

Devandas Kishnani and Others Vs. Nanikram Kishnani and Others

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Court : Mumbai

Decided On : Jan-28-1992

Reported in : AIR1993Bom76; 1992(3)BomCR1; (1994)94BOMLR904

Judge : D.R. Dhanuka, J.

Acts : [Limitation Act, 1963](#) - Schedule - Article 119 - Sections 5 and 12(2); Arbitration Act, 1872 - Sections 13 and 14(2); Limitation Act, 1908 - Schedule - Article 158

Appeal No. : Arbitration Petition No. 77 of 1991 in Award No. 131 of 1990 with Interim Petition No. 79 of 1991 in

Appellant : Devandas Kishnani and Others

Respondent : Nanikram Kishnani and Others

Advocate for Def. : J.I. Mehta, ;S.P. Kanuga and ;A.M. Desai, Advs. i/b.; Kanuga & Co.

Advocate for Pet/Ap. : R. Srinivasan, ;N.G. Thakkar, ;N.H. Gursakani and ;M.P.S. Rao, Advs. i/b. ;Malvi Ranchoddas & Co. and ;M/s. Nanu Hosmusjee & Co.

Judgement :

1. Shri Prem Devandas Kishnani (Petitioner/Claimant No. 8) and Smt. Neeru Prem Kishnani (Petitioner/ Claimant No. 19) (hereinafter referred to as the petitioners)

have challenged the impugned Award dated 10th March, 1990 as modified by Supplemental Award dated 20th Sept., 1990 made by Shri Ram Jethmalani, Senior Advocate, as a sole Arbitrator. The petitioners are members of 'DKK Group'. Shri Devandas K. Kishnani, Claimant No. 1, is father of Shri Prem Devandas Kishnani. The respondents to the petition are members of 'NKK Group'. Parties to the proceedings are family members.

2. Claimant No. 8 has filed a separate petition numbered as Interim Petition No. 79 of 1991, for condonation of delay in filing of the main petition seeking to set aside the impugned Awards. The petitioners have contended that as a matter of law, their application seeking to set aside the impugned awards is in time. The petitioners have further contended in alternative that in any event, the petitioner No. 1 (claimant No. 8) is entitled to condonation of delay in respect of filing of the above referred petition.

3. This petition involves question of interpretation and application of Art. 119 of [Limitation Act, 1963](#). The propositions of law applicable to this aspect are already settled by the decisions of the Hon'ble Supreme Court of India. The factual aspects concerning question of limitation are more than clear as both parties have relied mainly on undisputed documents forming part of the record of this case. The issue of limitation shall have to be decided first. The question of limitation is vigorously argued by learned counsel on all sides. The petitioners have supported the petition for condonation of delay. All the other members of DKK Group (claimants Nos. 1 to 7 and 9 to 18) and the respondents have vigorously opposed the petition.

4. It is necessary to summarise the relevant facts having bearing on the question of limitation. The relevant facts are as under:--

(a) By four separate agreements of reference respectively dated 25th Aug. 1989, 9th Sept. 1989, 9th Sept. 1989 and 9th Sept. 1989, the parties referred their disputes to the sole arbitration of Shri Ram Jethmalani, Senior Advocate of this Court, The claimants are described in the arbitration proceedings and in the impugned awards as members of 'DKK Group'. The respondents to the petition are members of 'NKK Group'. The four agreements of reference were made by the

parties in respect of their claims pertaining to four partnership firms i.e. (1) Jaihind Oil Mills Company, (2) Jaihind Oil Mills (Kerala), (3) Sai Transways, and (4) Onam Enterprises. The agreements of reference were signed inter alia by Shri Devandas K. Kishnani (HUF) through its Karta Shri Devandas K. Kishnani. At all material times, disputes and differences existed between the two groups referred to hereinabove.

