

CASE NO.:
Appeal (civil) 5669 of 2006

PETITIONER:
HCG Stock & Share Brokers Limited

RESPONDENT:
Gaggar Suresh

DATE OF JUDGMENT: 08/12/2006

BENCH:
G.P.MATHUR & A.K. MATHUR

JUDGMENT:
J U D G M E N T
[ARISING OUT OF S.L.P.(C) NO.6963 OF 2005]
W I T H :
CIVIL APPEAL NO. 5670 OF 2006
[Arising out of S.L.P.(c) No.7040 of 2005]

A.K.MATHUR, J.

Leave granted.

Both these appeals involve similar question of law therefore, they are disposed of by this common order. For convenient disposal of both these appeals, the facts given in Civil Appeal arising out of S.L.P.(c) No.6963 of 2005 are taken up for consideration.

This appeal is directed against the order passed by the Division Bench of the Bombay High Court in Appeal No.738 of 2004 on 2.12.2004 whereby the Division Bench of the High Court has affirmed the order of learned Single Judge. Learned Single Judge in turn has affirmed the order of the Arbitral Tribunal whereby the Arbitral Tribunal has upheld the objection of the respondent that the claim raised by the appellant is barred by limitation as per Bye-laws of the National Stock Exchange of India Limited.

A claim was made by M/s.HCG Stock and Share Brokers Limited (hereinafter to be referred to as the "appellant") before the Arbitral Tribunal and it was contested by the present respondent on the ground of limitation. The Arbitral Tribunal framed preliminary issue on limitation and held that the claim was barred by time and accordingly rejected the appellant's claim. Aggrieved against that order the appellant filed an arbitration petition before learned Single Judge of the High Court of Bombay. Learned Single Judge upheld the order of the Arbitral Tribunal. Aggrieved against that order dated 26.7.2004 passed by learned Single Judge, the appellant preferred an appeal before the Division Bench and the Division Bench dismissed the appeal and affirmed the order of the learned Single Judge.

In regular course of business the appellant maintained an account of the respondent in its books of accounts and from time to time the appellant forwarded to the respondent the extracts of the said account, which was received, retained and accepted by the respondent and at no point of time the respondent raised any dispute regarding the extract of the accounts. At the foot of the said account of the

respondent so maintained by the appellant a sum of Rs.49,79,388.17 paise remained due and payable by the respondent to the appellant as on 31.12.1999. The appellant also sent confirmation letter to the respondent along with copy of the statement of account and the respondent never raised any query nor did the respondent raise any objection and on the contrary, the respondent kept on promising to pay the outstanding dues in his accounts. The respondent sought some time for making the payment because of financial difficulties. However, after some time the appellant became suspicious and lodged a complaint against the respondent with the Economic Offences Wing on 21.3.2003. The appellant submitted that the cause of action has arisen when it filed the complaint against the respondent with the Economic Offences Wing on 21.3.2003 and therefore, the claim was within time and the same is not barred by limitation. The respondent filed his reply and raised an objection that the claim is barred by time. Apart from other objections which have been raised by the respondent, the respondent raised the plea of limitation and submitted that the time prescribed for filing any complaint arising out of a dispute redressal of which can be sought from the panel of Arbitrators by National Stock Exchange of India Limited is six months from the date of dispute. In the present dispute the time started running from the date on which the dispute has arisen. The last date on which the appellant has carried out a transaction on behalf of the respondent was 1.7.1999. The respondent submitted that the arbitration proceedings must be terminated since prima facie the dispute is not established as it is hopelessly barred by time. The Bye-laws of National Stock Exchange of India Limited provide six months period for filing of such complaint and the relevant portion of the bye-laws reads as under :

" \005 All claims, differences or disputes referred to in Bye laws (1), (1A), (1B) and (1D) above shall be submitted to arbitration within six months from the date on which the claim, difference or dispute arose or shall be deemed to have arisen. The time taken in conciliation proceedings, if any, initiated and conducted as per the provisions of the Act and the time taken by the Relevant Authority to administratively resolve the claim, differences or disputes shall be excluded for the purpose of determining the period of six months."

According to the appellant, the cause of action has arisen on or about 21.3.2003. Whether really the cause of action has arisen to the appellant on 21.3.2003 or prior to that, that is the question to be decided. On the basis of the letter dated 8.2.2001, the appellant called upon the respondent to clear up the outstanding dues on or before 16.2.2001. This is more than evident from the contents of the letter dated 8.2.2001 in which it has been clearly mentioned as follows :

" The above dues are pending for last one month and you have been already advised by our official from time to time to clear the outstanding dues at the earliest. We once again give an opportunity to you to clear the outstanding debit balance as per the statement of account (once again furnishing the statement of account with dues as on date

for your ready reference) on or before 15th Feb.2001."

That means on 8.2.2001 the appellant has already given notice that the outstanding amount of Rs.49,79,388.17 was due to it towards the trade and transaction but that has not been paid and it should be paid by 15.2.2001. Then by another letter dated 24.2.2001 again the appellant called upon the respondent to clear the outstanding dues before 19.3.2001 failing which the appellant would proceed to sell the shares placed with it as collateral security in the market and the proceeds thereof would be adjusted against the outstanding dues without any further intimation. Reference to this communication leaves no manner of doubt that the dispute has already arisen on 8.2.2001 and the last date for resolving the dispute was 19.3.2001. Therefore, even if we take the last cut off date to be 19.3.2001 then too the last date for filing the complaint would be September, 2001. In fact, the complaint was filed in the month of September, 2003. Therefore, the complaint was hopelessly barred by time.

In view of the admitted facts, the view taken by the Arbitral Tribunal as affirmed by the learned Single Judge and further affirmed by the Division Bench of the Bombay High Court requires no interference by this Court. Accordingly, the appeal is dismissed. There would be no order as to costs.

Similarly, the civil appeal arising out of S.L.P.(c) No.7040 of 2005 is also dismissed for the reasons mentioned above. There would be no order as to costs.