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Jayant D. Kandarkar
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 533 OF 2019
IN
NOTICE OF MOTION NO. 1015 OF 2019
(NOTICE OF MOTION (L) NO. 2015 OF 2018)
IN
REVIEW PETITION (L) NO. 13 OF 2018
IN
ARBITRATION APPLICATION NO. 57 OF 2011
WITH
APPEAL NO. 535 OF 2019
IN
REVIEW PETITION (L) NO. 13 OF 2018
IN
ARBITRATION APPLICATION NO. 57 OF 2011

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Antikeros Shipping Corporation having its office at 80, Broad Street, Monrovia Liberia, C/o Eletson Corporation, 118 Koloktroni, St. Piraeus, Greece .. Appellant

Versus

Adani Enterprises Limited, a Company incorporated under the Companies Act, 1956 having its office at 7th Floor, Eagle's Flight, Suren Road, Andheri (East), Mumbai 400 093. .. Respondent

....

Mr. Prashant Pratap, Senior Advocate a/w Mr. Nishaan Shetty & Mr. Mustafa Lokhandwala i/by Bose & Mitra & Co. for Appellant.

Mr. Vikram Nankani, Senior Advocate a/w Mr. Shailesh Poria & Ms.Ria Dalwani i/by Economic Law Practice for Respondent.

....

CORAM: PRADEEP NANDRAJOG, CJ. &
SMT. BHARATI DANGRE, J.

RESERVED ON : FEBRUARY 11, 2020.
PRONOUNCED ON : FEBRUARY 18, 2020

JUDGMENT [PER PRADEEP NANDRAJOG, C.J.]:

1. On 28th February 2008 an agreement was entered into between the appellants (A company incorporated under the Laws of Liberia and thereby outside the territorial jurisdiction of India) and the respondent, a Company incorporated in India. Under the agreement, the respondent, was to supply bunker fuel to the appellants' vessel M.T. Antikeros at Mudra Port. On 5th March

2008 the respondent supplied the fuel. 12 days latter, on 17th March 2008 a dispute arose between the parties regarding the quantity and quality of the fuel supplied. On 3rd June 2008 the appellant raised a demand towards damages in sum of $1,040,400.00. The respondent denied liability vide reply dated 25th August 2008 and raised a Counter-Claim in sum of $90,325.00 towards the adjusted cost of the fuel which was offloaded in United Arab Emirates where the vessel was diverted. The agreement dated 28th February 2008 envisaged resolution of the dispute at Mumbai as per the Arbitration and Conciliation Act, 1996 (**"Act")** before a Tribunal comprising three Arbitrators. One each to be nominated by the contracting parties and the 3rd to be appointed by the said two Arbitrators.

2. On 19th March 2009 the appellant invoked the arbitration clause and on 21st March 2009, with a view to save arbitration

costs, proposed a sole Arbitrator. There was no response. On 13th May 2009 the appellant appointed Mr.R.S.Cooper as its Arbitrator and called upon the respondent to do likewise. The respondent failed to respond to appoint an Arbitrator. On 28th February 2011 the appellant filed Arbitration Application No. 57/2011 under Section 11 of the Act in this Court praying that the Arbitrator on behalf of the respondent be appointed. In spite of being served the respondent did not appear and thus on 21st April 2011 a learned Single Judge of this Court disposed of Arbitration Application No. 57/2011 and on behalf of respondent appointed Ms. J.K.Bhatt as an Arbitrator. Mr.R.S.Cooper and Ms.J.K. Bhatt appointed Mr.T.V.Shanbhag, the Presiding Arbitrator. The Arbitral Tribunal came to be constituted.

3. On 5th July 2012 the appellant filed its Statement of Claim before the Arbitral Tribunal. On 15th October 2012 the

respondent filed an application before the Arbitral Tribunal seeking disclosure of documents by the appellant. On 23rd October 2012 the respondent filed its Statement of Defence and raised a Counter-Claim before the Arbitral Tribunal and while doing so raised no objection to the constitution of the Arbitral Tribunal or its jurisdiction to decide the disputes.

4. On 1st February 2013 the respondent filed an application before the Arbitral Tribunal challenging its jurisdiction on the plea that the appellant being a company incorporated outside India the High Court had no jurisdiction under Section 11 of the Act to appoint an Arbitrator because it was a case of an international commercial arbitration.

