



-: 1 :-

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 08TH DAY OF JANUARY, 2021

PRESENT

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MR. JUSTICE N.S.SANJAY GOWDA

M.F.A. No.4502/2020 (AA)

BETWEEN:

M/S. SERVE AND VOLLEY OUTDOOR
ADVERTISING PVT. LTD.,
HAVING ITS REGISTERED OFFICE AT
NO.110, ANDREWS BUILDING,
M.G. ROAD, BANGALORE - 560 001,
REPRESENTED BY ITS VICE PRESIDENT
HEAD-LEGAL RAJASHEKAR N.M.

... APPELLANT

(BY SMT. JAYNA KOTHARI, SENIOR COUNSEL FOR SRI ROHAN
KOTHARI, ADVOCATE)

AND:

1. BRUHAT BENGALURU MAHANAGARA PALIKE
THROUGH ITS COMMISSIONER,
N.R. SQUARE,
BANGALORE - 560 002.

2. SRI V.N. RAVINDRA,
DISTRICT JUDGE (RETD.,)
ARBITRATION CENTRE-KARNATAKA
(DOMESTIC AND INTERNATIONAL),
BANGALORE - 560 001.

... RESPONDENTS

THIS MFA IS FILED UNDER SECTION 37(1)(C) OF THE
ARBITRATION AND CONCILIATION ACT, 1996 READ WITH RULE
11 OF THE HIGH COURT OF KARNATAKA (PROCEEDINGS
BEFORE THE COURTS) RULES, 2001 PRAYING THIS HON'BLE
COURT TO: a) CALL FOR THE ENTIRE RECORDS PERTAINING TO
A.S.No.25/2014 DECIDED BY THE LD. VI ADDITIONAL CITY

CIVIL AND SESSIONS JUDGE, BANGALORE (CCH-11) VIDE FINAL ORDER AND JUDGMENT DATED 10.06.2020 (ANNEXURE-A); b) SET ASIDE THE IMPUGNED FINAL JUDGMENT AND ORDER DATED 10.06.2020 PASSED BY LD. VI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE (CCCH-11) IN A.S.NO.25/2014 (ANNEXURE-A), DISMISSING THE SUIT FILED BY THE PLAINTIFF UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996.

THIS APPEAL BEING HEARD AND RESERVED ON 09/12/2020 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **NAGARATHNA J.**, THROUGH VIDEO CONFERENCE PRONOUNCED THE FOLLOWING:

J U D G M E N T

The appellant herein was the plaintiff in A.S.No.25/2014. The said suit was filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Arbitration Act, 1996" for the sake of brevity), seeking setting aside of the arbitral award dated 26/12/2013, passed by sole Arbitrator/respondent No.2 herein. By the impugned judgment and decree dated 10/06/2020, passed by the VI Additional City Civil and Sessions Judge at Bengaluru City, the suit for setting aside the award dated 26/12/2013 was dismissed. Hence, this appeal.

2. Briefly stated the facts are that, the appellant/plaintiff being in the business of outdoor

advertisement, responded to a tender, inviting potential bidders to develop and maintain the road medians and also to earn revenue from the same. Plaintiff entered into three agreements with defendant No.1/respondent No.1 herein as the successful bidder. The details of the agreements are as under:

- (a) Agreement dated 13/04/2004 for Road Median from Windsor Manor to Mekhri Circle;
- (b) Agreement dated 13/04/2004 for Road Median from Dornlur Girls High School to Airport Exit Gate and
- (c) Agreement dated 30/12/2004 for Road Median from Hebbal Flyover to Mekhri Circle.

The plaintiff was permitted and licenced to beautify the road medians at the specified locations under the agreement and was allowed to install translite boxes in the road medians for displaying commercial advertisements of its clients. The plaintiff undertook to pay advertisement tax, cess and other statutory dues to respondent No.1/Bruhat Bengaluru Mahanagara Palike, which is a Municipal Corporation for the City of Bengaluru (hereinafter referred to as "BBMP", for short) at the rates prescribed from time to time. There were various terms and conditions under the agreement with regard to

payment of licence fee, advertisement tax, service tax, etc.