(b) On 10th March, 1990, the learned Arbitrator made his Award. At the meeting held on that day, the petitioner No. 1 i.e. claimant No. 8, was also present amongst others. A copy of the said Award was made available to the parties by the learned Arbitrator at the said meeting. It is of relevance to state that on 6th Sept. 1989, all the members of DKK Group including the petitioners herein had engaged M/s. Nanu Hormusjee & Co., Advocates, as their Advocates to represent them in the said arbitration proceedings and Vakalatnama duly executed by all the members of DKK Group including the petitioners herein is on record. By the said Award dated 10th March, 1990, it was provided that DKK Group shall retire and be deemed to have retired from three of the four firms mentioned in Clause I of the award i.e. Jaihind Oil Mills Company (Bombay), Sai Transways and Onam Enterprises, and the NKK Group shall retire and be deemed to have retired from Jaihind Oil Mills (Kerala). The said Award provided for continuation of these firms with continuing partners thereof as specified therein. By clause 3 of the said Award, it was provided that the assets of the four firms of the two groups shall be dealt with as mentioned in clause 5 of the Award. It was further provided that M/s. Jaico Trading, its office and godown were treated as the asset of the four firms by consent of the parties. By Clause 4 of the said Award, provisions were made for sharing of liabilities as provided therein. In substance, it was provided that except in respect of five categories of liabilities mentioned in Clause 4 of the award, the rest of liabilities shall be borne by the continuing partners. By Clause 4(1) of the Award, it was provided that contingent liability arising out of 'the Dutchman litigation' would not be of continuing partners. It was stated that in respect of this liability, suit was already decided in favour of M/s. Jaihind Oil Mills Co., but an appeal was pending. By sub-clause (5) of Clause 4 of the said award, provision was made in respect of liability pertaining to clearance of certain goods consigned from Cochin to Bombay in respect whereof the carriers had filed a criminal case in

Metropolitan Magistrate's 27th Court at Mulund, Bombay. By Clause 5 of the said award, provisions were made in respect of distribution or division of assets between DKK Group and NKK Group subject to other provisions thereof. By the said clause, provisions were also made for making of money payments. By clause 6 of the said award, directions were given for payment of Rs. 1.50 crores to DKK Group by NKK Group. The said award did not make any provision for distribution inter se amongst members of DKK Group. By clause 8 of the said award, it was provided that both the groups shall execute all necessary documents and perform all necessary acts to give effect to the terms of the said award. The said Award did not effect partition of assets of its own force and provided for execution of documents by the parties in terms of the Award. Immediately on pronouncement of the said award and on contents of the said Award becoming known to the parties and the copy there of being made available to the parties, the parties sought clarification from the learned Arbitrator in respect of liability mentioned in sub-clause (1) of Clause 4 of the Award dated 10th March, 1990. With consent of both the parties, the learned Arbitrator clarified and recorded in his note dated 10th March, 1990, as recited in modifying Award dated 20th Sept. 1990, as under:--

'After inspecting the Award, both the parties seek clarification of Clause 4(1) of the Award. Both the parties are agreed that this liability, if it ever arises, shall be borne by the two Groups in proportion to their respective shares in the partnership.'

(c) In the said arbitration proceedings, M/s. Nanu Hormusjee & Co., Advocates and Solicitors represented all the members of DKK Group including the petitioners throughout as one integrated group and M/ s. Kanga & Co., Advocates and Solicitors represented all the members of NKK Group. On or about 6th Oct. 1990, the petitioners appointed M/s. Desai, Berjis and Chinoy as their new Advocates and Solicitors. Thus by necessary implication, the authority of M/s. Nanu Hormusjee & Co., Advocates and Solicitors, to represent the petitioners stood terminated with effect from about 6th Oct. 1990.

(d) By their letter dated 12th March, 1990, M/s. Nanu Hormusjee & Co. representing all the members of DKK Group informed M/s. Kanga & Co., Advocates representing NKK Group that members of DKK Group were proceeding

to take possession of the various assets which had been awarded to them in their favour under the said award dated 10th March, 1990. It is clear to me from this letter that at least on 12th March, 1990, the petitioners had no intention to challenge the said Award. It would be a fair inference from the said letter that the said award was accepted by all the parties and all the members of DKK Group and NKK Group including the petitioners (claimants Nos. 8 and 19) were keen to implement the said award soon after the same was announced.

(e) The members of DKK Group felt that to some extent the said award dated 10th March, 1990 was required to be modified by consent. It is of some significance that the note made by the Arbitrator on 10th March, 1990, recited in the said modifying Award dated 20th Sept. 1990, did not form part of the Award dated 10th March, 1990 as such prior to making of the modifying award dated 20th Sept. 1990 described sometimes as supple-mental award. On 30th Aug. 1990, M/s. Nanu Hormusjee & Co., Advocates & Solicitors representing DKK Group requested the learned Arbitrator to correct the said award. Copy of the said letter is made available to the Court. Reference is made to the said letter in the modifying award. In view of the said letter of request made by DKK Group including the petitioners through their Advocates M/s. Nanu Hormusjee & Co. to which NKK Group or M/s. Kanga & Co. representing them had no objection, the learned Arbitrator called meeting after serving notices on the Advocates for both parties, as recited in the said modifying award dated 20th Sept. 1990 for completing the formality of amending the original award by consent of parties. The learned Arbitrator, who is a lawyer of considerable experience, was well aware of the fact that the modification of the original award dated 10th March, 1990 could be made only with consent of the parties as the modification sought did not result from any arithmetical error or accidental slip. At the meeting held on 20th Sept. 1990, all the members of both the groups duly represented by their Advocates gave a writing to the learned Arbitrator, which reads as under:--