5. On 3rd July 2013 the Arbitral Tribunal rejected the respondent's challenge to its jurisdiction holding that the Tribunal

had been constituted by an order of this Court and if the respondent was aggrieved by the order dated 21st April 2011 passed in Arbitration Application No. 57/2011 it could have challenged the said order before an appropriate forum.

6. On 19th September 2013 the Arbitral Tribunal settled the issues which arose for determination. Parties proceeded to lead evidence, both oral and documentary.

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7. Recording of evidence concluded on 26th April 2018. 13th, 14th, 20th and 21st July 2018 were the dates fixed by the Arbitrarily Tribunal for the parties to commence oral arguments which were rescheduled to 20th, 21st, 27th and 28th July 2018 as requested by the respondent. The appellant's counsel commenced arguments on 20th July 2018 and continued on 21st July 2018. The appellant's counsel concluded oral arguments on merits of the

dispute on 27th July 2018, on which date respondent's counsel opened his arguments challenging the jurisdiction of the Tribunal. Hearing scheduled for 28th July 2018 was cancelled when 10th, 11th, 25th and 27th August 2018 notified as the dates for respondent's counsel to conclude submissions. On 3rd August 2018 the respondent filed an application seeking recall of the order passed by the Tribunal on 3rd July 2013, as also the order dated 19th September 2013, by which order issues were settled. The Tribunal rejected the said application on 10th August 2018. Counsel for the respondent commenced submissions on merits which remained part-heard and got the hearing cancelled for 11th August 2018. On 13th August 2018 the Tribunal directed both the parties to agree to the additional day of hearing being fixed prior to 25th August 2018. On 21st August 2018 the respondent's counsel informed the Tribunal that the respondent intended to challenge the order dated 21st April 2011 passed by the learned Single Judge appointing Ms.

J.K. Bhatt as an Arbitrator on behalf of the respondent. Appellant opposed the application for hearing to be postponed. The Tribunal rejected the respondent's application seeking postponement and fixed 25th and 27th August 2018 for final hearing. On 25th August 2018 respondent's counsel sought an adjournment informing that the respondent had sought review of the order dated 21st April 2011 passed by this Court. On 28th August 2018 the Tribunal rejected the respondent's application dated 3rd August 2018 and refused to recall its order dated 3rd July 2013 and 19th September 2013. On 30th August 2018 the respondent filed a petition seeking review of the order dated 21st April 2011 passed by this Court. It also sought 7 years delay in filing the Review Application to be condoned. On 22nd March 2018 the impugned order was passed condoning delay of 7 years in seeking review of the order dated 21st April 2011 and simultaneously recalling the said order appointing Ms.J.K. Bhatt

as an Arbitrator on behalf of the respondent.

8. Torpedo shot by the respondent on 30th August 2018 hit its target. The Arbitral Tribunal came to be hit, in that, its constitution was blasted by the torpedo fired by the respondent.

9. The Notice of Motion (L) No. 2015 of 2018 praying that 2680 days delay in filing Review Petition (L) No. 13/2018 and the Review Petition have been disposed of by the learned Single Judge. Both have been allowed. The two appeals challenge the composite impugned order, one appeal challenging the order in so far Notice of Motion (L) No. 2015/2018 has been allowed condoning 2680 days delay in seeking review of the order dated 21st April 2011 and the other Appeal challenging the order in so far review petition No. 13/2018 has been allowed.

10. After noting the afore-noted facts, the learned Single Judge has noted that the appellant was admittedly located outside India and therefore, the Arbitration proceedings would be an international commercial arbitration as defined under Section 2(1)(f) of the Act, according to which, the Chief Justice of this Court or his designate has no jurisdiction to appoint an Arbitrator. Subject matter of the application being an international commercial arbitration the appropriate Fora was the Supreme Court of India and thus, the order dated 21st April 2011 was a nullity and is *non-est.* The learned Single Judge has noted the judgments reported as (2015) 7 SCC 690 *Zuari Cement Limited vs. Regional Director & Ors.,* (1990) 1 SCC 193 *Sushil Kumar Mehta vs. Gobind Ram Bohra (Dead)*, (2005) 7 SCC 791 *Harshad Chiman Lal Modi vs. DLF Universal Ltd. & Anr.,* 1995 Supp (3) SCC 249 *State of Orissa & Ors. vs. Brundabadn Sharma & Anr.,* (2006) 5 SCC 501 *Jain Studios Ltd. vs. Shin Satellite Public Co. Ltd.*, Review Petition