3. It is the case of respondent No.1/BBMP that the appellant fell into arrears in the payment of licence fee and other dues. Hence, demand notice dated 15/12/2009 was issued. Notices dated 15/12/2009, 14/09/2010 and 21/10/2010 were issued claiming arrears of licence fee, advertisement tax, etc. The said notices were issued under Rules 27 and 28 of Taxation Rules of Karnataka Municipal Corporation Act, 1976 (hereinafter referred to as "the KMC Act" for the sake of convenience).

4. The appellant also preferred a claim for Rs.1,90,00,000/- (Rupees one crore and ninety lakh only) as compensation against respondent No.1/BBMP and pursuant to an order passed in CMP.Nos.34-36/2006 an Arbitrator was appointed. However, the claim of the appellant was dismissed by award dated 10/06/2011. The appellant preferred A.S.Nos.67, 68 and 69/2011 before the City Civil Court, Bengaluru, under Section 34 of the Arbitration Act, 1996. The same are still pending.

5. However, with regard to the agreement made by respondent No.1/BBMP, notice dated 16/03/2012 was

issued stating that the plaintiff's denial of its liability on the demand notices referred to above had given rise to a dispute. In the circumstances, CMP.No.44/2012 was filed before this Court seeking appointment of a sole Arbitrator. The said petition was allowed and the sole Arbitrator was appointed to decide the dispute under the provisions of the Arbitration Act, 1996. The claim statement was filed before the Arbitrator. The appellant herein filed the defence statement, *inter alia*, contending that the claim is untenable, baseless and barred by time.

6. On the basis of the rival pleadings, the Arbitrator framed as many as eight issues, the first of them being, whether the claims made by the claimant are barred by time. The aforesaid issue was considered along with issue Nos.2 and 5 and on the basis of Section 474 of the KMC Act read with Section 21 of the Arbitration Act, 1996, learned Arbitrator held that it was open to the claimant/respondent No.1 herein to undertake arbitration within six years from the date of cause of action having arisen and consequently, held that the claim was not barred by time. The learned Arbitrator specifically held that the claim for arrears of licence fee and other tax dues till the date of expiration of licence period was not barred

by time. Consequently, learned Arbitrator decided the dispute and directed the appellant herein to pay the outstanding licence fee and tax arrears in respect of the three claimants till the expiration of the licence period, in all amounting to Rs.74,22,268/- with costs of the proceeding amounting to Rs.2,19,000/-.

7. Being aggrieved by the aforesaid award passed by the learned Arbitrator on 26/12/2013, the appellant herein preferred A.S.No.25/2014 under Section 34 of the Arbitration Act, 1996. The said suit was contested by respondent No.1/BBMP. By judgment dated 10/06/2020, the suit filed under Section 34 of the Arbitration Act, 1996 for setting aside of the award dated 26/12/2013 in A.S.No.25/2014 was dismissed. Hence, this appeal.

8. We have heard learned senior counsel Smt.Jayna Kothari appearing for the appellant and perused the material on record.

9. She contended that the trial Court has failed to appreciate the contention of the appellant to the effect that the claim made by respondent No.1/BBMP was time barred and therefore, the Arbitrator could not have passed any award against the appellant. She submitted that the trial

Court was not right in placing reliance on Section 474 of the KMC Act to hold that the period of limitation for making a claim by respondent No.1/BBMP was six years from the date of the cause of action had arisen. Learned senior counsel drew our attention to Sections 21 and 43 of the Arbitration Act, 1996 to contend that the said Sections deal with commencement of arbitral proceedings. She submitted, unless otherwise agreed to by the parties, the arbitral proceedings in respect of a particular dispute commences on the date on which a request for the dispute to be referred to arbitration is received by the respondent. The said date has to be regarded as the date on which notice was served to the other party requesting appointment of an arbitrator. That, in the present case, the notice was served on the appellant on 16/03/2012 for the purpose of appointment of an Arbitrator. The said notice was duly replied to by the appellant on 22/03/2012 stating that the claims made by the claimant were time barred. Therefore, appointment of an Arbitrator as per Clause 21 of the agreements did not arise.

