

CASE NO.:
Appeal (civil) 9672 of 2003

PETITIONER:
Milkfood Limited

RESPONDENT:
M/s GMC Ice Cream (P) Ltd.

DATE OF JUDGMENT: 05/04/2004

BENCH:
S.H. KAPADIA

JUDGMENT:
J U D G M E N T

WITH

CIVIL APPEAL Nos. 9673-9674 OF 2003

KAPADIA, J.

The question for consideration in the present appeals is \027 as to whether the Arbitration Act, 1940 (hereinafter referred to as "the 1940 Act") would apply in the facts and circumstances of the case or whether the case will have to be dealt with under the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act")?

Briefly, the facts of the case are as follows. The parties hereto entered into an agreement on 7.4.1992 in terms whereof the first respondent herein was to manufacture and pack in its factory a wide range of ice cream for and on behalf of the appellant. The agreement was to remain valid for five years. Admittedly, the contract contained an arbitration agreement being clause 20 thereof which is as under:\027

"In the case of any dispute or any difference arising at any time between the Company and the Manufacturer as to the construction, meaning or effect of this Agreement or any clause or thing contained therein or the rights and liabilities of the Company or the Manufacturer hereunder in relation to the premises, shall be referred to a single arbitrator, in case the parties can agree upon one, and failing such Agreement, to two arbitrators one to be appointed by either party and in case of disagreement between the two arbitrators aforesaid and in so far as and to the extent that they disagree to, an umpire to be appointed by the said two arbitrators before they enter upon the reference.

All such arbitration proceedings shall be in accordance with and subject to the provisions of the Arbitration Act, 1940, or any statutory modification or reenactment."

On the strength of this agreement dated 7.4.1992, the respondent herein filed title suit No.40 of 1995 on 20.5.1995 for

an injunction restraining the appellant herein from disturbing manufacture and supply of ice cream. In the said suit, the appellant applied for stay of suit vide application dated 17.7.1995 under section 34 of the 1940 Act. By order dated 3.8.1995, the trial Court stayed the suit. Being aggrieved, the respondent herein filed an application before Additional District Judge, Gaya, which was dismissed on 13.3.1996. Aggrieved, the respondent herein carried the matter in revision to the High Court which was disposed of on 6.5.1997 in terms of the following order:\027

"Before this court parties have agreed that the dispute between them may be referred as per the agreement to arbitrators chosen by the parties. The plaintiff has chosen Shri Uday Sinha, a retired judge of this court and Senior Advocate of the Supreme Court, while the defence have chosen Shri Hari Lal Agarwal, Senior Advocate of the Supreme Court, a former judge of this court and Chief Justice of Orissa High Court as arbitrators. The dispute between the parties is referred to arbitrators.

I hope that the learned Arbitrators will dispose of the arbitration proceedings within three months of the entering the reference."

The above order is a consent order by which application for stay of the suit stood disposed of. Pursuant to the consent order, the arbitrators nominated by the respective parties in turn appointed an umpire. On 19.8.1997, the parties were asked to appear. The respondent was called upon to file statement of claim. An issue arose for determination at that stage as to which of the two Acts applied to the arbitration. On behalf of the appellant, it was submitted that application under section 34 of the 1940 Act constituted a request to refer the matter to the arbitration and consequently the request marked the commencement of the arbitration proceedings. This argument was rejected by the arbitrators on the ground that a proceeding under section 34 of the 1940 Act was essentially a defence to the suit and it did not amount to referring a claim to arbitration. It was further held that the arbitration commenced in the present case when the claim was referred to the arbitrators on 6.5.1997. In this connection, reliance was placed on the provisions of section 85(2)(a) of the 1996 Act. It was further held that the order dated 6.5.1997 was a consent order and consequently, the arbitration proceedings commenced only after the said order which was passed after the new Act came into force. At this stage, it may be pointed out that in the course of hearing before the arbitrators and before the decision could be given on the above question, the appellant herein filed an application before the arbitrators dated 7.3.1998 enclosing notice dated 14.9.1995 served by the appellant on the respondent herein whereby the appellant had appointed Mr. H.L. Aggarwal as their arbitrator and by which notice the respondent herein was called upon to appoint their own arbitrator in terms of clause 20 quoted above. In the application dated 7.3.1998, the appellant submitted that in view of the above notice dated 14.9.1995, the arbitration proceedings had commenced under the 1940 Act. By majority decision, the arbitrators took the view that the said notice dated 14.9.1995 did not make any difference to the question of commencement of the arbitral proceedings in view of the provisions of section 85(2)(a) of the 1996 Act as there was a clear and explicit agreement between the parties recorded in the consent order dated 6.5.1997. It was held that in relation to arbitration proceedings which commenced before the 1996 Act, parties were free to agree as to when arbitration proceedings are