No.2 of 2013 in Arbitration Appeal No. 6 of 2007 in Arbitration Application No.44 of 2003 *State of Maharashtra vs. Hindustan Construction Company Ltd.*, 2016 (3) Mh.L.J 476 *Soham Shah vs. Indian Film Company Ltd. & Anr.*, (2005) 13 SCC 777 *Kapra Mazdoor Ekta Union vs. Birla Cotton Spinning and Weaving Mills Ltd. & Anr*. (1996) 4 SCC 178 *Urban Improvement Trust, Jodhpur vs. Gokul Narain (Dead) by Lrs. & Anr*. and 2012 (4) Mh.L.J. 771 *Shaikh Mohammad Murghay & Anr vs. State of Maharashtra & Ors*. to hold that an order passed by a Court lacking jurisdiction is a nullity and is *non-est* order and where a Court lacked inherent jurisdiction parties cannot confer jurisdiction by consent. Such an order was liable to be recalled. The question of limitation would not arise in such a situation. The learned Single Judge has noted various decisions which draw a distinction between a substantive review and procedural review with further decisions that a procedural review is inherent in every

Court. Holding in paragraph 12 that: '*having expressly held that I am only limiting myself to whether or not the order was passed without necessary jurisdiction under the Act',* the learned Single Judge has held in paragraphs 12 and 13 of decision as under:

> *"12. Having expressly held that I am only limiting myself to whether or not the Order was passed without necessary jurisdiction under the Act, I do not agree with Mr. Pratap's argument that the present Review Petition, being a substantial Review Petition on merits is not maintainable. Firstly, I do not agree that I am at present carrying out a substantive review. Secondly, Mr. Pratap's reliance on Rosy Blue (India) Pvt. Ltd. vs. Orbit Corporation Ltd. (supra) and Shiv Hare Builders vs. Executive Engineer, Provincial Division, Public Works Department & Ors. (supra) would also be of no assistance to him as I have already held that I am restricting myself to a procedural review and not a substantive review. The distinction between a procedural review and substantive review has in fact been recognized by both Ld. Single Judge(s) in their decisions sought to be relied upon by Mr. Pratap. Neither one of the two decisions hold that this Court will be divested of its powers to procedurally review an order admittedly passed without jurisdiction. I believe this Court is not prohibited from exercising its power of review to prevent miscarriage of justice or to correct grave and palpable errors committed by it. This Court's*

power in this regard is plenary. This Court, being a Court of Record, has a duty to itself to keep all its record in accordance with law. Hence, this Court has a duty and the necessary power to correct an earlier erroneous order. This exercise of procedural review will prevent the miscarriage of justice and correct palpable errors which may have been previously committed. In this context, I draw support from the decisions in Kapra Mazdoor Ekta Union vs. Birla Cotton, Spinning and Weaving Mills (supra), M.M. Thomas vs. State of Kerala & Anr. [(2000) 1 SCC 666], Shivdeo Singh & Ors. vs. State of Punjab & Ors. [AIR 1963 SC 1909] and State of Maharashtra vs. Hindustan Construction Company Ltd. (supra).

13. It is also Mr. Pratap's argument that orders passed under Section 11 are final and no intervention in the arbitral proceedings once commenced is permissible. However, this argument fails the test of scrutiny in view of the decisions rendered in Jain Studios Ltd. vs. Shin Satellite Public Co. Ltd. [(2006) 5 SCC 501], State of Maharashtra vs. Hindustan Construction Company Ltd. [Review Petition No.2 of 2013 in Arbitration Appeal No. 6 of 2007 in Arbitration Application No.44 of 2003], Soham Shah vs. Indian Film Company Ltd. [2016 (3) Mh.L.J 476] and Roptonal. I have already noted above that constitutional courts, being courts of record, have the necessary jurisdiction and power to recall their own orders. This jurisdiction and power is inherent by virtue of the fact that they are superior courts of record. This has been recognized in several

judgments of the Apex Court [see Shivdev Singh & Ors. vs. State of Punjab & Ors. AIR 1963 SC 1909 and M.M. Thomas vs. State of Kerala & Anr. (2000) 1 SCC 666]. In view thereof, Mr. Pratap's reliance on N.S. Atwal vs. Jindal Steel & Power Ltd. (supra) would not be of any assistance to him as in that case, the Ld .Single Judge carried out a substantive review, which according to the Division Bench was without jurisdiction. The facts in the case of N.S. Atwal vs. Jindal Steel & Power Ltd. (supra) are clearly distinguishable from the present matter."