10. In support of her contentions, learned senior counsel drew our attention to Section 43 of the Arbitration Act, 1996 and contended that the said Section refers to

the Limitation Act, 1963 (hereinafter referred to as "the Limitation Act"). Under the said Act, the period of limitation is three years from the date when the cause of action arises as per Article 137. Learned senior counsel contended that in the instant case, instead of adhering to the said period of limitation, the learned Arbitrator relied upon Section 474 of the KMC Act to hold that the period of limitation was six years and therefore, the claim made by respondent No.1 was within time and thereby held that the claim was not time barred. According to learned senior counsel, Section 474 of the KMC Act applies to a distraint order or suit or prosecution, however the said provision would not apply to an arbitration proceeding. She submitted that the Arbitration Act, 1996 is a special enactment and the same would prevail over any other law when it comes to an arbitration proceeding. That the expression "arbitration" is not found under Section 474 of the KMC Act; the said provision prescribes the period of limitation only in the case of a suit or prosecution, but it would not apply to an arbitration. Hence, learned arbitrator as well as the trial Court were not correct in entertaining the claim made by respondent No.1 and

passing of award against the appellant herein was the submission.

11. Learned senior counsel, Smt.Jayna Kothari also drew our attention to the latest judgment of the Hon'ble Supreme Court in the case of **Geo Miller & Co. Pvt. Ltd. Vs. Rajasthan Vidyut Utpadan Nigam Ltd. [2019 SCC Online 1137]** (Geo Miller & Co. Pvt. Ltd.). Learned senior counsel submitted that the claim made by respondent No.1 herein had to be rejected as being time barred in law and on the provisions of the Limitation Act and therefore, the award as well as the judgment passed by the trial Court may be set aside.

12. Having heard learned senior counsel in detail, we do not think it necessary to reiterate all the facts and contentions except highlighting the fact that appellant had entered into three agreements with defendant No.1/respondent No.1 herein as the successful bidder. The agreements were dated 13/04/2004 (two agreements) and 30/12/2004 for the purpose of beautifying the road medians at the specified locations in Bengaluru City and displaying commercial advertisements of its clients. According to respondent No.1/BBMP, appellant herein fell

into arrears of licence fee and other dues. Hence, demand notice dated 15/12/2009 and on subsequent dates were issued for payment of arrears of licence fee, development tax etc. Thereafter, notice dated 16/03/2012 was issued stating that the plaintiff's denial of its liability on the demand notices referred to above had given rise to a dispute. CMP.No.44/2012 was filed before this Court seeking appointment of a sole Arbitrator. On his appointment, the claim statement was filed and the appellant herein filed its defence statement, *inter alia*, contending that the claim was time barred. However, the learned Arbitrator held that the claim was not time barred having regard to Section 474 of the KMC Act read with Sections 21 and 43 of the Arbitration Act, 1996. Similarly, the trial Court dismissed the suit /application filed under Section 34 of the Arbitration Act, 1996 by holding that the claim was not time barred.

13. We have perused the copies of the agreements, which are collectively produced as Annexure – D, dated 13/04/2004 (two agreements) and 30/12/2004. The arbitration clause is in Clause 21 in all the agreements and the same being identical, is extracted as under:

"21. All disputes between the parties shall be referred to the sole arbitrator (at Bangalore) to be mutually agreed upon between the parties. If such an appointment is not possible, then each party shall suggest one arbitrator and the third arbitrator shall be selected by these two arbitrators by mutual agreement and if is not possible, then the third arbitrator shall be selected by lot from among the two names suggested by these two arbitrators.