to be regarded as commenced for the purposes of section 85(2)(a) of the 1996 Act and since there was such an agreement in the consent order dated 6.5.1997, the arbitration proceedings had commenced under the 1996 Act. It was further held that by order dated 6.5.1997 passed by the High Court, the arbitration was set in motion by the parties when they nominated their respective arbitrators and the Court ordered that the dispute between the parties be referred to the arbitrators and that the arbitration proceedings be disposed of within three months of entering upon the reference. It was held that arbitration commenced when there was a completely constituted arbitration Tribunal to decide the dispute, which on facts took place only after the 1996 Act commenced. It was further held that the notice dated 14.9.1995 served by the appellant was a non-starter and that such a notice did not commence arbitral proceedings in terms of section 85(2) of the 1996 Act. Consequently, by majority decision, it was held that the consent order dated 6.5.1997 marked the commencement of the arbitral proceedings and, therefore, the 1996 Act was applicable.

One of the learned arbitrators, Mr. H.L. Aggarwal in his dissenting opinion held that the arbitration proceedings commenced in the present case when the notice dated 14.9.1995 was issued by the appellant to the respondent. In this connection, he placed reliance on section 37(3) of the 1940 Act. Questioning the majority decision of the arbitrators, the appellant herein moved an application under section 33 of the 1940 Act in the High Court. A learned single Judge of the High Court held that in the present case the disputes were referred to for arbitration only on 6.5.1997 and, therefore, the parties have to be governed by the provisions of the 1996 Act. The Letters Patent Appeal preferred therefrom was also dismissed by a five-Judge Bench of the High Court as not maintainable.

Mr. Harish Salve, learned senior counsel appearing on behalf of the appellant submitted that having regard to the fact that the notice appointing the arbitrator had been served by the appellant upon the respondent as far back as 14.9.1995 in terms whereof the arbitration proceedings commenced, the 1940 Act was applicable in the instant case. Referring to section 21 and section 85 (2) (a) of the 1996 Act, it was urged that there are well known expressions in arbitral proceedings being "commencement of the arbitration proceedings", "continuance of arbitration proceedings", "entering into reference", which in different context could carry different meanings. The Parliament however in the 1996 Act has chosen to use the expression "commencement of arbitral proceedings", in section 21 the meaning thereof as is understood in common parlance should be applied. Strong reliance in this connection was placed on the decision of Queen's Bench Division in *Charles M. Willie & Co. (Shipping) Ltd. v. Ocean Laser Shipping Ltd.* [(1999) 1 Lloyd's Law Report 225].

Learned counsel for the appellant further submitted that there was a conflict in the decision of the two-Judge Benches of this Court as regards the construction of the arbitration agreement as contained in clause 20 thereof vis-à-vis the applicability of the 1996 Act. In this connection, my attention was drawn to the decision of this Court in the case *N.S. Nayak & Ors. v. State of Goa* [(2003) 6 SCC 56], wherein allegedly a different note has been struck from an earlier decision of this Court in *Delhi Transport Corporation Ltd. v. Rose Advertising* [(2003) 6 SCC 36].

Per contra, Mr. R.K. Jain, learned senior counsel

appearing on behalf of the respondent urged that having regard to the object of 1996 Act, as also in view of the fact that the arbitrators had already entered into the reference pursuant to the consent order dated 6.5.1997, this Court may not interfere with the impugned judgment in exercise of jurisdiction under Article 136 of the Constitution. Strong reliance was placed on the judgment of this Court in the case Chandra Singh v. State of Rajasthan [(2003) 6 SCC 545].