11. The reasoning of the learned Single Judge could be stated thus:

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(a) That the learned Single Judge was exercising the power of procedural review which is inherent and plenary in every Court as distinct from the power of a substantive review.

(b) Being a Court of record the Court has a duty to itself to keep all its record in accordance with law and this exercise of procedural review will prevent the miscarriage of justice and correct palpable errors which have been committed.

12. At the hearing of the two appeals, a preliminary objection to the maintainability was raised by Mr. Vikram Nankani learned Senior Counsel for the respondent. It was argued that under the Act only such appeals are maintainable against orders passed which are enumerated in Section 37 (1) & (2) of the Act. As per learned Senior Counsel, the impugned order having been passed by the learned Single Judge in exercise of the inherent review jurisdiction would not be appealable.

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13. Mr. Prashant Pratap, learned Senior Counsel for the appellant urged that the appeal would be maintainable for the reason the impugned order has not been passed in exercise of the power of review under the Act and as recorded in the impugned order it has been passed in exercise of the inherent review jurisdiction and thus appeal would lie there against under Rule 7 of Order XLVII of the Code of Civil Procedure.

14. We have troubled the reader of our opinion by recording the backdrop facts and the nature of the order passed by the learned Single Judge for the reason the law is clear. Where a Court acts under an appealable provision of law and passes an order, a party is not deprived of the right of appeal, though on the facts the order should not have been passed under that provision. The judgments reported as 44 Mad.919 *Muthiah Chekttiar vs. Govinddas Krishnadas*, (1947) 1 M.L.J. 292 *Somasundaramma vs. Seshagiri Rao*, AIR 198 Mad.245 *Oor Nayakkan @ Krishnaswami Naidu & Ors.*, AIR 1962 Ker 17 *Parvathi Pillai & Ors. vs. Kuttan Pillai*, and 1882 ILR 9 P.C.48 *Hurriash Chunder Chowdhry vs. Kalisundery Debi* may be referred to in said regard.

15. The impugned order having been passed in exercise of the review jurisdiction by the learned Single Judge, we hold that both appeals are maintainable.

16. The learned Single Judge has recognized the fact that under the Act no power of review is vested. Though not specifically recognized, implicit in the impugned order is the recognition of the fact by the learned Single Judge that unlike the Supreme Court which is vested with a power of review under Art. 137 of the Constitution of India, High Courts are not vested with any power of review under the Constitution. The learned Single Judge has recognized the difference between a substantive review and a procedural review and has held that the power of substantive review must be vested in a Court by a Statute and in the absence of such power vested, no substantive review can be undertaken by the Court. But, a procedural review inheres in every Court and Tribunal to review its decision and if a procedural fault is found, to undo the same.

17. The learned Single Judge has held that he is exercising procedural review jurisdiction, but we find from the impugned judgment no reasoning as to why the learned Single Judge has held that he is exercising procedural review jurisdiction.

18. Matter of procedure would be such as the opposite party not being served and being proceeded ex-parte and a decision being pronounced. An application bringing to the notice of the Court that the party was not served and the Court proceeded ex-parte erroneously, would be an instance of the Court exercising procedural review jurisdiction. Similarly, a case being adjourned on a date notified to the parties but erroneously noted by the Registry of the Court to be listed on an earlier date and as a result being shown in the cause list on a wrong date and the matter being dismissed in default, on an application filed to correct the error, would be a case of procedural review for the reason the error

relates to one of procedure.

19. Where a Court takes wrong/erroneous seisin of a matter and proceeds to pass an order on merits, an application filed pleading that the Court had no jurisdiction to take cognizance of the matter would relate to a substantive review being sought because the pleadings constituting the review would relate to the substance of the nature of lis brought before the Court.

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20. The learned Single Judge has used a second arrow in the quiver. The learned Single Judge has held that being a Court of record, it is the duty of the Court to correct its record. Though not mentioned, the learned Single Judge has obviously kept Art. 215 of the Constitution of India in mind.

21. Whilst it may be true that Constitutional Courts being

Courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior Courts of record as has been recognized in several judgments such as AIR 1963 SC 1909 *Shivdev Singh vs. State of Punjab,* AIR 1967 SC 1 *Naresh Shridhar Mirajkar vs. State of Maharashtra,* (2000) 1 SCC 666 *M.M. Thomas vs. State of Kerala &* 2018 SCC OnLine SC 2737 *Municipal Corporation of Greater Mumbai vs. Pratibha Industries Ltd.,* but for the reasons herein after recorded, said principle of law cannot be applied in the instant case for the reason when the learned Single Judge disposed of the Arbitration Application on 21st April 2011 he was not exercising the power of a Court because the power being exercised was that of a delegate of the Chief Justice of this Court.

