CASE NO.:
Appeal (civil) 4699 of 2006

PETITIONER:
Oil & Natural Gas Corporation Ltd.

RESPONDENT:
M/s Nippon Steel Corporation Ltd.

DATE OF JUDGMENT: 07/11/2006

BENCH:
Dr. AR. Lakshmanan & Tarun Chatterjee

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 7294/2006)

Dr. AR. Lakshmanan, J.

Leave granted.

Oil & Natural Gas Corporation Ltd. is the appellant. Aggrieved by the judgment and order dated 6th/8th December, 2005 passed by the High Court of Judicature at Bombay in Appeal No. 321 of 1997 in Arbitration Petition No. 260 of 1996 in Award No. 98 of 1996, this appeal was preferred.

The question that falls for determination in this appeal is whether the filing of the award dated 2.3.1996 by M/s Little & Co., advocate for the Oil & Natural Gas Corporation Ltd. (for short "ONGC") in the Court on 23.3.1996 is the deemed notice under Section 14(2) of the Arbitration Act, 1940 and whether the limitation for setting aside the said award at the instance of ONGC shall commence from that date.

The appellant is a Public Sector Oil Company incorporated under the Companies Act, 1956 and engaged in the business of exploration and exploitation of Hydrocarbons. The appellant, ONGC and the respondent M/s Nippon Steel Corporation Ltd. entered into a contract for transportation and installation of fabricated structures of South Basein Platform Complex which was to be located at about 80Kms. west of Bombay in the Arabian Sea. Disputes and difference arose between the parties which were subsequently arbitrated and an award was passed on 2.3.1996 under the Indian Arbitration Act, 1940 which confers statutory jurisdiction on courts of law either to convert a legally valid award into a rule of the Court or set aside/remit the same on the grounds specifically provided for that purpose in the said Act. There is an express and well defined statutory scheme for the same in the Act. A provision of law \026 Section 14 of the Indian Arbitration Act, 1940, which is relevant for this appeal, reads as under:

"14. Award to be signed and filed \026

(1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person

claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) Where the arbitrators or umpire state a special case under Clause (b) of Section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award."

The plain and simple language of the above provision requires firstly that the arbitrators/umpire, as the case may be, shall:
(a) sign the award they make
(b) give notice in writing to the parties of the making and signing of the award

(c) cause the award along with the records be filed in Court
Thereupon the Court shall:

(d) give notice to the parties of the filing of the award
(e) if a special case is referred to court, shall pronounce its opinion, after giving notice to the parties and hearing them.

On 23.3.1996, M/s Little & Co., the advocates, as per the request of the Arbitrator filed an award in the Court on behalf of the Arbitrator. The Court, on 9.5.1996, issued a notice to the parties about the filing of the award which was received by the appellant on 14.6.1996. The appellant, on the receipt of the notice from the Court, moved an application for setting aside the award on 12.7.1996. The learned single Judge rejected the petition of the appellant solely on the ground that the same was time barred as the appellant had knowledge of the filing of the award much prior to the date of notice to them by the Court.
Aggrieved by the judgment and order as passed by the learned single Judge, the appellant filed an appeal before the Division Bench of the High Court which also dismissed the appeal reaffirming the judgment of the learned single Judge holding that the application of the appellant was barred by limitation as the same was moved after a span of 30 days from the knowledge of the filing of the award in Court. The Division Bench also directed the appellant to deposit with the office of the Prothonotary & Senior Master, High Court, Bombay, a sum of Rs.2,36,29,954/-. The appellant deposited the above said amount as per the said order. Thereupon the respondent moved a Notice of Motion No. 206 of 2006 in Appeal No. 321 of 1997 in Arbitration No. 260/96 in Award No. 98/96 praying the Court to direct the office of the Prothonotary & Senior Master, High Court, Bombay to pay and hand over the sum of Rs.2,36,29,954/- with accrued interest due thereon to the respondent. The appellant filed an affidavit in reply to the notice of motion. The respondent again moved a Notice of Motion No. 1082 of 2006 praying the Court to pass a judgment and decree in terms of the Award dated 2.3.1996. Hence the present appeal by way of special leave petition has come up.

We have heard Mr. Gopal Subramanium, learned Additional Solicitor General of India, appearing for the appellant and Mr. Ashok H. Desai, learned senior counsel appearing for the respondent.

The learned ASG and the learned senior counsel advanced elaborate submissions with reference to the provisions of the Indian Arbitration Act, 1940, Limitation Act,1963 and also cited many decisions in support of their respective contentions.

Mr. Gopal Subramanium submitted as under:

(a) that the award was filed by the arbitrator and not by the appellant and that the appellant has not instructed their counsel to file the award and that the award was filed by the counsel at the instance of the arbitrator. The arbitrators had addressed a letter to the counsel along with their affidavits for filing the award. As the award was filed on behalf of the arbitrator, the doctrine of constructive notice cannot be stretched to the extent of imputing knowledge on the appellant of filing of the award;

(b) that as per Section 14(2) of the Arbitration Act, the arbitrator causes the award to be filed on request of either of the party or on the express direction of the Court. In the instant case, the appellant has not filed any application requesting the arbitrator to file the award in Court. In the absence of such an application, the award filed by the arbitrator, cannot be construed as an award filed at the instance of the appellant and hence doctrine of constructive notice cannot be extended to the facts and circumstances of the case. The High Court has overlooked the significance of the expression "the Court shall thereupon give notice to the parties of the filing of the award " occurring in the aforesaid section. The use of the aforesaid expression in the said section reflects the legislative intention that the notice referred therein should always be given by the Court.