'Both the groups represented by their respective attorneys agree that the arbitrator may modify the award bearing in mind such equities as he thinks fit, and the modification need not be confined to such modifications as are covered by Section 13(d) of the Arbitration Act. Both the parties agree that after the modification is

decided upon by the Arbitrator, there will be no further dispute between the parties and both the parties will take immediate steps to have the Award made Rule of the Court, and implement it in letter and spirit.'

The said writing was signed by the various Advocates representing both, the groups and also by some of the individuals. By the said supplemental award dated 20th Sept. 1990, the original award dated 10th March, 1990 was modified in respect of liability referred to in Clause 4(5) of the award and also in respect of clause 6 of the said award. Clause 3 of the Supplemental Award is of some significance. The said clause reads as under:--

'Save and except the amendments made by Clauses(1) and (2) above, the rest of the Award shall remain, and this modification shall be annexed to the original Award and the same be deemed to be a part thereof.'

Thus the supplemental award dated 20th Sept. 1990 is nothing but a modifying award and is part and parcel of the original award dated 10th March, 1990 and has no separate identity in law as it has merged with the original award. The said supplemental award is merely an amendment of the original award dated 10th March, 1990 with consent of the parties. It is reasonable to consider the two awards as merged into one another and the same can be described as single award dated 10th March, 1990, it being well-settled that amendment forms part of the original. The learned counsel for the petitioners has submitted that both the said awards can be appropriately considered as award dated 20th Sept. 1990. This part of the controversy however is of no consequence and it makes no difference as to whether the two awards are considered as award dated 10th March, 1990 or award dated 20th Sept. 1990. The petitioners have not disputed the authority of M/s. Nanu Hormusjee & Co. to address letter dated 30th Aug. 1990, to receive notices of meeting held also on behalf of the petitioners and to give consent to modifying/supplemental award dated 20th Sept. 1990 or to give the said writing. It must be presumed that the petitioners had full knowledge of consent award dated 20th Sept. 1990 when made. The petitioners are bound by the consent given by their Advocates to the said Award.

(f) On 25th Sept. 1990, the award dated 10th March, 1990 was filed by the Arbitrator in the office of the Prothonotary and Senior Master, High Court, Bombay. On 28th Sept. 1990, the modifying award dated 20th Sept. 1990 was also filed. Both the said Awards are liable to be treated as Award dated 10th March, 1990 as amendment forms part of the original.

(g) The Award was partly acted upon between the parties for some time in the month of Oct. 1990. The DKK Group took possession of part of the assets under the said Award.

(h) On or about 5th or 6th Oct. 1990, the petitioners herein filed a suit in the Bombay City Civil Court at Bombay against 14 members of DKK Group only. A copy of the plaint in the said suit is made available to this Court and forms part of compilation. The petitioners herein contended in the said suit that the petitioners' share in the assets allocated to DKK Group under the said award were not separately and independently demarcated and the petitioners were likely to suffer irreparable loss if the other members of DKK Group took possession of the said assets and disposed of the same. It is nowhere stated in the said plaint in this suit that the petitioners desired the impugned award to be set aside. The suit proceeds on the footing that the impugned award was binding on the parties including the petitioners. By this suit the petitioners prayed for permanent injunction restraining the defendants to the suit i.e. other members of DKK Group from disposing of or creating any third party rights in the properties described in Exhibit 'M' to the plaint or any part thereof. No reference is to be found in the said plaint in the said suit to the modifying award or supplemental award dated 20th Sept. 1990. The plaint filed in the said suit was returned by the Bombay City Civil Court to the plaintiffs for presentation to proper Court, presumably on the ground of lack of pecuniary jurisdiction. The said suit was not filed in High Court. Admissions contained in the plaint bind the plaintiffs unless satisfactorily explained. The petitioners herein filed this suit through their new Advocates M/s. Desai, Berjis & Chinoy as by this time the petitioners decided to commence legal battle against the other members of DKK Group for the first time to safeguard their interest for sub-division of the assets coming to the share of DKK Group under the said Award. M/s. Desai, Berjis & Chinoy were aware of filing of the said Awards as would be obvious from

narration of facts hereinafter.