22. A word by way of clarification needs to be penned concerning the decisions of the Supreme Court in *Pratibha*

Industries' case (supra). *Prathibha Industries* had offered bids as per tender notice dated 19th September 2008, clause 13 of the General Conditions of Contract specifically recorded that no arbitration was allowed and in case of disputes or differences the matter would be referred to the Municipal Commissioner of Greater Mumbai whose decision will be final. Notwithstanding that, *Pratibha Industries* filed an application under Section 9 of the Act before the Bombay High Court praying for an interim injunction to restrain the Corporation from invoking the Bank Guarantees. Taking cognizance of the same on 23rd June 2017 granting ad-interim injunction next date fixed was 27th June 2017 when the learned Single Judge of this Court proceeded to record that on the instructions of the Assistant Engineer of the Corporation, who was present in Court, Mr. Bharucha Senior Counsel for the Corporation stated that the Corporation has no objection to the suggestion made by Mr. Makhija the learned

Counsel for *Pratibha Industries* that Justice V.M. Kanade (Retd.) be appointed as the Sole Arbitrator. In view of such statement Justice V.M.Kanade (Retd.) was appointed as a Sole Arbitrator to decide the disputes between the parties arising out of tender notice dated 19th September 2008. On 3rd July 2017 a Notice of Motion was filed on behalf of the Corporation pointing out to the Court that the agreement between the parties barred Arbitration and hence the prayer that the order dated 27th June 2017 be recalled. By an order dated 12th September 2017, referring to the applicable clause of the General Conditions of Contract the learned Single Judge observed that there being no arbitration clause at all, but-in-house proceedings, which could be taken at the behest of the parties, and this being, recalled the order appointing Justice V.M. Kanade (Retd.) as the Sole Arbitrator. Appeal filed under Section 37 of the Act by *Pratibha Industries* succeeded before the Division Bench on the reasoning that there being no power of

review vested in the Court under the Act, the review application filed was not maintainable. The decision of the Division Bench was overruled by the Supreme Court on the reasoning that a Court of record has inherent jurisdiction to correct erroneous orders. Suffice it to record that the decision of the Supreme Court in *Pratibha Industries'* case was dealing with a situation where the learned Single Judge had exercised power of a Court because it was passed in an application filed under Section 9 of the Act.

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23. Prior to the amendment of the Act by the Arbitration & Conciliation (Amendment) Act 2015 brought into force with effect from 1st January 2016 when in sub-section 4, 5 & 6 of Section 11 of the Act the words *'the Chief Justice or any person or institution designated by him' wherever* they occur were replaced by the words *'the Supreme Court or, as the case may be, the High Court or any person or institution designated by such*

Court', the position was that under the Act the procedure for appointment in case of sub-section 3 being applicable was to file an application before the Chief Justice of a High Court or any person or institution designated by him, in a case of domestic arbitration and before the Chief Justice of India or any person or institution designated by him in International Commercial Arbitration.

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24. In the decision reported as (2005) 8 SCC 618 *S.B.P. & Co. vs. Patel Engineering Ltd. & Anr.*, a 7-Judge Bench of the Court held that the power under Section 11 of the Act was a judicial power.

25. Though a judicial power, the power under Section 11, prior to the Act being amended with effect from 1st January 2016 was not the power vested in the Court, but vested in the Chief Justice

or his delegate. Power under Section 9 and Section 34 of the Act is in the Court, and the Court would be as defined under clause (e) of Sub-section 1 of Section 2 as it then exited in the Act. In the decision reported as (2015) 1 SCC 32 *State of West Bengal & Ors. vs. Associated Contractor,* in paragraphs 16 and 17 the Supreme Court noted that '*it is obvious that section 11 applications are not to be moved before the* ***Court*** *as defined but before the Chief Justice either of the High Court or of the Supreme Court as the case may be, or there delegates.*'..... '*the decision of the Chief Justice or his designate, not being the decision of the Supreme Court or the High Court, as the case may be, has no precedential value, being a decision of a judicial authority which is* ***not a Court of record*** *'.*

26. Thus, the impugned decision in so far it uses the arrow in the quiver by relying upon decisions noting jurisdiction and power

of Constitutional Courts, being Courts of record, has used an arrow which was not available to be used on the bow.