(c) The High Court has failed to comprehend the true spirit and intent of clause (b) of Article 119 of the Limitation Act. Mr. Gopal Subramanium submitted that the words used in Article 119 makes it abundantly clear that the said Article recognizes the date of service of notice as the relevant date for computation of the stipulated period of limitation. The Legislature, after exercising its wisdom, has specifically used the expression "the date of service of notice" and not the date of knowledge of the filing of the award, in Article 119 of the Limitation Act. The construction now adopted by the High Court tends to obliterate the difference between the date of service of notice and the date of knowledge of the award, and is hence contrary to the legislative intent.

(d) that the appellant has not received any communication or intimation about the filing of the award except for the notice dated 9.5.1996. The expression "the Court shall thereupon give notice to the parties of the filing of the award" occurring in Section 14(2) of the Arbitration Act has to be conjointly read with the expression "the date of notice" occurring in Article 119(b) of the Limitation Act. A conjoint reading of the aforesaid section in the manner indicated above leads to an irresistible conclusion that the relevant date to be taken into account for completion of the period of limitation as stipulated in Article 119(b) of the Limitation Act, is the date of

service of notice by the Court. The notice dated 9.5.1996 is the first form of communication received by the appellant on 14.6.1996 as regards the filing of the award. Accordingly, the period of thirty days has to be computed from 14.6.1996 i.e. the date of receipt of the said notice. In view of the expression "the date of notice" used in Article 119 of the Limitation Act, the period of limitation has to be computed from the date of service of notice.

e) The provisions of Order III Rule 5 of C.P.C. is reproduced hereunder:

"5. Service of process on pleader \026 Any process served on the pleader who has been duly appointed to act in Court for any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person."

It was argued that the High Court has erred in importing the principle of Order III Rule 5 of the C.P.C. to the facts of the present case. The principle embodied in the said Rules is only applicable in cases where the counsel acts on behalf of his client and where the counsel in his representative capacity represents his client. In the present case, the counsel has not acted in his representative capacity. By filing the award at the instance of the arbitrator, the counsel was acting as a representative of the arbitrator and was not acting as a representative of the appellant. Since at the time of filing of the award, the counsel was acting under the instruction of the arbitrator, the principles of agency cannot be extended to the aforesaid facts of the present case.

Explaining further, the learned ASG submitted that it is manifest from the aforesaid Rule that the presumption inherent in the said Rule applies only in cases where the pleader has been duly appointed to act for the party. The presumption under the Rule cannot be applied to situations where the pleader is not acting for the party. For application of the aforesaid Rule, it is sine qua non that the pleader should have been appointed by the party to act in Court. It is submitted that in the instant case, the counsel was not appointed by the appellant to act in Court on its behalf. The counsel, at the time of filing of the award, was acting on behalf of the arbitrator and was appointed by the arbitrator to file the award on his behalf.

(f) that the High Court is not right in applying the proposition laid down by this Court in F.C.I. vs. B. Kuttappan, (1993) 3 SCC 445 and has failed to appreciate the legal proposition laid down by this Court in Deo Narain Choudhary vs. Shree Narain Choudhary, (2000) 8 SCC 626. The High Court has committed an error in overlooking the proposition laid down by this Court in Ch. Ramalinga Reddy vs. Superintending Engineer, (1999) 9 SCC 610.

(g) That the High Court has overlooked real bone of contention between parties and have been swayed away by the proposition that the notice contemplated by Section 14(2) of the Arbitration Act can be in any form i.e., oral or written and the aforesaid proposition only adumbrates the principle