It was next contended that a proceeding commences in the Court of law when a plaint is filed and by analogy an arbitration proceeding must be held to be initiated when a claim petition is filed by the claimant before the arbitrator; that before a proceeding is said to be initiated before a Court or Tribunal, the existence of such Tribunal was a condition precedent for initiation of proceedings. The learned counsel, therefore, contended that for purposes of determining the point of time "when an arbitration proceeding commences", an arbitral Tribunal must be constituted. Reliance in this connection was placed on the judgment of this Court in the case of Secy. to Government of Orissa v. Sarbeswar Rout reported in [(1989) 4 SCC 578]. It was further submitted that an arbitrator enters into a reference when he applies his mind to the differences and disputes between the parties and not prior thereto. Alternatively, it was submitted that the proceeding commences when the arbitrator enters upon the reference. Reliance was placed on the judgment of this Court in the case Sumitomo Heavy Industries Ltd. v. ONGC Ltd. reported in [(1998) 1 SCC 305]. It was further submitted that in any event, the starting point for commencement of the arbitration proceedings would be when the dispute was referred to by the High Court on 6.5.1997 and not prior thereto.

Learned counsel for the respondent contended that in any event as the parties had agreed in terms of clause 20 of the contract that all such arbitration proceedings shall be in accordance with and subject to the provisions of the 1940 Act or any statutory modifications or re-enactment thereof, they must be deemed to have agreed that new Act shall apply. Strong reliance has been placed on the judgment of this Court in the case of Thyssen Stahlunion GMBH v. Steel Authority of India Ltd. reported in [(1999) 9 SCC 334], Delhi Transport Corporation Ltd. (supra) and N.S. Nayak (supra). Lastly, it was submitted that section 37 of the 1940 Act, being for the purposes of commencement of the period of limitation, had no application whatsoever for the purposes of determining the question as to whether the 1940 Act will apply or the 1996 Act will apply.

I may now notice the provisions of the 1940 Act. Section 2 defines arbitration agreement to mean a written agreement to submit present or future dispute to the arbitration, whether an arbitrator is named therein or not. Section 2(e) defines "reference" to mean reference to arbitration. Therefore, the term "arbitration agreement" is different from the term "reference". "An agreement to refer" and "a reference" are two separate transactions while an arbitration agreement is only a contract to refer, reference is delegation of authority to a named arbitrator. Section 8 confers power upon the Court to appoint arbitrator where the parties concurred in the appointment of an arbitrator. In such a case, after the Court appointed an arbitrator, it is the parties who referred the dispute to him. On the other hand, section 20 enabled a party to apply for filing of the arbitration agreement in the Court and that section empowered the Court to make an order of reference to the arbitrator appointed by the

parties and in the absence of such appointment, the Court was empowered to make an order of reference to the arbitrator appointed by it. In other words, under section 20, unlike section 8, it is the Court which referred the dispute. In the case of Fertilizer Corporation of India Limited v. M/s Domestic Engineering Installation reported in [AIR 1970 Allahabad 31], it has been held that under section 20(4), three courses were open to the Court. After the arbitration agreement was ordered to be filed, the Court shall proceed to make reference, firstly to the arbitrator appointed by the parties in the agreement, secondly to the arbitrator not named in the agreement but with regard to whom the parties agreed otherwise, and thirdly when the parties did not agree upon an arbitrator, to an arbitrator appointed by itself. This difference between section 8 and 20 was important as under section 48 of the 1940 Act, it was provided that the Act shall not apply to any reference pending at the commencement of the said Act, to which the law in force immediately prior to the commencement shall continue to apply notwithstanding any repeal effected by the Act. Section 48 was a transitory provision in which the emphasis was on "reference". Section 48 of the 1940 Act which corresponded to section 25 of the English Arbitration Act 1899 was a subject of debate in larger number of matters as different dates for different stages of arbitration proceedings were provided for.

Since transitory provision is to be interpreted in the light of facts and circumstances existing on the date the new Act coming into force, section 21 and 85(2) of the 1996 Act are quoted below:\027

"21. Commencement of arbitral proceedings. \027
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.

85. Repeal and savings.\027 (1) \005.

(2) Notwithstanding such repeal,\027

(a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;

(b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act."