(i) On 10th Oct. 1990, M/s. Desai, Berjis and Chinoy, Advocates, addressed a letter to petitioner No. 1 (claimant No. 8) at London referring to the telephonic discussion which the said newly appointed Advocates and Solicitors had with their client, the petitioner No. 1. At no time was there any conflict between the petitioner No. 1 and petitioner No. 2. Both the petitioners were always represented by one set of legal advisors. Correspondence was carried on by petitioner No. 1 on behalf of himself and his wife, petitioner No. 2 (claimant No. 19). Both the petitioners are husband and wife respectively and are residing together. Both the petitioners have always made common cause in respect of subject matter of this litigation. During course of correspondence, the petitioner No. 1 addressed letters to M/s. Kanga & Co. representing NKK Group on behalf of himself and his wife, claimant No. 19. Along with the said letter dated 10th Oct. 1990, M/s. Desai, Berjis and Chinoy forwarded a Vakalatnamato petitioner No. 1 for being signed by both the petitioners although they were already engaged to act for them earlier. Along with the said letter, the said newly appointed Advocates of the petitioners also forwarded draft of a letter for being signed by both the petitioners and for being transmitted by the courier so that the implementation of the award was not delayed. The enclosure to this letter is of considerable significance. The said proposed letter was to be addressed by the petitioners to the members of NKK Group. In the last but one paragraph of the said letter, it is written as under:--

'We have instructed our Solicitors, M/s Desai, Berjis and Chinoy to take suitable steps to have the said Award duly modified, filed in Court for the purpose of obtaining a Decree thereof as well as waive services of the filing of the Award and to take all incidental steps to ensure that the Decree in terms of the said Award dated 10-3-1990 as modified by Supplemental Award dated 20-9-1990 is obtained at the earliest.'

(j) It is clear from the said letter dated 10th Oct. 1990 that M/s Desai, Berjis and Chinoy, duly authorised Advocates of the petitioners, were fully aware of the original award dated 10th March, 1990 as well as the modified award dated 20th Sept. 1990 at least by 10th Oct. 1990 and also of the fact that the said awards

have been filed in Court. The said letter was admittedly received by the petitioners.

(k) Sometime in the month of Nov. 1990, meetings were held between the Advocates and Solicitors representing all the parties for implementation of the said awards. During the course of the said meetings, M/s Nanu Hormusjee and Co., Advocates, represented members of DKK Group except the petitioners and M/s Desai, Berjis and Chinoy, Advocates, represented the petitioners. M/s Kanga and Co. Advocates, represented members of NKK Group throughout. Reference is made to these meetings in the correspondence forming part of record of this case.

(l) On 8th Dec. 1990, M/s Nanu Hormusjee & Co. Advocates, addressed a letter to M/s Desai, Berjis and Chinoy, Advocates representing the petitioners. The said letter is also self eloquent. In this letter also, reference is made to both the awards dated 10th March, 1990 as well as modifying or supplemental award dated 20th Sept. 1990. At this stage also there is no whisper of challenging the impugned awards already filed in Court.

(m) Along with the letter dated 13th Dec. 1990, M/s Kanga & Co. Advocates representing NKK Group forwarded copy of notice of filing of 'the award dated 10th March, 1991', to the petitioner No. 1. Original Award dated 10th March, 1990 and Amending Award dated 20th Sept. 1990 can be reasonably described as Award dated 10th March, 1990. It is expressly stated in the Award dated 20th Sept. 1990 that the said Award is integral part of original Award dated 10th March, 1990. The petitioner No. 1 received the said communication along with copy of the formal notice of filing of the award on 7th Jan. 1991. By his letter dated 22nd Jan. 1991, the petitioner No. 1 on behalf of himself and his wife, petitioner No. 2, pointed out to M/s Kanga and Co. Advocates representing NKK Group, that both the petitioners had decided to challenge the said award. It was stated in the said letter that the grievance of the petitioners was that their share in the assets were not secured to them under the said Award. In the said letter, the petitioner No. 1 stated as under:--

'We (meaning thereby both the petitioners) intend to challenge this award on the basis

In the post-script to this letter, it was stated that petitioner No. 2 was not served with notice of filing of award. Since formal service of formal notice of filing of Award is not a must, the post script to the said letter is of no significance in view of finding recorded on the issue of petitioner's knowledge of filing of both the Awards at the material time. By their letter dated 31st January, 1991, M/s Kanga & Co. informed the petitioner No. 1 that NKK Group had no objection to the petitioners receiving their share in the assets allotted to DKK Group from other members of DKK Group. There could be no dispute on this aspect.