27. We therefore hold that the learned Single Judge had no jurisdiction to entertain the petition seeking review of the order dated 21st April 2011.

28. The remedy of the respondent was to challenge the said order before the Supreme Court by filing a petition under Art. 136 of the Constitution of India for the reason no appeal lies against an order under Section 11 of the Act as the Act stood when the order was passed.

29. We note that Mr. Vikram Nankani learned Senior Counsel for the respondent had argued that an order passed on an application seeking review of an earlier order, if grants the review

and the result is an application under Section 11 of the Act being dismissed, the earlier order merges in the latter order and it has to be treated that the application under Section 11 has been dismissed and therefore the instant appeals are not maintainable on the principle of merger.

30. This argument overlooks the fact that, as held in the decisions which we have noted in paragraph 14 above, the impugned order has to be read as it is to find what was the source of the power used to pass the order. The source of the power admittedly used by the learned Single Judge is the inherent power of a Court of record to correct its errors within the realm of procedural review, and this we have already dealt herein above.

31. The impugned judgment has a reasoning which is rolled over with respect to the issue of 2680 days delay to be condoned.

The learned Single Judge has held that by acquiescence and/or by consent jurisdiction cannot be conferred on a Court or an authority having no jurisdiction to take cognizance of a matter and because the learned Single Judge was exercising procedural review jurisdiction to correct a wrong by a Court of record, the issue of delay was irrelevant. Therefore, the learned Single Judge has not dealt with the sufficiency of the cause shown in the pleadings in the Notice of Motion (L) No. 2015 of 2018.

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32. For the reasons above, holding that it was not a case of procedural review and much less by a Court of record inasmuch as the order review whereof was prayed for was passed by the delegate of the Chief Justice of this Court, we hold that in formally condoning the delay on the reasoning given, the impugned order is vitiated when it proceeds to condone the delay by not considering whether sufficient cause was shown to condone the

delay of 2680 days in seeking review of the order dated 21st April 2011.

33. Whilst it may be true that an order passed in a lis or an issue which cannot be taken cognizance of by a Court or an authority is void and non-est, but that does not mean that a party can sleep over its rights and participate in further proceedings and one fine day approach the Court or the authority to rectify the error. In cases where a party was unaware of an order passed against it or was not aware of a fact which if brought to the notice of the Court or the authority would have resulted in the Court or the authority having no jurisdiction, in said situations alone the issue of delay and laches would become immaterial for the reason the party concerned would have approached the Court or the authorities at the first available opportunity to it to question the order which lacked jurisdiction.

34. In the instant case the respondent knew about the order dated 21st April 2011 when the Arbitral Tribunal gave notice to it and the appellant filed its Statement of Claim on 5th July 2012. On 15th October 2012 the respondent filed an application before the Arbitral Tribunal seeking disclosure of documents by the appellant followed by filing its Statement of Defence and raising a Counter-Claim on 23rd October 2012. On 1st February 2013 the respondent challenged the jurisdiction of the Tribunal on the plea that the appellant being a company incorporated outside India the order under Section 11 of the Act was a nullity because it was a case of an International Commercial Arbitration. On 3rd July 2013 the Arbitral Tribunal rejected the challenge to its jurisdiction and the respondent kept quiet. It participated in the arbitration proceedings till when after evidence was led by both parties and counsel for the appellant concluded submissions and the counsel

for the respondent opened arguments in reply and after seeking adjournments from the Tribunal filed the review petition on 30th August 2018. It needs no rocket science for anyone to infer that probably the respondent got a premonition that it might lose. The members of the Arbitral Tribunal charged and were paid daily hearing fee. The counsel engaged by the appellant were also paid their fee. The respondent knew of the expenditure being incurred by the appellant. We therefore hold that the respondent failed to show sufficient cause entitling it to 2680 days delay in seeking review of the order dated 21st April 2011 to be condoned.

35. Both appeals are allowed. Impugned order dated 22nd March 2018 is set aside. Notice of Motion (L) No.2015 of 2018 assigned Notice of Motion No. 1015 of 2019 after disposal whereof is dismissed and so is the Review Petition (L) No.13 of 2018. The torpedo fired by the respondent is declared to be a dude and it sinks without hitting its target.

36. The appellant would be entitled to costs incurred before the learned Single Judge as also in the instant appeals which we quantify at ₹ 5 lakhs.

SMT. BHARATI DANGRE, J. CHIEF JUSTICE

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