A bare reading of section 21 of the 1996 Act indicates that arbitral proceedings in respect of a dispute commences on the date on which request to refer such dispute to arbitration is received by the respondent, unless otherwise agreed by the parties. Section 21 is similar to section 14 of the English Arbitration Act 1996 which provides that parties are free to agree as to when an arbitration is to be regarded as commencing both under the Arbitration Act 1996 and for limitation purposes. In the absence of such agreement, section 14 of that Act applies. Russell on Arbitration, [XXII Ed. Page 165] says as follows:-

"Commencement for limitation purposes. The parties are free to agree when an arbitration is to be regarded as commencing both under the Arbitration Act 1996 and for limitation purposes. In the absence of agreement the provisions of section 14 of the Arbitration Act 1996 apply. Under that section an arbitration is treated as being commenced when a notice in writing is served on the other party requiring him to agree to the appointment of an arbitrator or, if the parties are each to make an appointment, requiring him to appoint an arbitrator. The party giving the notice does not have to have already appointed his own arbitrator. Where, however, the arbitration agreement specifies the person to be appointed as arbitrator, the arbitration is treated as being commenced when a notice in writing is served on the other party requiring him to submit the dispute to that person. Finally, if the arbitrator is to be appointed by someone other than a party to the arbitration proceedings, such as an arbitral institution, the arbitration is treated as being commenced when notice in writing is given to that other person requesting him to make the appointment. It is prudent to send to the respondent a copy of the notice addressed to the person requested to make the appointment as this may avoid arguments about when the notice was given."

In the present matter, one is concerned with transitional provision, i.e. section 85(2)(a) which enacts as to how the statute will operate on the facts and circumstances existing on the date it comes into force and, therefore, the construction of such a provision must depend upon its own terms and not on the basis of section 21 (see Principles of Statutory Interpretation by G.P. Singh 8th Ed. Page 188). In Thyssen's case (supra), section 48 of the old Act and section 85(2)(a) of the 1996 Act came for consideration. It has been held by this Court that there is a material difference between section 48 of the 1940 Act, which emphasized the concept of "reference" vis-à-vis section 85(2)(a) of the 1996 Act which emphasizes the concept of "commencement"; that there is a material difference in the scheme of two Acts; that the expression "in relation to" appearing in section 85(2)(a) refers to different stages of arbitration proceedings under the old Act; and lastly that section 85(2)(a) provides for limited repeal of the 1940 Act, therefore, I am of the view that one cannot confine the concept of 'commencement' under section 85(2)(a) only to section 21 of the 1996 Act which inter alia provides for commencement of arbitral proceedings from the date on which a request to refer a particular dispute is received by the respondent. In this connection, I may usefully quote commentary on "Commercial Arbitration" (2nd Edition, page 169) by Mustill & Boyd which reads as under:\027 "It is common to use expressions such as 'a notice of arbitration' or 'the commencement of an arbitration' as if they had the same meaning for all purposes, in the context of all the various possible types of agreement to arbitrate. This is misleading, for when enquiring whether sufficient steps have been taken to set an arbitration in train, the answer may depend on the reason why the question is being asked. There are several different reasons

why it may matter when the arbitration has begun. Of these, the following are probably the most important.

First, the question may be whether, at a given moment, there is any person or group of persons with jurisdiction to make an award, and power to give directions and make rulings in the course of the reference. For this purpose, what is being considered is whether the arbitration has reached the stage where there is a completely constituted arbitral tribunal.

Second, the problem may relate to the jurisdiction of the arbitrator. Thus, if there is a general reference of disputes the scope of the reference will be determined by the state of the disputes at the moment when the arbitration was begun. Disputes arising thereafter must be the subject of a separate arbitration, unless brought within the existing reference by consent.

Third, the purpose of the enquiry may be to ascertain whether the claimant has taken such steps as may be prescribed by statute or contract for the purpose of preventing his claim from being time barred.

Finally, it may be necessary to consider whether one party has taken sufficient steps towards setting the arbitration in motion to give him certain procedural advantages in the appointment of the tribunal: either as a preliminary to appointing his own nominee as sole arbitrator, or at least by way of preventing the other party from exercising his statutory right to make, or procure, a nomination in default.

It is plain that expressions such as 'the commencement of the arbitration' must have different meanings in these various contexts. For example, the giving of a notice to concur in the appointment of a sole arbitrator is sufficient to prevent time from running under the Limitation Act 1980; and it is also an essential first step towards the making of a default appointment under section 10(a) of the Arbitration Act. But the arbitration has not at this stage 'commenced' in any practical sense, since there is no person or group of persons charged with any authority to determine the matters in dispute."

