authorities.

9. In view of the Agreement, the Appellant sought withdrawal of the suit filed against the Respondent – Suit No.331/1989 captioned *Mohd. Amin v. Mohd. Iqbal* – and the same was dismissed as withdrawn by an order dated 25.02.1991.

10. The project – construction and development of the Multi Storeyed Group Housing Complex – was abandoned. However, the possession of the subject property was not returned to the Respondent.

11. The disputes between the parties essentially relate to the Respondent's right to reversion of the subject property, (plot of land ad-measuring 435 square yards) possession of which was yielded by the Respondent to the Appellant for development of the project.

12. Clause 10 of the Agreement is central to the said dispute and is set out below:

“10. That without prejudice to the aforesaid, it is hereby specifically agreed by and between the parties that if for any reasons, the aforesaid Multi Storeyed Group Housing Project is abandoned, the area of the plot measuring 435 Sq.Yd shall be reverted to the SECOND PARTY and this agreement shall become null and void. And the SECOND PARTY shall be free to use the said land according to its desire.

In case of abandonment of the project, the possession of the aforesaid area will be reverted to the SECOND PARTY. However, the SECOND PARTY shall keep harmless and indemnified the FIRST PARTY, if there has



been any financial liability arising out of the said reversion or incidental thereto”

13. The land was not reverted to the Respondent and this led to disputes between the parties. The Agreement contained an arbitration clause (Clause 19 of the Agreement) and the disputes between the parties were referred to arbitration.

ARBITRAL PROCEEDINGS AND IMPUGNED AWARD

14. Before the Arbitral Tribunal the Respondent claimed vacant possession of the subject property (plot ad-measuring 435 sq.yds., as earmarked in the site plan, situated at 268, Naseem Bagh, Jamia Nagar, Okhla, New Delhi) in terms of Clause 10 of the Agreement (Claim no.I). In addition, the Respondent claimed compensation and damages to the extent of ₹25,00,000/- (Rupees Twenty Five Lacs) for removing the construction existing on the subject property (Claim no.II) as well as costs and expenses for litigation (Claim no.III). The principal dispute that fell for consideration of the Arbitral Tribunal was whether the Respondent was entitled to reversion of the subject property and compensation for removal of the structure raised thereon. The relevant extract of the impugned award is set out below:

“70. In the wake of the above findings, the Tribunal makes the following Award:

- i) Claim No.I of the Claimants is allowed. The Respondents are hereby directed to redeliver to the Claimants, the possession of the disputed plot measuring 435 Sq.Yds, situated at 268, Naseem Bagh, Jamia Nagar, Okhla, New Delhi along with the constructions standing thereon as on 25.02.1991, as per Clause 10 of the Agreement, within thirty days herefrom.
- ii) In the event, the constructions standing on the disputed land, described hereinabove and evidenced by the Report of the Local Commissioner dated 04.03.1989 and the



photographs accompanying the same and submitted in Suit No.331 of 1989, are not in existence as on date, the Respondents would pay to the Claimants, a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) as the money value thereof, by way of compensation/damages. Claim No.II is allowed to this extent.

iii) If the amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) is payable in terms of Clause II, the Respondents would make the payment thereof to the Claimants, within 60 days herefrom.

vi) Costs of arbitration assessed at Rs.12,69,380/- (Rupees Twelve Lakhs Sixty Nine Thousand Three Hundred and Eighty Only) would be payable by the Respondents to the Claimants within 60 days herefrom.

v) Failing the payment of the money part of the Award within 60 days herefrom, the same would carry interest @18% per annum computed from beyond such 60 days, till the date of payment.”

15. The Appellant contested the claim on the ground that it was barred by limitation as well as on merits. On the basis of rival pleadings, the Arbitral Tribunal framed the following issues / broad points for determination:

- “I. Whether the reliefs claimed by the Claimants in the present reference are barred by Law of Limitation as contended by the Respondents? If no, to what relief(s) are the Claimants entitled?
- II. Whether the Respondents are entitled to any sum claimed by them by way of Counter Claim in the present reference? If yes, to what sum, are they entitled?
- III. Whether the parties are entitled to any interest on any amount determined by the



Tribunal to be payable to them? If yes, at what rate?