While recourse is to be had to this arbitration by the licensee, he shall inform his intention only to the Commissioner, BMP through a letter personally handed over to him under acknowledgement and no other mode of communication shall be treated as valid and binding on the licensor."

14. In order to consider the contentions raised by learned senior counsel for the appellant, it would be useful to refer to the following provisions of law:

Sections 21 and 43 of the Arbitration Act, 1996:

"21. Commencement of arbitral proceedings.- Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

x x x

43. Limitations.- (1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in Court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted."

As per Section 21 read with Section 43(2) of the Arbitration Act, an arbitration shall be deemed to have commenced on the date on which a request for reference to arbitration is received by the respondent. However, if

the parties agree under the agreement to some other event for commencement of arbitration that would have effect. Notice under Section 21 has to be served and received by the respondent. If no notice is received by the respondent, then there is no commencement of arbitral proceedings under Section 21. Thus, the date of commencement of the arbitration would be relevant for determining whether any claim is barred by limitation. A time-barred claim in arbitration is to be dealt with in the same manner as a time-barred prayer in a suit, covered by Section 3 of the Limitation Act. Thus, in the absence of an agreement, Section 21 of the Arbitration Act states that arbitral proceedings commence on the date on which a request for reference to arbitration is received by the respondent. *[Source: Commentary on the Law of Arbitration, Fourth Edition by Justice Indu Malhotra]*

While considering Section 43 of the Arbitration Act, particularly sub-section (1), it is necessary to refer to the Limitation Act. In that regard, we must refer to sub-section (2) of Section 29 of the Limitation Act in the first instance. The same reads as under:

"29. Savings.—

x x x

(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."

Section 3 of the Limitation Act 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.

(2) For the purposes of this Act—

(a) a suit is instituted—

- (i) in an ordinary case, when the plaint is presented to the proper officer;
- (ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and
- (iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

-: 15 :-

- (b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—
 - (i) in the case of a set off, on the same date as the suit in which the set off is pleaded;
 - (ii) in the case of a counter claim, on the date on which the counter claim is made in court;
- (c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

Sub-section (2) of Section 29 of the Limitation Act states that where for any special or local law for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule (to the Limitation Act), the provisions of Section 3 of the Limitation Act 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) of the Limitation Act shall apply only in so far as, and to the extent to which, they are "not expressly excluded by such special or local law". What is significant in sub-section (2) of Section 29 of the

Limitation Act are: (i) prescription of a period of limitation under any special law or local law different from the period prescribed by the Schedule under the Limitation Act and (ii) in such a case, the period of limitation prescribed under the special or local law shall be deemed to be the period prescribed for the purpose of Section 3 of the Limitation Act and (iii) Section 3 of the Limitation Act shall apply accordingly.

Sub-section (1) of Section 3 of the Limitation Act states that 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. Clause (a) to sub-section (2) of Section 3 of the Limitation Act deals as to when a suit is instituted. Clause (b) to sub-section (2) of Section 3 states as to when a claim by way of set off or a counter claim is deemed to have been instituted and Clause (c) to sub-section (2) of Section 3 states that an application by notice of motion in a High Court is made when the application is presented to the proper officer of that Court. Section 3 of the Limitation Act has been adverted to in the case of ***State of Orissa vs. Mamata Mohanti, [(2011) 3 SCC 436]*** (*Mamata Mohanti*), wherein it has been observed that by virtue of

Section 3 of the Limitation Act, it is obligatory on the part of the Court to dismiss a suit or appeal, if filed after the prescribed period even though the limitation is not set up as a defence or there is no defence raised on the issue of limitation, even at the appellate stage, because in some of the cases, it may go to the root of the matter.

15. However, Section 3 is subjected to Sections 4 to 24 (inclusive) of the Limitation Act. Sections 4 to 24 (inclusive) of the Limitation Act essentially deal with computation of period of limitation under certain circumstances and in substance, excludes time from the prescribed period of limitation. It is not necessary to go into the details of those sections at this stage, except to highlight the fact that Sections 4 to 24 (inclusive) shall apply only insofar as and to the extent to which they are not expressly excluded by such special or local law and in the instant case to arbitration proceeding.