that the notice referred to in Section 14(2) need not specifically be framed in a written format.
Thus Mr. Gopal Subramanium submitted that the impugned judgment is contrary to well settled proposition of law.
Mr. Ashok H. Desai, learned senior counsel, appearing for the respondent submitted as follows:
1. The instant case is squarely covered by the decision of this Court in F.C.I. vs. B. Kuttappan (Supra).
2. In regard to the argument of the learned ASG appearing for the appellant, that M/s Little & Co.,advocate was acting as a representative of the arbitrator and it was not acting as a representative of the appellant and that they were not appointed by the appellant to act in Court on their behalf, Mr. Ashok Desai submitted that the above submission is falsified by Annexures P-3 and P-4 filed by the appellant itself. Annexure P-3 is the letter dated 23.3.1996 addressed to the Prothonotary & Senior Master, High Court, Mumbai by which M/s Little & Co., advocates, in their capacity as an advocate for the appellant herein, requested that the award therein be taken on file.
Annexure P-4 is the letter dated 26.4.1996 addressed to the Prothonotary & Senior Master, High Court, Mumbai by which M/s Little & Co., advocates, again in their capacity as the advocate for the appellant herein, gave the addresses of the parties as well as their advocates.
According to Mr. Ashok Desai, both these letters confirm that the award was filed by M/s Little & Co., advocates as the counsel for the appellant and that they had, by their own showing, been appointed by the appellant to act on its behalf in Court. The learned single Judge also held that there is not a word to say that M/s Little & Co. had filed the award in Court for and on behalf of the Arbitrator nor despite the specific contention of the bar of limitation, had any affidavit been filed either by the arbitrators or any one from the office of M/s Little & Co. to say that the Arbitrator had engaged or required M/s Little & Co. to file the award.
(3) It is settled law that intimation, communication or notice to pleader is notice to the party in view of Order III Rule 5 of C.P.C. and that such intimation, communication or notice to pleader would be sufficient compliance with Section 14(2) of the Arbitration Act, 1940. Therefore, Mr. Ashok Desai submitted that the appellant is estopped from claiming that it did not have the corresponding knowledge of the filing of the award by M/s Little & Co. The moment the award was filed by the appellant's counsel in Court and was taken on record by the Court, the notice by the Court is deemed to the appellant. In other words, even in the absence of formal notice, some other act of the Court is enough to foist awareness of the filing of the award in Court, wherefrom the period of limitation is to commence.
(4) Inviting our attention to Rule 786 of the Bombay High Court (Original Side) Rules, Mr. Ashok Desai submitted that the award has been filed in Court, the Prothonotary and Senior Master shall forthwith issue notice of such filing to the parties interested in the award. In the instant case, the learned single

Judge has recorded that the Prothonotary & Senior Master of the Court had on around 24.4.1996 directed the counsel for the appellant M/s Little & Co., to furnish detailed addresses of the parties and that the appellant's counsel had on 26.4.1996 furnished those addresses. The learned single Judge found that this communication from the Court received by the appellant's counsel on or before 26.4.1996 could itself be treated to be a notice by the Court to counsel for the appellant, about the filing of the award in Court. Thus it was submitted even if the period of 30 days as contemplated under Article 119 of the Limitation Act is computed from 26.4.1996, the petition to set aside the award filed on 12.7.1996 would be time barred.

He denied that the High Court has failed to follow the dictum laid down by this Court in the case of Deo Narain Choudhary vs. Shree Narain Choudhary,(supra) and in Ch. Ramalinga Reddy vs. superintending Engineer (supra).

In the above cases, this Court held that limitation does not begin to run merely on filing of a caveat in Court by the objecting party as the notice regarding filing of the award must be act of Court, even though it need not be in writing. The instant case is not one where deemed or constructive notice is imputed to the appellant because its own counsel expressly acting as its counsel, filed the award in Court and hence the appellant is estopped from claiming lack of knowledge about the filing of the award on that date. It does not lie in the mouth of the appellant whose counsel had filed the award in Court to contend that it did not have the knowledge of the filing of the award. Likewise, in the case of Ch. Ramalinga Reddy vs. superintending Engineer (supra), this Court held that mere intimation from one party to the other party as to the filing of the award, without direction by the Court, is not notice in terms of Section 14(2) of the Arbitration Act, 1940. The instant case is again not one where constructive or deemed notice is imputed to the appellant because of any intimation sent by the respondent to the appellant.

Concluding his arguments, Mr. Ashok Desai submitted that the instant case is fully covered by the decision of this Court in F.C.I. vs. B. Kuttappan, (supra) as aforesaid. In the said case, this Court has been pleased to impute constructive notice to the party for the act of its counsel on similar facts. Mr. Ashok Desai submitted that when the party or its pleader already has knowledge of the filing of the award in Court in terms of Section 14 of the Arbitration Act, 1940, a subsequent notice by the Court to the parties in this regard is of no legal consequence and cannot in law prejudice the rights of the parties. He further submitted that it is factually incorrect that in the instant case, M/s Little & Co. did not act in its "representative capacity" on behalf of the appellant and reiterated that in the instant case M/s Little & Co. filed the award expressly acting in Court as the counsel for the appellant and that M/s Little & Co. was appointed by the appellant to act in Court on its behalf which is evident from Annexures P- 3 and P-4 to the appeal.

Arguing further, Mr. Ashok Desai submitted that the question in the instant matter is not whether the appellant had expressly instructed its counsel to file the award in Court but whether the very act of the appellant's counsel acting as counsel of the appellant in filing the award in Court imputes deemed and constructive knowledge of the filing of the award on the appellant.

It was also submitted by Mr. Ashok Desai that the

decisions of this Court in Deo Natain Choudhary vs. Shree Narain Choudhury (supra) and Ch. Ramalinga Reddy vs. Superintending Engineer (supra), are not applicable to the facts of the instant case and are even otherwise consistent with the decision of this Court in F.C.I. vs. B. Kuttappan, (supra). Mr. Ashok Desai further submitted that the appeal filed by the ONGC has no merits and therefore, is liable to be dismissed with heavy costs.

Questions of law:-

In the above background, the following substantial questions of law arise for consideration by this Court:

1. Whether the High Court was justified in extending the principle of constructive notice to the facts of the present case ignoring the express stipulations of Section 14(2) of the Arbitration Act, 1940?

2. Whether the High Court was justified in ignoring the fundamental difference between the two expressions i.e. date of service of notice and date of knowledge of award?