(n) On 20th Feb. 1991, the petitioner No. 2 (claimant No. 19) received formal notice of filing of the Award issued by the Proton-notary and Senior Master along with a covering letter of M/s Kanga & Co. Both the petitioners had knowledge of filing of Awards since Oct. 1990 or at least since 7th January, 1991.

(o) On 22nd March, 1991, both the petitioners filed this petition seeking to set aside 'the award dated 20th Sept. 1990' meaning thereby both the awards or in the alternative seeking to have the said award or awards remitted to the Arbitrator in view of failure of the Arbitrator to determine the share of the petitioners in the assets awarded to DKK Group on the grounds more particularly set out in the said petition.

(p) On 4th April, 1991, the petitioner No. 1 alone filed a separate application, numbered as Interim Petition No. 79 of 1991, seeking condonation of delay in respect of his petition seeking to set aside the impugned awards or in alternative seeking to have the said awards remitted to the Arbitrator.

5. Article 158 of the Limitation Act, 1908 read as follows:--

'158. Under the Arbitration Act, 1940, to set aside an award or to get an award remitted for reconsideration.

Thirty days The date of service of the notice of the filing of the award'.

Article 119 of the [Limitation Act, 1963](#) reads as follows:-'119. Under the Arbitration Act, 1940 (10 of 1940),-

a) for the filing in Court of an award;

Thirty days The date of service of the making of the award;

b) for setting aside an award or getting an award remitted for reconsideration.

Thirty days The date of service of the notice of the filing of the award.'

6. A petition seeking to set aside an award or for remission thereof for reconsideration by the Arbitrator must be filed within 30 days 'from the date of service of the notice of the filing of the award. 'The provisions of the old Art. 158 of the Limitation Act, 1908 and new Art. 119 of the [Limitation Act, 1963](#) are identical. In absence of binding authorities of the Apex Court construing Art. 158 of the old Limitation Act, 1908 or Art. 119 of the new [Limitation Act, 1963](#), it would have been perhaps plausible to argue that limitation for filing of a petition to set aside an award or remission thereof does not commence until formal written notice of the filing of the award is formally served on the party concerned by the Court in which the Award is filed. However, the question of interpretation of the said Articles is no longer an open question. The relevant propositions of law governing interpretation and application of above referred Articles are already laid down by the Hon'ble Supreme Court of India at least in two of its leading judgments on the subject to which it is necessary to make reference.

7. In Nilkantha v. Kashinath, : [1962]2SCR551 , the Supreme Court interpreted and applied Art. 158 of Limitation Act, 1908. Art. 158 of the Limitation Act, 1908 and 119 of [Limitation Act, 1963](#) are required to be read in conjunction with S. 14(2) of the Arbitration Act, 1940. In paragraph 8 of its above referred judgment, the Supreme Court observed that the expression 'give notice' in sub-sec. (2) of S. 14 simply meant 'give intimation of the filing of the award'. In the same paragraph, the Apex Court observed that notice to the pleader was notice to the party. In paragraph 9 of the judgment the Apex Court dealt with the submission of the learned counsel relying on use of the word 'service' in Article 158 of the Limitation Act, 1908 in support of his submission that limitation in respect of filing of petition seeking to set aside award or remission thereof did not commence till written notice of filing of the award was served by the Court on the party concerned. While

dealing with this submission of counsel, the Apex Court held that the word 'service' according to Webster's New International Dictionary, II Edition, meant 'act of bringing to notice, either actually or constructively, in such manner as is prescribed by Law'. In paragraph 10 of his judgment, Raghubar Dayal, J. speaking for the Bench, made observations to the effect that if the expressions 'notice' and 'service' used in the said Article were construed to mean only a written notice served formally on the party to be affected, the party having knowledge of the filing of the award would be able to stultify the object underlying the process of arbitration by delaying filing of his objections. In the same paragraph of the judgment, the Supreme Court observed as under at Page 669 :--

'Moreover, to construe the expression as meaning only a written notice served formally on the party to be affected, will leave the door open to that party, even though with full knowledge pf the filing of the award he has taken part in the subsequent proceedings, to challenge the decree based upon the award at any time upon the ground that for want of a proper notice his right to object to the filing of the award had not even accrued. Such a result would stultify the whole object which underlies the process of arbitration -- the speedy decision of a dispute by a tribunal chosen by the parties.'