Hence, the question in the instant case is, *whether Section 474 of the KMC Act, which is a special law prescribes a different period of limitation than as prescribed under the schedule to the Limitation Act, in terms of Section 3 of the Limitation Act?*

In other words, whether on a reading and interpretation of Section 474 of the KMC Act, it is to be held that under that Section, the application filed by the respondent seeking arbitration of the dispute is to be held to be maintainable, having regard to the period of limitation mentioned therein, which is applicable even in the case of an arbitration.

Before answering the said question, it would be useful to refer to certain judicial precedent, which are apposite.

16. With regard to filing of a suit or an appeal within the prescribed period of limitation, in ***N.Balakrishnan v. M. Krishnamurthy, [(1998) 7 SCC 123]*** (*N.Balakrishnan*), the Hon'ble Supreme Court has held as under:

"21. Sub-section (2) of Section 29 of the Limitation Act states that where any special or local law for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule (to the Limitation Act), 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". What is significant in sub-section (2) of Section 29 of the Limitation Act are: (i) prescription of a period of limitation under any special law or local law different from the period prescribed by the Schedule under the Limitation Act and (ii) in such a case, the period of limitation prescribed under the special or local law shall be deemed to be the period prescribed for the purpose of Section 3 of the Limitation Act and (iii) Section 3 of the Limitation Act shall apply accordingly.

22. Sub-section (1) of Section 3 of the Limitation Act states that 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. Clause (a) to sub-section (2) of Section 3 of the Limitation Act deals as to when a suit is instituted. Clause (b) to sub-section (2) of Section 3 states as to when a claim by way of set off or a counter claim is deemed to have been instituted and Clause (c) to sub-section (2) of Section 3 states that an application by notice of motion in a High Court is made when the application is presented to the proper officer of that Court. Section 3 of the Limitation Act has been adverted to in the case of ***State of Orissa vs. Mamata Mohanti, [(2011) 3 SCC 436]*** (*Mamata Mohanti*), wherein it has been observed that by virtue of Section 3 of the Limitation Act, it is obligatory on the part of the

Court to dismiss a suit or appeal, if filed after the prescribed period even though the limitation is not set up as a defence or there is no defence raised on the issue of limitation, even at the appellate stage, because in some of the cases, it may go to the root of the matter. However, Section 3 is subjected to Sections 4 to 24 (inclusive) of the Limitation Act. Sections 4 to 24 (inclusive) of the Limitation Act essentially deal with computation of period of limitation under certain circumstances and in substance excludes time from the prescribed period of limitation. It is not necessary to go into the details of those sections at this stage, except to highlight the fact that Sections 4 to 24 (inclusive) shall apply only insofar as and to the extent to which they are not expressly excluded by such special or local law and in the instant case to appeals.”

17. ***Hukumdev Narain Yadav vs. Lalit Narain Mishra, [(1974) 2 SCC 133]***, (*Hukumdev Narain Yadav*), is a matter which arose under the Representation of People Act, 1951. Under Section 81 of the said Act, a period of 45 days from the date of the election of a returned candidate is the limitation time prescribed within which an election petition calling in question any election on one or more grounds specified in sub-section (1) of Section 100 and Section 101 has to be presented to the High Court. In the said case, the election petition had been presented beyond

the period of 45 days and had been dismissed. One of the questions considered was, by virtue of Section 29(2) of the Limitation Act, whether the provisions of Sections 4 to 24 of the said Act were applicable to election petitions and if so, whether Section 5 of the Limitation Act was applicable. Also, whether the facts of the case therein warranted condonation of delay. Thus, unless Section 5 of the Limitation Act was made applicable, the discretion of the Court to extend the time would not be available.