3. Whether the High Court was justified in overlooking the legislative intent in framing Article 119(b) of the Limitation Act by incorporating the expression "the date of service of notice"?

4. Whether in view of the exhaustive nature of Article 119(b) of the Limitation Act, the High Court was justified in importing the principle embodied in Order III Rule 5 of the Code of Civil Procedure?

5. Whether the High Court has failed to appreciate the significance of the expression "the Court shall thereupon give notice to the parties of filing of the award" occurring in Section 14(2) of the Arbitration Act, 1940?

6. Whether the High Court was justified in overlooking that the presumption of constructive notice can be drawn only against the party whom the counsel is representing at the time of performing the said act?

We have given our careful consideration to the entire material placed before us, the arguments advanced by both sides with reference to the pleadings, annexures, documents, provisions of law in the Indian Arbitration Act, 1940 and of the Limitation Act, 1963 and the rulings cited by both the counsel.

In the instant case, the award was filed at the instance of the arbitrator by M/s Little & Co. on 23.3.1996 as is clear from Annexure P-4. The relevant part of annexure P-4 reads as under:

"We, therefore, now give below the address of the parties as well as their advocates for the purpose of serving notice in respect of the above award.

The address of the claimant is as under:

Xxxxxxxxxx

The address of the respondents and their advocates are as under:

Oil and Natural Gas Corporation Ltd.
(E & C Division)
Bombay Regional Business Centre
16-E Maker Towers,

Cuffe Parade
Bombay-400 005

M/s Little Co.
Central Bank Building, 3rd Floor,
Mahatma Gandhi Road,
Fort, Bombay-400 023."

The description of M/s Little & Co. as the lawyer of the respondent in the Arbitration, is not of any consequence and not binding on the appellant so long as no vakalat is given to them at the relevant time of filing of the award before the Court to act as their lawyer in the proceedings initiated under Sections 33 & 34 of the Arbitration Act, 1940 before the High Court.

The fact that Annexure P-4 is filed after filing of the award and that the counsel has furnished the address of the appellant for service of notice reflects that M/s Little & Co. was not representing the appellant at the time of filing of the award. These letters, in our view, clearly establish that M/s Little & Co. at the time of filing of the award was acting at the instance of the Arbitrator.

The fact that M/s Little & Co. on the panel of the advocates of the appellant does not determine its representative capacity at the time of filing of the award. Panel lawyers are not standing counsel for the ONGC in the High Court. Panel lawyers' services are availed of, on a case to case basis. M/s Little & Co. filed the award acting as the agent of the arbitrator and while doing this ministerial act of filing of the award on behalf of the Arbitrator they were not acting in their capacity as the counsel of the appellant.

The respondent has misconstrued the pleadings of the appellant. The appellant is not denying the fact that M/s Little & Co. was the counsel for the appellant in the arbitration proceedings. The appellant is, in fact, only contending that at the time of filing of the award, the counsel was not acting on behalf of the appellant but was acting as a representative of the arbitrator. The law requires the arbitrator to file the award before the competent Court. The Arbitrator can discharge this legal duty by himself or through an agent who happened to be an appellant's counsel in the Arbitration. The fact that the counsel had filed the award at the express request of the arbitrator reflects that the counsel was acting as a representative of the Arbitrator at the time of filing of the award and was discharging any professional service as a lawyer to the appellant. In fact, as contended by the learned ASG appearing for the appellant, that the appellant had occasioned to appoint M/s Little & Co. to act as its lawyer before the High Court even before the award was filed. Since the appellant had no intention to get the award filed in Court, there was no question of appointing M/s Little & Co. to coordinate with arbitrator to obtain the award and file the same before the court. Therefore, in our view, the knowledge of the said lawyer about the filing of the award is not a notice, either actual or constructive to the appellant.

Order III Rule 5 CPC:-

We shall now consider the arguments advanced on Order III Rule 5 C.P.C. In our view, the principles enshrined in Order III Rule 5 C.P.C. is not applicable to the facts of the instant case. The principles embodied in the said Rule is only applicable in cases where the counsel acts on behalf of his client and where the counsel in its representative capacity represents its client. In the instant case, by filing the award at the instance of the arbitrator, the counsel is acting as a representative of the arbitrator and was not acting as a

representative of the appellant and, therefore, the presumption envisaged by the said Rule cannot be stretched to situations where the pleader is not acting on behalf of the party.

Arguments on Article 119 of the Limitation Act, 1963:-

Mr. Gopal Subramanium, learned Additional Solicitor General, submitted that Article 119 recognizes the date of service of notice as the relevant date for computation of the period of limitation. This Article unlike other Articles does not refer to the date of knowledge of filing of the award and hence the period of limitation cannot be computed from the date of knowledge of filing of the award as contemplated by Article 119 of the Limitation Act. In view of the specific expression used in Article 119, limitation cannot be computed from the date of knowledge of the award. Further, at the time of filing of the award, the appellant did not have knowledge of the filing of the award as the award was filed by M/s Little & Co. at the instance of the Arbitrator.