IV. Which of the parties is entitled to the cost of the present arbitration?

V. Are the parties entitled to any other relief or reliefs in justice, law or equity?”

16. The Arbitral Tribunal rejected the contention that the claim was barred by limitation and proceeded to examine the claims on merits. The Arbitral Tribunal found merit in the Respondent’s claim for reversion of the subject property and accordingly, allowed the said claim (Claim no.I). In addition, the Arbitral Tribunal also directed that if the structures raised by the Respondent on the subject land were not standing, the Appellant would pay compensation of a sum of ₹15,00,000/- (Rupees Fifteen Lakhs Only) and allowed the Respondent’s Claim no.II to the said extent. In addition, the Arbitral Tribunal also awarded costs assessed at ₹12,69,380/- (Rupees Twelve Lakhs Sixty-nine Thousand Three Hundred Eighty Only) in favour of the Respondent and against the Appellant. The monetary amounts were directed to be paid within a period of sixty days from the date of the impugned award, failing which the same would attract interest at the rate of 18% per annum computed for the period commencing after expiry of sixty days from the date of the impugned award till the date of payment.

17. The Appellant’s petition to set aside the impugned award was rejected by the learned Single Judge.

The present appeal

18. The Appellant has confined the challenge in the present appeal to three fronts.

18.1 First, that the Arbitral Tribunal had erred in not appreciating that the claims were barred by limitation. Mr. Anil Navriya, learned counsel appearing for the Appellant submits that the claim was admittedly beyond the period of limitation. However, the Arbitral Tribunal extended the benefit of Section 14(1) of the Limitation Act, 1963



(hereafter the *Limitation Act*) without any pleadings or particulars to establish the same. In any event, the award of compensation for the structures on the subject property was not the subject matter of earlier proceedings. Therefore, insofar as the claim of compensation is concerned, no benefit could be derived by the Respondent.

18.2 Second, he submits that the impugned award was vitiated by patent illegality. He further submitted that the Agreement did not contemplate any compensation for the structures in the event the project was abandoned. He submitted that it was obvious that all structures on the land on which the project was proposed to be developed would be demolished for the said purpose. Thus, it was obvious that the Respondent had concurred in demolishing of all the structure standing on the subject property.

18.3 Third, he submitted that the costs imposed are excessive and not warranted as the claims itself were required to be rejected.

19. In view of the above, the first question to be examined is whether the impugned award is vitiated by patent illegality on the ground that the Arbitral Tribunal had extended the benefit of Section 14(1) of the Limitation Act.

20. The Arbitral Tribunal accepted that the claims had been filed beyond the period of three years from the accrual of cause of action; however, concluded that the Respondent was entitled to the benefit of Section 14(1) of the Limitation Act in respect of the time spent by the Respondent in pursuing its claim in an execution proceeding.

21. The Arbitral Tribunal rightly held that by virtue of Section 43 of the A&C Act, the Limitation Act applies to arbitration. Thus, Section 14 of the Limitation Act would also be applicable. The Arbitral Tribunal noted that the following conditions were required to be satisfied for excluding the period spent in other proceedings by virtue of Section 14 of the Limitation Act:

- “I. The plaintiff/applicant has been prosecuting with due diligence, another civil proceeding.



- II. Such civil proceeding may be in a court of first instance or of appeal or revision.
- III. Such civil proceeding is against the same defendant/opposite party.
- IV. The proceeding related to the same matter in issue or for the same relief.
- V. The proceeding has been prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
- VI. If the contingencies in Clause I to V exist, the time during which the plaintiff/applicant has been pursuing the civil proceeding shall be excluded for computation of the period of limitation prescribed for any suit or application relating to the same matter in issue or for the same relief.”

22. Thereafter, the Arbitral Tribunal proceeded to examine whether the aforesaid conditions were satisfied in the instant case.

23. First of all, the Arbitral Tribunal found that the words ‘other cause of a like nature’ expanded the amplitude of Section 14 of the Limitation Act to also cover execution proceedings. The Arbitral Tribunal also referred to the decision of the Supreme Court in **Zafar Khan & Anr. v. Board of Revenue, UP & Ors.: 1984 (Supp) SCC 505** and held that the expression ‘other cause of a like nature’ ought to be read *ejusdem generis* with the expression ‘defect of jurisdiction’ and observed that other cause of like nature must be construed as something analogous to a defect of jurisdiction.

24. The Arbitral Tribunal also referred to the decision of the Supreme Court in **Raghunath Das v. Gokul Chand & Ors.: AIR 1958 SC 827** and on the strength of the said decision held that Section 14 of the Limitation Act is wide enough to cover execution proceedings. Finally, the



Arbitral Tribunal also examined the question whether the Respondent's pursuit of the execution proceedings for seeking reversion of the land was *bona fide*.

25. The Arbitral Tribunal noted that the Respondent had instituted execution proceedings on 19.07.1999 for securing the reversion of the subject property in terms of Clause 10 of the Agreement. The proceedings were premised on the basis that disposal of the suit on the basis of the Agreement would also entail an order for implementing the terms thereof. The Appellant had resisted the enforcement proceedings on two grounds. First, that there was no executable decree and second, that the project had not been abandoned.