18. In the said case, a comparison of Section 29(2) of the Limitation Act, 1908 with Section 29(2) of the Limitation Act, 1963 was made and the question was whether Section 5 of the Limitation Act was applicable. It was observed that even if the Limitation Act was applicable to election petitions under the Representation of the People Act, 1951, whether Section 5 thereof particularly was excluded from application in the case of an election petition. It was contended in the said case that the words 'expressly excluded' would mean that there must be an "express reference" made in a special or local law to the specific provision of the Limitation Act of which the operation is to be excluded. But, the Hon'ble Supreme Court observed that what has to be seen is whether the

scheme of the special law and the nature of remedy provided therein are such that the Legislature intended it to be a complete Code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act and particularly Section 5 thereof, are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the special law. That in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law would exclude their operation. It was contended that only those provisions of the Limitation Act which are applicable to the nature of the proceedings under the Act, unless expressly excluded, would be attracted. But, the same was not accepted by the Hon'ble Supreme Court as it observed that the intent of Section 29(2) of the Limitation Act must be noted. That Section 29(2) of the Limitation Act provides that Sections 4 to 24 (inclusive) shall apply only insofar as and to the extent to which, they are not expressly excluded by such

special or local law. If none of them are excluded, all of them would become applicable. Whether those Sections are applicable is not determined by the terms of those Sections, but by their applicability or inapplicability to the proceedings under the special or local law. Ultimately, it was held on a consideration of the scheme of the provisions concerning the filing of election petition under the Representation of the People Act, 1951, that Section 5 of the Limitation act did not govern the filing of the election petition or their trial and hence, the application filed for condonation of delay did not warrant any consideration.

19. ***Consolidated Engineering Enterprises vs. Prl. Secretary, Irrigation Department, [(2008) 7 SCC 169]***, (*Consolidated Engineering Enterprises*), is a judgment of a three Judge Bench of the Hon'ble Supreme Court on the proviso to Section 34(3) of the Arbitration Act, which has considered the Arbitration Act to be a special law as compared to Limitation Act. In the said case, after referring to Section 34 of the Arbitration Act, and considering the same in light of Section 29(2) of the Limitation Act, it was observed that when any special statute prescribes certain period of limitation as well as

provision for extension up to specified time limit on sufficient cause being shown, the period of limitation prescribed under the special law shall prevail and to that extent, the provisions of Limitation Act shall stand excluded. This is because of the intention of the Parliament in enacting sub-section (3) of Section 34 of the Act of 1996. That an application for setting aside the award must be made within three months and the period can be further extended on sufficient cause being shown by another period of thirty days, but not thereafter. Hence, Section 5 of the Limitation Act is inapplicable as it stands excluded under Section 29(2) of the Limitation Act. Further, it was also observed that even though Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act of 1996 for setting aside the award, one need not conclude that Section 14 of the Limitation Act would also be inapplicable to an application filed under Section 34 of the Act of 1996.

(a) In the said case, His Lordship, *Raveendran J.* gave a separate but concurring opinion. His Lordship referred to Section 43 of the Arbitration Act to hold that Section 43 makes an express reference to the Limitation Act both in the Court and in arbitration. That there is also

no express exclusion by an application of the provision of the Limitation Act to the proceedings under the Arbitration Act. But, there are some specific departures from the general provisions of Limitation Act, such as, the proviso to Section 34(3) and sub-sections (2) to (4) of Section 43 of the Act of 1996. His Lordship observed that where the schedule to the Limitation Act prescribes a period of limitation for appeals or applications to any Court, and the special or local law provides for filing of appeals and applications to the Court, but does not prescribe any period of limitation in regard to such appeals or applications, the period of limitation prescribed in the Schedule to the Limitation Act will apply to such appeals or applications and consequently, the provisions of Sections 4 to 24 will also apply. But, where the special or local law prescribes for any appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, then the provisions of Section 29(2) of the Limitation Act would be attracted. In that event, the provisions of Section 3 of Limitation Act will apply, as if the period of limitation prescribed under the special law was the period prescribed by the Schedule to Limitation Act, and for the purpose of determining any

period of limitation prescribed for the appeal or application by the special law, the provisions contained in Sections 4 to 24 of the Limitation Act will apply to the extent to which they are not expressly excluded by such special law. That the object of Section 29(2) of the Limitation Act is to ensure that the principles contained in Sections 4 to 24 of Limitation Act apply to suits, appeals and applications filed in a court under special or local laws also, even if it prescribes a period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application of any or all of those provisions.