The Apex Court emphasised the object of the Arbitration Act in support of its interpretation of above referred provisions. In this case the Court had not even issued a formal notice of filing of the award. No formal notice of filing of the Award was served on the party who had filed objections to the Award. Nevertheless, it was held by the Supreme Court that the objections filed by the party affected were beyond time on the ground that the pleader of the party affected had notice of the filing of the award beyond the period of 30 days. In this case, the Supreme Court computed the period of limitation from the date of pleader's knowledge of filing of the award. The Supreme Court observed that such knowledge of filing of award may be direct or indirect, formal or informal or even constructive. It must be laid down as a matter of law that the requisite knowledge of filing of award of the party or his pleader must be clear and definite knowledge before period of limitation can be computed from date of knowledge of filing of award in lieu of formal service of formal notice of filing of the award issued by the Court.

8. This judgment in *Nilkantha v. Kashinath* (supra) has stood the test of time and was re-affirmed in the subsequent judgment in the case of *Indian Rayon Corporation Ltd. v. Raunaq & Co. Pvt. Ltd.*, : AIR 1988 SC2054 . In this case, the impugned award was filed in the High Court on 4th February 1977 and the party affected had filed an affidavit of 4th February 1978 to the effect that the award had been wrongly filed in the High Court and it should be taken off the file. No notice of filing of award was served on the party concerned till 30th July 1981. Notice under Section 14(2) of the Arbitration Act in respect of filing of award in Court was served on the party concerned only on 30th July 1981. Thereafter the party concerned filed a petition to set aside the said award after obtaining certified copy thereof only on 8th September 1981. If the limitation for filing of the petition to set aside the award commenced from the date of service of formal notice issued by the Court under Section 14(2) of the Arbitration Act, the petition seeking to set aside the award was in time as the period taken for obtaining the certified copy of the award would have also been excluded for computation of period of limitation. However, both the High Court of Calcutta as well as the Supreme Court took the view that the said petition was time-barred as the period of limitation commenced from 4th February 1978 when the party affected had definite knowledge of filing of the award as obvious from the affidavit of the objector referred to hereinabove. It was held by the Apex Court, following the ratio of the above referred judgment in *Neelkantha's case* (supra), that the limitation commenced from the date of knowledge of filing of the award and not from the date of formal service of formal notice of filing of the award. In my opinion, the following propositions emerge from the above referred judgments of the Apex Court :--

(1) Limitation for filing of a petition seeking to set aside an award or the remission thereof to the Arbitrator for consideration commences from the date of knowledge of filing of the award, provided such knowledge is clear and definite. In such a case, the party intending to challenge the award must file the petition seeking to set aside the award or remission thereof within 30 days from the date of obtaining knowledge of filing of the award, direct or indirect, actual or constructive. Knowledge of authorised pleader or advocate of the objector in respect of filing of the award is liable to be considered as knowledge of the party for the purpose aforesaid.

(2) In absence of proof of such knowledge of filing of the award, limitation would commence from the date of formal service of the formal notice of the filing of the award under Section 14(2) of the Arbitration Act.

(3) The petitioner is also entitled to exclusion of time required for obtaining certified copy of the award as permissible under Section 12(2) of [Limitation Act, 1963](#).

In view of the above referred judgments of the Supreme Court, it is not necessary to refer to other decisions cited at the Bar except two of them indicated hereinafter.

9. Shri Srinivasan, the learned counsel for the petitioners, relied on the Division Bench judgment of the High Court of Madhya Pradesh in the case of Union of India v. Prithipal Singh & Co., : AIR 1988 MP191 . The Division Bench of the High Court of Madhya Pradesh in this case inter alia held as under at Page 195 :--

'If, however, in spite of such informal information or otherwise knowledge to a party pf the filing of the award, the Court chooses to issue a notice to be served upon the parties, it is the date of the service of notice which shall be the starting point of limitation.'

In my judgment, the ratio of this judgment is in conflict with the ratio of the judgment of the Supreme Court in the Indian Rayon Corporation's case (supra) and is of no assistance to Shri Srinivasan, In the case before the Supreme Court also, definite knowledge of the objector in respect of the filing of the award was followed by formal service of the formal notice of filing of the award under Section 14(2) of the Arbitration Act, 1940. Nevertheless, the Supreme Court held that the period of limitation commenced from the date of knowledge of the filing of the award and not from the date of service of notice of filing of award or a subsequent date. In my judgment, the above referred Division Bench judgment of High Court of Madhya Pradesh does not lay down the principles of law correctly and the said judgment stands overruled by the ratio of above referred judgment of the Supreme Court in Indian Rayon Corporation's case.