26. The execution proceedings instituted by the Respondent were disposed of by an order dated 12.03.2004 passed by a learned Single Judge of this Court. The Court found that there was no executable decree and accordingly relegated the Respondent to other remedies. The said order was carried in appeal before the Division Bench of this Court. The Division Bench did not concur with the order of the learned Single Judge and by an order dated 18.11.2005 remanded the matter for decision afresh.

27. In the second round, the learned Single Judge held that the Respondent was entitled to warrant of possession of the subject property and directed issuance of such warrants by an order dated 30.11.2007. The Appellant appealed the said order before the Division Bench of this Court. In the second round the learned Division Bench agreed with the view that the dismissal of the suit as withdrawn did not result in an executable decree. Accordingly, appeal was allowed by the Division Bench by an order dated 15.04.2009.

28. The Arbitral Tribunal held that in view of the above sequence of events, it was apparent that the Respondent had pursued the execution proceedings in the *bona fide* belief that the same would result in remedying his grievance. The fact that there was a difference of opinion between Courts with regard to the execution proceedings, rendered it



impossible to conclude that the Respondent lacked any *bona fide*, good faith and diligence in prosecuting the execution proceedings. The Arbitral Tribunal held that *“additionally, no default, negligence, inaction or slackness in efforts on the part of the Claimants and their predecessor in interest as well, is decipherable throughout the course of the execution proceedings spanning over two decades in their bid to regain the possession of the disputed land under Clause 10 of the Agreement”*.

29. We are unable to fault the impugned award to the extent that the benefit of Section 14 of the Limitation Act is extended in the present case.

30. The material facts to exclude the period were available on record. The Appellant was also provided full opportunity to pursue its defence of limitation.

31. It is relevant to refer to Section 3(1) of the Limitation Act, which reads as under:

“3. **Bar of limitation.** – (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.”

32. It is apparent from the plain language of Section 3(1) of the Limitation Act that the Court is required to dismiss any suit or appeal or any application instituted or filed beyond the period of limitation even though such defence may not have been set up. The opening words of Section 3(1) of the Limitation Act, namely, *‘Subject to the provisions contained in Sections 4 to 24 (inclusive)’* indicate that the Court is also required to consider the said provisions in determining whether the suit, appeal or application is barred by limitation. The plain language of Section 3(1) of the Limitation Act does indicate that a Court is required to make necessary inquiry regarding limitation notwithstanding the defence raised. It is also apparent that the question whether Section 14 of the Limitation Act is



applicable would necessarily have to be a part of the said determination.

33. It is relevant to note that language of Section 5 and Section 14 of the Limitation Act is materially different. Whilst, Section 14 of the Limitation Act applies to exclusion of certain period for calculating the period of limitation, Section 5 of the Limitation Act provides for extension of the period of limitation for an appeal or application. The same is predicated on the applicant satisfying the Court that it had sufficient cause for not preferring an appeal or not making any application within the specified period. Section 14 of the Limitation Act does not require a specific application if the material facts to consider its applicability are on record.

34. In the present case all facts as necessary to consider whether the Respondent was entitled to exclusion of the period spent in pursuing the execution proceedings, in terms of Section 14 of the Limitation Act are on record. Thus, we are unable to accept that the impugned award to the extent it directs reversion of the subject property to the Respondent, is vitiated by patent illegality

35. We accordingly reject the contention that the impugned award is vitiated on the ground of patent illegality in respect of the award in respect of Claim no.(I).

36. Insofar as Claim no.(II) is concerned, it is the Appellant's contention that the Respondent had not pursued any claim for compensation in the execution proceedings and therefore the said claim would be barred by limitation as it was raised for the first time after the execution proceedings were dismissed. The said question requires examination.

37. Issue notice limited to the issue of award in respect of Claim nos.(II) and (III).

38. The learned counsel appearing for the Respondent accepts notice.

39. Reply, if any, be filed within a period of two weeks



from date. Rejoinder, if any thereto, be filed before the next date of hearing.

40. In the meanwhile, the impugned award to the extent it directs payment of compensation of ₹15,00,000/- and costs of ₹12,69,380/- is stayed.

41. We clarify that the Respondent is not precluded from enforcing the impugned award to the extent of recovering the possession of the subject property.

42. List on 27.05.2024.”

16. As is apparent from the above, the notice in the present appeal was confined to the impugned award in respect of Claim no.2 and 3 – that is, the award of damages of ₹15,00,000/- on account of cost of building/ construction standing on the subject land at the time of the Agreement quantified at ₹15,00,000/- and cost of arbitration quantified at ₹12,69,380/-.