Therefore, the position in law is that before the English Arbitration Act 1996, the expression "commencement of arbitration proceedings" depended upon the facts of each case. There was no single conclusive test to determine 'commencement'. In a case, where it was necessary to consider whether one party had taken sufficient steps for setting arbitration in motion, the court has to consider the date of setting up of arbitral tribunal. In the matter involving the scope of reference the test of the state of dispute was relevant. Therefore, the expression "commencement of arbitration proceedings" had different meanings in various contexts. The learned authors have further observed that although notice to

concur is an essential step, arbitration proceedings cannot be said to have commenced in practical sense till tribunal charged with authority stood duly constituted. It is for this reason that English Arbitration Act 1996 now provides under section 14 that commencement will take place from the date when notice to concur is served. This view is supported by the judgment of the division bench of this Court in Delhi Transport Corporation Ltd. (supra), in which a similar question was raised. In that matter, the parties had entered into an agreement on 15.1.1993 for display of advertisement on DTC buses in Delhi. The agreement was for a period of three years commencing from 15.1.1993. The agreement contained an arbitration clause. Disputes arose between the parties. A request was made by the contractor on 9.1.1995 for appointment of arbitrator to settle the disputes. This was followed by another letter dated 26.11.1995 containing a similar request. On 16.1.1996, he filed a petition under section 20 of the 1940 Act. The counsel appearing for DTC made a statement in the court on 19.7.1996 that an arbitrator had been appointed on 4.7.1996 as per the agreement. The petition became infructuous in view of that statement. The arbitrator conducted the proceedings and made an award on 6.10.1998. To enforce the award, the contractor filed an application under 1996 Act. The DTC contested that application on the ground that the 1996 Act was not applicable and, therefore, the execution petition was not maintainable. The contention of the DTC before the High Court was that the proceedings had commenced under the old Act. This objection was upheld by the learned single Judge based on the view that the arbitration proceedings had commenced on the date when request for appointment of arbitrator was made which was prior to 16.8.1996 when the new Act came into force. The contractor went in appeal. The division bench of the High Court found on facts that the parties went for arbitration with clear understanding that the proceedings would be conducted under the new Act, particularly when the appointment of arbitrator was made after the new Act had come into force and particularly when the parties had participated in the arbitration proceedings with the understanding that the proceedings would be governed by the new Act. Hence, the High Court decided the matter in favour of the contractor. Aggrieved, the DTC came in appeal to this Court. This Court found on facts that the arbitration clause, which is identical to the clause in the present case, showed that the parties had agreed to be governed by the law in force at the relevant time and such arbitration clauses were recognised under the new Act. This Court further found from the conduct of the arbitration proceedings and the participation of the parties therein that the parties had agreed to proceed under the 1996 Act and, accordingly, this Court upheld the judgment of the division bench of the High Court. In my view the said judgment applies to the present case. The point to be noted is that while construing section 85(2) of the 1996 Act, which is a transitional provision, the terms of the arbitration clause and the conduct of the parties were taken into account. Therefore, interpretation of section 85(2)(a) cannot be confined to section 21 of the 1996 Act. However, in cases where the new Act is applicable one has to go by section 21 and in which case arbitration proceedings will commence from the date when request is received by the respondent for referring the dispute to arbitration, unless the parties have agreed to the contrary.

In the case of N.S. Nayak (supra), this court held that even in cases of pending arbitration proceedings the parties had an option of changing the procedure so as to be governed by the provisions of the 1996 Act.