10. In National Insurance Co. Ltd. v. Punam Chand Jain, : AIR1983 Cal148 , the Division Bench of the High Court of Calcutta held that the limitation in respect of

application seeking to set aside an award would run from the date of knowledge of the filing of the award. The same view is taken by the Apex Court. The above referred judgment of High Court of Calcutta was delivered by Sabyasachi Mukharji, J. (as His Lordship then was) on behalf of the Division Bench of the High Court of Calcutta. Sabyasachi Mukharji, J. delivered the judgment in the Indian Rayon Corporation's case on behalf of the Bench of the Hon'ble Supreme Court. The principles of law laid down in both the cases are identical.

11. Applying the ratio of the above referred judgments, I hold that M/s. Desai, Berjis and Chinoy, duly authorised Advocates of the petitioners, had requisite knowledge of the filing of original award dated 10th March 1990 and also the modifying award dated 20th September 1990 since about 10th October 1990. It is more than clear from contents of letter dated 22nd January 1991 written by petitioner No. 19 Claimant No. 8) on behalf of himself and his wife (claimant No. 19) to M/s. Kanga & Co., Advocates, that both the petitioners had definite knowledge of filing of the award at least from 7th January 1991. It is not the case of petitioner No. 2 that the petitioner No. 2 had no knowledge of filing of award or that letters addressed by petitioner No. 1 on behalf of himself and his wife or his Advocates M/s. Desai Berjis & Chinoy were without her authority. I must presume knowledge of filing of award also on part of petitioner No. 2 having regard to ordinary course of human conduct. It is therefore irrelevant that the petitioner No. 2 was formally served with the formal notice issued by the Court in respect of filing of the award only on 20th February 1991. Period of limitation for filing of this petition expired long time back and the petition filed on 22nd March 1991 cannot be treated as in time. No application for obtaining certified copy of award was made in this case. No pleaderis raised by the petitioners seeking exclusion of time under Section 12(2) of [Limitation Act, 1963](#).

12. Shri Srinivasan, the learned counsel for the petitioners, has argued that the enclosure to letter dated 13th December 1990 addressed by M/s. Kanga & Co., Advocates for NKK Group, to petitioner No. 1 was copy of the sealed notice issued by the High Court on 27th November 1990 in respect of filing of the award dated 10th March 1990 only and not both the awards. The learned counsel for the petitioners has submitted that no notice was served at all on either of the

petitioners in respect of filing of the supplemental award dated 20th September 1990. The learned counsel for the petitioners has submitted that the enclosed notice dated 27th November 1990 issued by the High Court must be treated as referring to award dated 10th March 1990 only. The argument of Shri Srinivasan is attractive at first blush but does not stand the scrutiny. If the formal service of the formal notice of filing of the award under Section 14(2) of the Arbitration Act was a mandatory requirement of law for purpose of commencement of period of limitation for filing petition seeking to set aside an award or remission thereof, the learned counsel for the petitioners would have been right in his above submission. Since formal service of the formal notice of filing of the award is not required in cases where the objector can be proved to have knowledge of the filing of the award, this submission of the learned counsel loses its significance. I have already held as a fact that both the petitioners had definite knowledge of the filing of the award since 10th October 1990 or at any rate since 7th January 1991 or at least since 22nd January 1991 when petitioner No. 1 addressed a letter to M/s. Kanga & Co. manifesting intention of himself and petitioner No. 2 to challenge the award. No application for condonation of delay is filed on behalf of petitioner No. 2. Remedy of both the petitioners to challenge the said award or to get the said award remitted to the Arbitrator for reconsideration became barred by limitation. I hold that both the petitioners had factual and actual knowledge of filing of both the awards i.e. the original as well as modifying/supplemental award. It cannot be forgotten that the modifying award dated 20th September 1990 is integral part of original award dated 10th March 1990 as stated in the modifying award itself.

13. The next important question which arises for consideration the Court is as to whether a case is made out by the petitioners for condonation of delay in respect of filing of the petition, being Interim Petition No. 79 of 1991.

14. It is not possible to accept the submission of Shri Srinivasan that the modifying Award dated 20th September 1990 is nullity and made without consent of the petitioners. The petitioners consented to making of the said award through their authorised Advocates M/s. Nanu Hormusjee & Co.