(b) In this context, it was clarified that the provisions of the Limitation Act would not apply to appeals or applications before Tribunals, unless expressly provided. This is because, the Schedule to the Limitation Act prescribes the period of limitation only to proceedings in Courts and not to any proceedings before any Tribunal or quasi-judicial authority. Therefore, it was held that the provisions of the Limitation Act could apply to all proceedings under the Arbitration Act both in Court and in arbitration except to the extent expressly excluded by the provisions of the Arbitration Act. This was because of the

express reference to applicability of the Limitation Act to the proceedings in Court and Arbitral Tribunal under Section 43 of the Arbitration Act.

In the said case reference was made to the judgment in ***State of Goa vs. Western Builders [(2006) 6 SCC 239]***, (*Western Builders*). In *Western Builders*, after referring to the scheme of the provisions under the Arbitration Act, the Hon'ble Supreme Court held that wherever the Parliament wanted to give power to the Court, it has been incorporated in the provisions of the Arbitration Act. That by virtue of Section 43 of the Arbitration Act, the Limitation Act applies to the proceedings under the former Act and the provisions of the Limitation Act can only stand excluded to the extent wherever different period has been prescribed under the Arbitration Act or as in the instant case KMC Act.

20. Therefore, it is necessary to refer to the local law, which is the KMC Act in the instant case, Section 474 of the KMC Act reads as under:

"474. Limitation for recovery of dues. - No distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to the corporation under this Act

after the expiration of a period of six years from the date on which distraint might first have been made, a suit might first have been instituted or prosecution might first have been commenced, as the case may be, in respect of such sum."

Thus, the limitation period for filing a suit to recover dues to the corporation (BBMP) is six years from when a suit might first have been instituted. The expression used in Section 474 of KMC Act is "suit". Learned senior counsel for the appellant submitted that the said Section would not apply to an arbitration proceeding. However, we do not think, the said submission is right inasmuch as the Hon'ble Supreme Court in the case of *Geo Miller & Co. Pvt. Ltd.* (supra) has referred to ***Panchu Gopal Bose vs. Board of Trustees for Port of Calcutta [(1993) 4 SCC 338]*** (*Panchu Gopal Bose*) and extracted paragraph No.11 in the latter case as under:

"11. 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.”

On a reading of the same, it is clear that the period of limitation, whether for a suit or an arbitration is the same under Section 474 of the KMC Act even though the word “arbitration” is not found in the said provision. The reason being, the judgment in *Panchu Gopal Bose* clearly states that 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. Therefore, the period of limitation as prescribed for a suit in Section 474 of the KMC Act, i.e., to commence a civil action, would also be the same for commencement of an arbitration. Hence, the expression “suit” in Section 474 of the KMC Act would take within its scope and ambit the expression “arbitration” also. This is because arbitration is an alternative dispute resolution mechanism to a suit. In the circumstances, the period of limitation for making claims by respondent No.1/BBMP by way of a suit or arbitration is six years from the date when the cause of action arose.

Therefore, the trial Court was justified in confirming the reasoning of the learned Arbitrator vis-à-vis the

–: 30 :–

question regarding the period of limitation for the commencement of arbitration in the instant case and by holding that the claim was not time barred. Therefore, we cannot accept the contention of learned senior counsel for the appellant.

There being no other contention raised against the impugned judgment of the trial Court, we find no merit in the appeal. Hence, the appeal is ***dismissed***.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

S*