Our attention was drawn to paragraph 5 of the counter affidavit filed by the respondent in this appeal. We have perused the same. It is seen from the averments that the respondent has admitted in paragraph 5 of the counter affidavit that an act of the Court is necessary to foist awareness of filing of the award. The averments made in the said paragraph itself indicates that by the letter dated 24.4.1996, the Prothonotary and Senior Master directed M/s Little & Co. to furnish detailed address of the parties for the purpose of serving them the notice of filing the award. The fact that M/s Little & Co. was directed to furnish address of the parties for service of notice indicates that the Court itself did not consider the act of filing of the award by M/s Little & Co. as notice or even constructive notice. The letter dated 24.4.1996 is a letter directing the counsel for the appellant to furnish address for service of notice on the parties. Therefore, the said letter cannot be treated as an act of Court sufficient to foist knowledge of filing of award. On the other hand, the said letter induces and triggers the belief that the Court shall, notwithstanding the filing of the award, serve notice on the parties including the appellants of filing of the award. Vide the communication dated 26.4.1996 M/s Little & Co. only complied with the aforesaid direction and accordingly furnished the address for service of notice on the parties. By furnishing the addresses, even M/s Little & Co. though the knowledge they have about the filing the award is not notice to ONGC and the Court ought to service notice separately. Therefore, it was submitted that the period of limitation cannot be computed w.e.f. 26.4.1996. We see merit and substance in the above submission.

Likewise, in paragraph 6 of the counter affidavit, the respondent has admitted that the arbitrator had caused the award to be filed through the appellant’s counsel in the arbitration proceedings. Thus at the relevant time M/s Little & Co. was acting as an agent of the arbitrator and was not acting as counsel for the appellant.

The doctrine of constructive notice cannot be extended to acts that are performed at the instance of a third party. As already stated and noticed, that at the time of filing of the award M/s Little & Co. was acting at the instance of the arbitrator i.e. a third party. This sine qua non for application of the principle of constructive notice is that the counsel should have acted as a representative of the party. Since the award was filed at the instance of the arbitrator and on his express request, the counsel was acting as a representative of the arbitrator and not as a representative of the appellant.

We shall now consider the decisions cited by learned ASG in support of his contention.

1. Kumbha Mawji vs. Union of India, [1953] SCR 878

In this case, this Court was considering the authority of the umpire to file the award on behalf of the appellant into court in terms of Section 14(2) of the Arbitration Act. This Court held that Section 14(2) clearly implies that where the award or a signed copy thereof is in fact filed into court by a party he should have the authority of the umpire for doing so. This Court further held as under:

"The mere filing of award in Court by a party to it without the authority of the arbitrator or umpire is not a sufficient compliance with the terms of s.14 of the Indian Arbitration Act, 1940, nor can it be inferred from the mere handing over of the original award by the umpire to both the parties that he authorized them to file the same in Court on his behalf; that authority has to be specifically alleged and proved."

2. Nilkantha Shidramappa Ningashetti vs. Kashinath Somanna Ningashetti and Others, [1962] 2 SCR 551

In this case, in a partition suit the Arbitrator filed his award in the court and the judge adjourned the case for "the parties' say to the arbitrator's report." No notice in writing was given to the parties by the court of the filing of the award. Objection to the award was filed by the appellant beyond the period of limitation. The court ordered the award to be filed and decree to be drawn up in terms of the award as the objection filed was beyond the period limitation.

The appellant's case was that the period of limitation as under Art. 158 of the Limitation Act, for an application to set aside the award, would run against him only from the date of service of the notice in writing was issued by the Court to the appellant the time never began to run against him. The appellant also contended that as the court had refused to set aside the award the appeal was maintainable under s.39(1)(VI) of the Arbitration Act. This Court held as under:

"that the communication by the court to the parties or their counsel of the information that an award had been filed was sufficient compliance with the requirements of sub-s.(2) of s.14 of the Arbitration Act, with respect to the giving of the notice to the parties concerned, about the filing of the award. Notice does not necessarily mean "communication in writing". The expression "give notice" in sub-s.(2) of s.14 of the Arbitration Act simply means giving intimation of the filing of the Award. Such intimation need not be given in writing and could be communicated orally. That would amount to service of notice when no particular mode of service was prescribed.

Held, further that where there was no objection before the court praying for setting aside the award, no question of refusing to set it aside could arise, and no appeal therefore was maintainable under s.39(1)(VI) of the Arbitration Act."

3. Parasramka Commercial Company vs. Union of India, 1969 (2) SCC 694

In this case, the appellant entered into a contract with the Union of India and the matter was referred to arbitration. The award was made and signed on April 26, 1950. The arbitrator did not send a notice of the making and signing of the award but sent a copy of the award signed by him to the company which acknowledged the receipt of the copy by letters dated May 5 and May 16, 1950. The Appellant filed an application under Section 14(1) of the Arbitration Act in the Trial Court on March 30, 1951, for making the award rule of the Court. The respondent took an objection before the Trial

Court that the application was beyond time as it was not filed within 90 days of the receipt of notice that the award had been made and signed. The Trial Court upheld the objection and dismissed the application and the High Court, in revision, confirmed it. The Company appealed to this Court with special leave. It was contended that the notice under Section 14(1) had to be something besides the award of which a copy had been sent. This Court held as under:

"that reading the word 'notice' it denotes merely an intimation to the party concerned of a particular fact. Notice may take several forms. It must be sufficient in writing and must intimate quite clearly that the award has been made and signed. In the present case, a copy of the award signed by the arbitrator was sent to the company. The company had sufficient notice that the award has been made and signed. In fact the two letters of May 5 and May 16 quite clearly show that the Company knew full well that the arbitrator had given the award, made it and signed it. In these circumstances to insist upon a letter which perhaps was also sent it is to refine the law beyond the legitimate requirements. The only omission was that there was no notice of the amount of the fees and charges payable in respect of arbitration and award. But that was not an essential part of the notice for the purpose of limitation. A written notice clearly intimating the parties concerned that the award has been made and signed certainly starts limitation. The decision of the learned Single Judge who has endorsed the opinion of the Subordinate Judge that limitation began to run from the receipt of the copy of the award which was signed by the arbitrator and which gave due notice to the party concerned that the award had been made and signed is upheld. That is how the party itself understood when it acknowledged the copy sent to it. Therefore, the application must be treated as being out of time."

4. Indian Rayon Corporation Ltd. vs. Raunaq and Company Pvt. Ltd., (1988) 4 SCC 31

This Court in the above matter held:

"In order to be effective both for the purpose of obtaining the judgment in terms of the award and for setting aside the award, there must be (a) filing of the award in the proper count; (b) service of the notice by the court or its office to the parties concerned; and (c) such notice need not necessarily be in writing. It is upon the date of service of such notice that the period of limitation begins and at present under clause (b) of Article 119 of the Limitation Act, the limitation expires on the expiry of the 30 days of the service of that notice for an application for setting aside of the award. It is the service of the notice and not the mode or method of the service that is important or relevant. Beyond this there is no statutory requirement of any technical nature under Section 14(2) of the Act. The expression 'give notice' in Section 14(2) simply means giving intimation of the filing of the award. Such intimation need not be given in writing and could be communicated orally or otherwise."

5. Food Corporation of India and Others vs. E. Kuttappan, (1993) 3 SCC 445. In this case, this Court held as under:

"When the arbitrator had sent the award and other papers to the respondent through his counsel, unless

he had authorized the respondent or his counsel on his behalf to the filing of it in court, it cannot be assumed that when the respondent or his counsel filed the award and other connected papers in court it was not done for and on behalf of the arbitrator. Instantly it was the respondent who by his letter had requested the arbitrator to send to his lawyer the award for filing it into court and to whom the arbitrator obliged on such request. When the arbitrator chose to accede to the request of the respondent in specific terms, he by necessary implication authorized the respondent's counsel to file the award and the connected papers in court on his behalf. The law enjoined on the arbitrator to file the award in court for which purpose he could even be directed by the court. The obligation of filing the award in court is a legal imperative on the arbitrator. The agency of the party or its lawyer employed by the arbitrator for the purpose normally need be specific but can otherwise be deduced, inferred or implied from the facts and circumstances of a given case. It needs, however, shedding the impression that when a lawyer files the award in court when given to him by the arbitrator his implied authority to do so, shall not be presumed to exist. In the instant case, no one raised the plea that the filing of the award in court by the respondent's lawyer was without the authority of the arbitrator and the courts below were not engaged on that question. The matter was agitated on the basis of knowledge of award from that fact.

6. Patel Motibhai Naranbhai and Another vs. Dinubhai Motibhai Patel and Others, (1996) 2 SCC 585

In the above case, this Court held thus:

"9. Under Sub-section (2) of Section 14, a duty is cast upon the arbitrator to file the award or cause the award to be filed in the court at the request of the party to the arbitration agreement or if so directed by the court. There is no provision which requires the arbitrator to apply to the court for filing of the award and pass a decree in terms of the award. An application for filing the award in court has to be made within thirty days from the date of service of the notice of making of the award under Article 119 of the Limitation Act. Even if it is held that Article 119 will apply only to an application made by a party and not by the arbitrator, Article 137 will come in the way of the arbitrator's making any application beyond the period of three years from the date of making of the award.

10. Faced with the situation that an application for filing the Award in Court Under Section 14(2) of the Arbitration Act has become barred by limitation, Jayantikumar Ishwarbhai Patil induced the Arbitrator to make an application for filing of the Award and also for making the Award the rule of the Court. In other words. Jayantikumar Ishwarbhai Patel, a party to the dispute with the help of the Arbitrator, did indirectly what he could not have done directly. We are of the view that law cannot be allowed to be circumvented in this fashion. The Court should have declined to entertain the application moved by the Arbitrator nearly six years after making of the Award. Without the application of the Arbitrator, the application made by Jayantikumar Ishwarbhai Patel Under Section 14(2) could not survive. The court should not come to the aid of a party where there has been unwarrantable delay in seeking the

statutory remedy. Any remedy must be sought with reasonable promptitude having regard to the circumstances."