17. Notwithstanding the above, Mr Jauhar, the learned counsel appearing for the appellant sought to once again re-agitate his challenge to the impugned award in respect of Claim no.1. He contended that the reference to arbitration was invalid as it was beyond the period of limitation and his contentions have been misunderstood. He earnestly contended that there were two periods of limitation. One for making a claim, which would end with invocation of the arbitration. And second, the period within which the parties could initiate the proceedings if the arbitrator was not appointed. He submitted that in the present case there is no explanation for the delay in appointment of the arbitrator. He also sought to refer to the decision in the case of ***Bharat Sanchar Nigam Limited and Anr. v. Nortel Networks India Private Limited: (2021) 5***



SCC 738 and Arif Azim Company Limited v. Aptech Limited.: 2024 SCC OnLine SC 215.

18. The aforesaid contentions are unmerited in the given facts of this case.

19. In the present case, the respondent had instituted execution proceedings on 19.07.1999 seeking reversion of the subject land in terms of Clause 10 of the Agreement. According to the respondent, he had become aware in the year 1999 that the appellant and the developer had abandoned the project. There is no cavil that if this was so, the respondent could have invoked arbitration on the said date instead of filing the execution proceedings for reversion of the subject land. However, the respondent had filed an execution petition seeking to enforce the order, whereby the suit instituted by the appellant was disposed of by binding the parties to the terms of the Agreement.

20. In ***Panchu Gopal Bose v. Board of Trustees for Port of Calcutta: (1993) 4 SCC 338***, the Supreme Court had explained that invoking the arbitration would be akin to instituting a suit. Thus, the question whether any claim is barred by limitation would require to be determined by examining as to what would have been the period of limitation if there was no arbitration agreement between the parties.

21. In the present case, the respondent had, in fact, instituted the proceedings for reversion of the subject land by filing an execution petition on 19.07.1999 (being Execution Petition No. 191/1999). The respondent's action was premised on the terms of this Court's order,



which was in turn passed on the basis of the Agreement.

22. The execution proceedings were dismissed by the learned Single Judge on 12.03.2004. The respondent appealed the said decision before the Division Bench of this Court. The Division Bench noted that the suit instituted by the appellant was disposed of pursuant to a joint application filed under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 and the said order recorded as follows: *“I direct that parties shall be bound by the terms of the compromise Ex.P2”*.

23. In view of the above, the Division Bench reasoned that the decision of the Executing Court holding that Clause 10 of the Agreement was a new Agreement did not appear correct. Accordingly, the Division Bench passed an order dated 18.11.2005, remanding the matter and restoring the Execution Petition (Ex. No.191/1999) before the learned Single Judge.

24. By an order dated 30.11.2007, the Executing Court allowed the execution proceedings and granted the relief as sought for. However, on an appeal preferred by the appellant, the Division Bench set aside the said order by an order dated 15.04.2009. The respondent preferred a Special Leave Petition before the Supreme Court against the said order dated 15.04.2009 passed by the Division Bench.

25. Apparently, the Special Leave Petition was granted and it was converted to civil appeal (being Civil Appeal No.6936/2011). In the said appeal, both the parties jointly requested that the disputes arising from the Agreement be referred to arbitration. The Supreme Court



acceded to the said request. Thus, the appellant's claim that the reference was invalid, is clearly insubstantial. After having persuaded the Supreme Court to refer the disputes to arbitration, it is not open for the appellant to now question the validity of the reference.

26. It is material to note that the appellant had preferred a Special Leave Petition (Civil) Diary No. 32370/2024 captioned ***Kulan Rukhsana Amin and Ors. v. Khalid Iqbal and Ors.*** before the Supreme Court, seeking to appeal the order dated 25.04.2024 of this Court, whereby the appellant's challenge to the impugned award and the impugned order in respect of claim no.1, was rejected. The Supreme Court has since dismissed the said SLP by an order dated 30.09.2024. Thus, insofar as the appellant's challenge to the impugned award in respect of Claim no.1 is concerned, the same stand concluded.

27. Insofar as the Claim nos.2 and 3 are concerned, it is not disputed before us that the construction as raised on the subject land had been demolished. The only question raised by the appellant was regarding the compensation awarded in respect of the said construction. Concededly, the respondent had not placed any evidence on record to establish the cost of such construction. The learned counsel appearing for the respondent had fairly conceded that the amount awarded against Claim no.2, was without any evidence and thus, may be set aside.

28. Insofar as the cost awarded by the Arbitral Tribunal is concerned, we find that the respondent had substantially succeeded before the Arbitral Tribunal and therefore, we find no ground to interfere with the award of cost. In view of the above, the impugned award and the



2024:DHC:8912-DB



impugned order to the extent that the Arbitral Tribunal has allowed the respondent's Claim no.2 and awarded damages quantified at ₹15,00,000/- plus interest is concerned, the same is set aside.

29. The appeal is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SACHIN DATTA, J

NOVEMBER 20, 2024
RK