15. The learned counsel for the petitioners has submitted that Section 5 of the Limitation Act must be liberally construed and applied so as to advance substantial justice. The learned counsel for the petitioners is right in requesting the Court to approach the question of condonation of delay in light of the observations made by the Hon'ble Supreme Court in the case of Collector, Land Acquisition, Anantnag v. Katiji, : (1987)ILLJ500SC and approach the question from point of view of liberal approach so as to advance substantial justice. Of course, it does not follow that delay must be condoned in every case irrespective of facts. In this case, it was observed by M.P. Thakkar, J. speaking for the Bench, that Courts must do substantial justice and approach the question of sufficient cause for condonation of delay with a liberal approach. It is undoubtedly true that a justice-oriented approach is necessary while deciding application under Section 5 of [Limitation Act, 1963](#). However, it cannot be said that in every case delay must necessarily be condoned.

16. Shri N. G. Thakkar, the learned counsel for the other claimants, and Shri S. P. Kanuga, the learned counsel for the respondents, have submitted with all the emphasis at their command that in the instant case substantial justice would be defeated if delay in filing of this petition was condoned by the Court by taking an extremely liberal view of the matter. Both the learned counsel have pointed out that the present petition is an afterthought and there is no justice in the case of the petitioners at all. It has been submitted with considerable force that the petitioners at one stage had decided to accept the award and pursue their remedy of getting their share from other members of DKK Group only by adopting independent proceedings. Reliance is rightly placed on letter dated 12th March 1990 addressed by M/s. Nanu Hormusjee & Co. to M/s. Kanga & Co. and also letter dated 10th October 1990 annexed to additional affidavit dated 4th October 1991 of the petitioners. Reliance is rightly placed on this aspect on copy of the plaint in the suit filed by the petitioners in the Bombay City Civil Court at Bombay seeking an injunction restraining the other members of DKK Group from disposing of the assets coming to their share under the said award. Reliance is also rightly placed on the writing dated 20th September 1990 handed over to the learned Arbitrator by the Advocates for both the parties. Reliance is also rightly placed by the learned opposing counsel on the fact that part of the award is already acted upon to the

knowledge of the petitioners in October 1990. It has been contended in the application for condonation of delay that the petitioners are parties from London and the petitioners had no access to the relevant documents at the relevant time. This part of the case is unbelievable. The petitioners were duly represented by well known firm of Advocates in Bombay and petitioner No. 1 (claimant No. 8) was actively pursuing the matter and was present before the learned Arbitrator at the meeting held on 10th March 1990. The petitioner No. 1 always represented himself and petitioner No. 2 in the proceedings. The real remedy of the petitioners is to seek relief against the other members of DKK Group for getting their share from the assets coming to the share of DKK Group as a unit under the impugned awards rather than blocking the process of implementation of the said awards. Each of the averments made in the application for condonation of delay is vague. None of these averments constitutes sufficient cause. Right accrued to the parties supporting the award to obtain decree in terms of award. About 96% of the sharers are supporting the award. Taking a strict view of the matter, no case is made out for condonation of delay. Taking a liberal view of the matter also, no case is made out for condonation of delay. Delay should normally be condoned if sufficient cause is made out. Substantial justice is on side of the parties supporting the Award. The petitioners are not without a remedy against the other members of DKK Group for obtaining their share. The Arbitrator was not bound to provide for sub-division of assets coming to share of DKK Group. NKK Group was not concerned with internal disputes between the petitioners and other members of DKK Group. In ultimate analysis, the question as to whether the delay should be condoned or not a question of fact. There cannot be any hard and fast rule. The Hon'ble Supreme Court refused to condone the delay in the Indian Rayon Corporation's case (supra). In several cases, even delay of few days is not condoned by the Court. In some cases, much longer delay is condoned. It depends upon the facts of each case and the conclusion of the Court on the issue of 'sufficient cause' after applying justice-oriented approach. Shri N. G. Thakkar, the learned counsel for other members of DKK Group, stated during course of his submissions that the other members of DKK Group were not averse to determination of petitioners' share in the assets and liabilities crystallised under the impugned awards for DKK Group. Since the parties are not ad idem on the

mechanism of fresh reference to arbitration for resolution of internal disputes between the petitioners and other members of DKK Group, these petitions shall have to be decided on their own merits. I hope that members of DKK Group would sit together and settle their internal disputes amicably. However the present petitions cannot be kept pending indefinitely to the prejudice of 96% of members of two families.

17. In the result, Interim Petition No. 79 of 1991 for condonation of delay is dismissed. Having regard to the facts and circumstances of the case, there shall be no order as to costs.

18. Arbitration Petition No. 77 of 1991 is also dismissed as time-barred. Remedy of both the petitioners was barred by law of limitation as already held by me in the foregoing part of this judgment much prior to the day when the petition was filed. There shall be no order as to costs in this petition also. Both the petitions are dismissed with no order as to costs.

19. Issue of certified copy is expedited.

20. Petition dismissed.