7. Secretary to Govt. of Karnataka and Another vs. V. Harishbabu, (1996) 5 SCC 400

In the above case, this Court held thus:

"We also do not find any merit in the submission of the learned Counsel for the respondent that the endorsement made by the government pleader on 24.6.1993 on the award which was then filed by the arbitrator in court would amount to a notice under Section 14(2) of the Act. The endorsement made by the additional government pleader on 24.6.1993 can at best be construed as a notice issued by the arbitrator under Section 14(1) of the Act and such a notice, as we have already observed, is not a substitute for a notice which is mandatorily required to be issued by the Court and served upon the parties regarding the filing of the award under Section 14(2) of the Act. The trial court, therefore, fell in error in opining that "admittedly he has not filed any objections within 30 days from the date of the filing of award by the respondent No. 3 before this Court and there are no other impediments as such to deny the relief sought for by the petitioner." The period of limitation, for filing objections to the award as we have already noticed, does not commence from the date of filing of the award by the arbitrator in the court and that period would only commence from the date of service of the notice issued by the court under Section 14(2) of the Act. The High Court also fell in error in observing that the appellant could not be heard to say that he had no knowledge of the filing of the award in the Court prior to 13.7.1993 on the ground that "the additional government pleader representing respondents 1 and 2 before the court below had taken notice of the filing of the award by the arbitrator on 24.6.1993." There is nothing on the record to show that any such notice was issued by the Court regarding the filing of the award. The endorsement made by the additional government pleader on the award which was later on filed by the arbitrator in the court, did not relieve the court of its mandatory obligation to issue the notice, orally or in writing, to the appellant or its counsel to file the objections, if any, to the award. The endorsement made by the additional government pleader is of no consequence in so far as the issuance of notice by the Court under Section 14(2) is concerned. Computing the period of 30 days with effect from 13.7.93 no award could be made a rule of the Court before the expiry of the period of 30 days from that date. Not filing of any objections to the memo by 31.7.93, could not take away the statutory right of the appellants to file objections to the award within a period of 30 days commencing from 13.7.1993. Under these circumstances, the order of the trial court as well as the impugned order dated 12.7.1995 of the learned Single Judge of the High court cannot be sustained and the same are hereby set aside. This appeal consequently succeeds and is allowed."

8. Ch. Ramalinga Reddy vs. Superintending Engineer and Another, (1999) 9 SCC 610 (3 Judges)

In this case, this Court held thus:

"3.The award was made on 29-7-1985. It was sent by the arbitrator to the Court on 31-7-1985 and was

received by the Court at 12 noon on 5-8-1985. It is the case of the appellant that his advocate informed the Additional Government Pleader in writing of the receipt of the award on 5-8-1985. On 7-8-1985, the Court issued notice of the award and it was received by the respondents on 10-8-1985. The petition to challenge the award was filed by the respondents on 6-9-1985.

6. Section 14(1) of the Arbitration Act, 1940, requires arbitrators or umpires to give notice in writing to the parties of the making and signing of the award. Section 14(2) requires the court, after the filing of the award, to give notice to the parties of the filing of the award. The difference in the provisions of the two sub-sections with respect to the giving of notice is significant and indicates clearly that the notice which the court is to give to the parties of the filing of the award need not be a notice in writing. The notice can be given orally. (See Nilkantha Sidramappa Ningashetti v. Kashinath Somanna Ningashetti.) In Indian Rayon Corpn. Ltd. v. Raunaw and Co. (P) Ltd. it was held that the fact that parties have notice of the filing of the award is not enough. The notice must be served by the court. There must be (a) filing of the award in the proper court; (b) service of the notice by the court or its office to the parties concerned; and (c) such notice need not necessarily be in writing. It is upon the date of service of such notice that the period of limitation begins for an application for setting aside the award.

9. It will be noted that it was held that it did not lie in the mouth of the party who had filed the award in court through his advocate to contend that he did not have knowledge of the filing of the award and he could not contend that it was only the subsequent date upon which the Court issued notice that was the starting point of limitation. This judgment, as the passage quoted indicates, does not in any way dilute what was laid down in the cases of Nilkantha Sidramappa Ningashetti and Indian Rayon Corpn. Ltd., indeed, it could not, for those were decisions of a larger and a coordinate Bench, respectively. The judgment holds only that a party who has filed the award in court through his advocate is estopped from contending that, so far as he is concerned also, the period of limitation to challenge the award begins only when the court issues notice in respect of its filing. The ratio of the judgment has, therefore, no application to the facts of the case before us."

9. Deo Narain Choudhary vs. Shree Narain Choudhary, (2000) 8 SCC 626.

In the above judgment, this Court held that notice regarding filing of the award must be some act of court even though it need not be in writing but intimation by the arbitrator is not sufficient for the purpose of Section 14(2). Dismissing the appeal, this Court held that the period of limitation under Article 119 of the Limitation Act, 1963 will start running from the date the notice has been given by the court under Section 14(2) of the Act. This Court in para 16 held thus:

"16. There can be no dispute with the proposition of law that the notice need not be in writing and can be oral. However all the authorities clearly lay down that the notice must be some act of the Court. The proposition

that a notice must be by the Court is also confirmed by an authority of this Court in the case of Ch. Ramalinga Reddy v. Superintending Engineer reported in (1999) 9 S.C.C. 610. In this case "it has been held that mere intimation by an Arbitrator is not sufficient and it is the Court which has to given notice."