In the case of Charles M. Willie & Co. (Shipping) Ltd. (supra), the facts were as follows. By a memorandum of agreement dated April 1, 1990, Charles M. Willie & Co. (Shipping) Ltd. sold their vessel to Ocean Laser Shipping Ltd. The MOA provided for an arbitration clause, which inter alia stated that if any dispute arises in connection with the contract, the same shall be decided by a single arbitrator and if the parties did not agree on the appointment of a single arbitrator, the dispute shall be settled by three arbitrators, each party appointing one arbitrator, the third to be appointed by London Maritime Arbitrators Association. On 21.11.1990, Willie received a letter from solicitor of Ocean Laser Shipping Ltd. enquiring about an engine stoppage in January, 1988. Consequently, the dispute started. On 12.3.1992, Ocean Laser Shipping Ltd. through their solicitor invited Willie & Co. to agree on the appointment of a single arbitrator and further stated that in the event of Willie & Co.'s failure to nominate its arbitrator by 3.4.1992, Ocean Laser Shipping Ltd. appointed one Mr. Kazantzis as an arbitrator. On 5.11.1993, Ocean Laser submitted their claim before the arbitrator. On 18.2.1994, points of defence were filed. One of the points which arose for determination was as to when the arbitration could be said to have commenced. Taking a clue from section 34(3) of the Limitation Act, 1980 which provided that an arbitration should be treated as having been commenced when one party served on the other party a notice requiring him to agree to the appointment of an arbitrator, it was held by Queen's Bench that commencement took place from receipt of such notice. This judgment has no application to the facts of the present case. The present case involves interpretation of transitional provisions, which was not in issue in the said judgment. Further, the judgment of Queen's Bench was based on provisions of Limitation Act, by analogy. Further, the judgment of Queen's Bench was delivered under the Arbitration Act, 1996 under which the parties are free to agree when arbitration is to be regarded as having commenced both under the said Act and for limitation purposes and that in the absence of the agreement, the provisions of section 14 of the English Arbitration Act, 1996 were to apply.

To sum up, in this case, the question concerns interpretation of transitional provisions; that section 85(2)(a) emphasizes the concept of "commencement" whereas section 48 of the 1940 Act emphasized the concept of "reference"; that section 85(2)(a) provides for implied repeal; that the scheme of 1940 Act is different from the 1996 Act; that the word "reference" in section 48 of the old Act had different meanings in different contexts; and for the said reasons, I am of the view that while interpreting section 85(2)(a) in the context of the question raised in this appeal, one cannot only rely on section 21 of 1996 Act.

In the light of what is stated above, I now refer to the facts of the present case. The parties entered into an agreement on 7.4.1992 which contained an arbitration clause 20, which inter alia stated that in the case of dispute between the parties arising in relation to the contract, the dispute shall be referred to a single arbitrator, in case both sides agree upon one such arbitrator and failing such agreement, the dispute shall stand referred to two arbitrators, one to be appointed by the either party, and in case of disagreement, between the two arbitrators, the dispute was to be referred to an umpire to be appointed by the two arbitrators. Before entering upon the reference under clause 20 quoted above, all such arbitration proceedings were to

be governed by the provisions of the Arbitration Act, 1940 or under any statutory re-enactment. This clause is similar to the one considered by this Court in the case of Delhi Transport Corporation Ltd. (supra). On the strength of the agreement dated 7.4.1992, the respondent herein filed title suit No.40 of 1995 for injunction and in the said suit, the appellant herein applied for stay under section 34 of the 1940 Act. Suffice it to state that on 6.5.1997, when the matter came up before the High Court, the parties agreed that all disputes between them may be referred to arbitrators chosen by the parties as per the agreement. A consent order was accordingly passed on that day by the High Court referring the dispute to the arbitrators. Therefore, for all practical purposes, the arbitration commenced on 6.5.1997, by which time the 1996 Act had come into force. In the circumstances, I am in agreement with the majority decision of the arbitrators that the proceedings in the present case would be governed by the provisions of the 1996 Act.

For above reasons, I respectfully dissent from the opinion of Sinha, J. Consequently I am of the view that this Civil Appeal ought to fail and be dismissed with no order as to costs.

CIVIL APPEAL Nos. 9673-9674 OF 2003

Now coming to the Civil Appeal Nos.9673-9674 of 2003, the facts briefly are as follows. On 6.4.1998, the learned arbitrators by majority decision took the view that in the present case the arbitration proceedings had commenced on 6.5.1997 when a consent order was passed by the Patna High Court and, therefore, the proceedings were governed by the 1996 Act. Aggrieved, the appellant herein had moved the single Judge of Delhi High Court. By order dated 13.10.1998, the learned single Judge of the High Court was pleased to uphold the majority decision dated 6.4.1998. Being aggrieved, the appellant carried the matter in Letters Patent appeal which was dismissed as not maintainable. Having regard to the provisions of section 39 of the 1940 Act as interpreted by this Court in the case of Union of India v. Mohindra Supply Company reported in [AIR 1962 SC 256] second appeal, which included Letters Patent appeal under section 39(2), was not maintainable. Accordingly, the civil appeal Nos.9673-74 of 2003 fail and are dismissed.

There shall be no order as to costs in all the appeals.