10. East India Hotels Ltd. vs. Agra Development Authority, (2001) 4 SCC 175

In this case, this Court held thus:

"10. From a perusal of the above provision, shorn of unnecessary details, it is clear that notice under sub-section (2) of Section 14 of the Act need not be in writing and that it can also be oral. What is essential is that there must be service of notice or intimation or communication of the filing of the award to the parties, mode of service of such a notice being immaterial. But such information, communication and knowledge must be by or pursuant to order of the court. However, after filing of an award by the arbitrator or the Umpire in the court, if it merely records the presence of the parties or their counsel but does not indicate that notice of filing of the award be given to the parties, no service of notice can be attributed from that fact, as notice must be referable to an act of the court."

11. Bharat Coking Coal Ltd. vs. L.K. Ahuja, (2004) 5 SCC 109

In this case, this Court held thus:

"If there is no material to show that a notice of filing of the award has ever been given to the parties, any period of limitation as prescribed in Article 119(b) loses its significance. The law is clearly to the effect that mere knowledge of passing of an award is not enough. The period of limitation will commence as provided in Article 119(b) of the Limitation Act only upon notice as to filing of the award in the court being given to the parties concerned.

In the present case the situation has arisen with very special features. The Supreme Court made an order appointing a new arbitrator who was directed to file an award in the Court and he submitted the award in court after publishing the same to the parties. Though on 18-02-2002 the Registry notified the submission of the award in court by way of an office report, but the same cannot be treated to be in the nature of a notice. The noting made by the Registry in the office report merely brought to the notice of the Court as to what had transpired and as the matter was being listed before the Court, a copy was served upon the parties concerned. It is only thereafter it can be said that the Court directed issue of notice to the parties regarding filing of the award which has been sent by the Registry. The Registry on its own could not have issued a notice without a direction from the Court in this regard. Therefore there was no notice of filing of the award in the Court to the parties as contemplated in Article 119(b) of the Limitation Act. Further, on 11-3-2002 when the matter was listed before the Court, the parties concerned took notice of the same and thereafter, objections have been filed by the parties on 11-4-2002. The plea based on limitation is therefore liable to be rejected."

In the instant case, the impugned judgment has been

passed without appreciating the factual difference in the present case and the set of facts leading to the dictum laid down in F.C.I. vs. E. Kuttappan (supra). The dictum laid down therein is not applicable to the facts and circumstances of the case on hand. The factual difference in F.C.I. vs. B. Kuttappan (supra) and the present case are explained as under:-

Facts of Food Corporation of India vs. B. Kuttappan	Facts of the present case
The respondent therein moved an application before the Arbitrator requesting him to forward the award to his advocate for filing the same in Court.	No application is made by the Petitioner requesting the Arbitrator to file the award. The Arbitrators themselves forwarded the letter along with the affidavit requesting the Counsel to file the Award.
Filing of the Award was done at the instance of the Respondent herein and on its express request.	The Filing of the award is done at the instance of the Arbitrator and not at the instance of the Petitioner. M/s Little & Co. was acting as the agent of the Arbitrator. When it did the ministerial act of filing the award in the Court as requested by the Arbitrator.

In view of the aforesaid difference in the facts and circumstances, the dictum laid down in F.C.I. vs. B. Kuttappan (supra) cannot be applied to the present case.

In our view, the High Court has failed to follow the dictum laid down by this Court in Deo Narain Choudhary vs. Shree Narain Choudhary (supra) and Ch. Ramalinga Reddy vs. superintending Engineer (supra).

This Court has expressly laid down that notice regarding filing of Award must be given to the Court by some act of court. The letter of Prothonotary and Senior Master cannot be regarded as an act of court. This Court also conclusively laid down in the aforesaid case that mere intimation from one party to the other of the filing of the Award cannot be construed as notice in terms of Section 14(2) of the Act. Hence, in our view, the intimation from the Prothonotary seeking address of the parties for the purpose of issuance of notice cannot be characterized as notice in terms of Section 14(2).

We have already said that the dictum laid down in Kuttappan's case (supra) was not applicable to the facts of the present case. At the time of filing of the Award M/s Little & Co. was not acting as representative of the appellant as admitted by the respondent in para 5 of the counter affidavit. The Arbitrator had caused the Award to be filed through M/s Little & Co. The aforesaid categorical admission cannot, therefore, be ignored or brushed aside.

For the foregoing reasons, we hold that objections to the Award filed by the appellant on 12.06.1996 was not barred by time. We, therefore, allow the appeal and set aside the order passed by the High Court in Appeal No. 321 of 1997 affirming the judgment passed by the learned single Judge dismissing the arbitration petition under Sections 30 and 33 of the Act, 1940 on the ground of limitation under Article 119 of the Limitation Act.

During the pendency of the special leave petition in this court on 05.05.2006, this Court directed the Prothonotary and Senior Master, High Court, Bombay to invest the sum of Rs. 2,36,29,954/- in fixed deposit in a Nationalized Bank. The Prothonotary and Senior Master is directed to keep the said fixed deposit in force till the disposal of the arbitration petition No. 260 of 1996 in Award No. 98 of 1996 by the High Court. The appellant is at liberty to file his objections to the award passed by the arbitrator and the High Court. The High Court is requested to dispose off the arbitration petition which was filed in the year 1996 within 3 months from today. No costs.