

CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.3180 of 2007
GRASIM INDUSTRIES LTD. APPELLANT
VERSUS
STATE OF KERALA RESPONDENT

O R D E R

Jagdish Singh Khehar, CJI

1. Heard learned counsel for the rival parties.

2. The appellant - Grasim Industries Ltd. was engaged in the manufacture of rayon grade wood pulp, in the Kozhikode District, of the State of Kerala. The appellant company obtained certain grants from the Government of Kerala, for an exclusive right and licence to fell, cut and remove bamboos, from certain areas in the Nilambur valley, for the purpose of converting the same into rayon grade wood pulp and ancillary products. The first of such contractual agreements was executed on 03.05.1958. The same was followed by supplementary contractual agreements dated 06.08.1962, 10.07.1974, 16.11.1976 and 27.10.1988. In the first agreement dated 03.05.1958, clause 16 provided for settlement of disputes arising under the contract, through arbitration. The same read as under:
- S If at any time hereafter either during the continuance or after the termination of the Agreement, any doubt, difference or dispute shall arise between the parties hereto touching or concerning their respective rights or privileges hereunder or otherwise arising out of these presents then the same shall be referred to the arbitration of

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three independent persons as arbitrators, one to be appointed by each party to the reference and the third, by both the parties thereto, and the unanimous decision of the said arbitrators or in the event of any difference of opinion amongst them the decision of the majority of them, shall be binding and conclusive on the parties to the reference and every such reference shall be deemed to be a reference to arbitration under the Indian Arbitration Act, 1940 and shall be regulated and conducted accordingly. - \235

3. The successor agreements, after the original agreement, postulated modifications in the terms of the contract. We are only concerned herein, with the supplementary agreement dated 27.10.1988, wherein clause 11 provided as under:

- S 11. Subject to the modifications mentioned above, the Principal Agreement and the First, Second and Third Supplemental Agreements shall remain in force and effect. - \235

4. The first question, that arises for consideration is, whether the arbitration clause incorporated in the original agreement, dated 03.05.1958, can be stated to be subsisting and enforceable between the parties, or whether the same stood extinguished? Having given our thoughtful consideration to the issue in hand, keeping in view clause 11 of the supplementary agreement dated 27.10.1988, we are satisfied, that the original arbitral clause, contained in the agreement dated 03.05.1958, subsisted and was never extinguished. We say so because, clause 11, extracted above, clearly expressed, that the supplementary agreements(s) only altered the modifications provided for, and such of the terms and conditions, as were not modified - S...shall remain in force and effect... - \235. Since the arbitration clause 16, was

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admittedly never modified/altered, it would necessarily not be considered as having been extinguished. In the above view of the matter, we must also express our satisfaction, that the dispute(s)

between the parties, under their contractual obligations, were arbitrable.

5. In fact, we feel, that the State of Kerala was also aware of the rightful legal position, namely, the applicability of the arbitral clause provided for in the original contractual agreement, dated 03.05.1958. This conclusion of ours is based on the fact, that the State of Kerala, through its communication dated 24.11.2016, actually invoked clause 16 of the parent agreement, dated 03.05.1958, to appoint arbitrators in the matter arising between the same parties, under the same contractual obligation. A relevant extract of the aforesaid letter is reproduced hereunder:

â- SI am to invite your attention to the reference cited. As per Clause 16 of the Parent Agreement dated 03.05.1958, entered into between the Kerala Government and M/s.Grasim Industries Ltd, Government appointed Sri.Varghese IFS, Additional Principal Chief Conservator of Forests as Arbitrator to settle the dispute arise between Government and Grasim Industries Limited, Mavoor, Kozhikode, as per the Arbitration and Conciliation Act, 1996. In the circumstances I am to request you to appoint an arbitrator for your company as stipulated in Section 11 of the Arbitration and Conciliation Act 1996, within thirty days and to inform to Government for further action in this regard.â- \235

6. One of the reasons for which the High Court had non-suited the appellant, who had raised a claim on 08.05.2002, was that the claim raised by the appellant was beyond the period of limitation. Insofar as the instant aspect of the matter is concerned, it was concluded by the High Court, in the impugned

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order dated 21.11.2003, that the claim raised by the appellant was beyond the period stipulated in clause 9 of the supplementary agreement, dated 27.10.1988. To determine the instant issue, clause 9 aforementioned, is extracted hereunder:

â- S 9. Subject to clause 6, where the supply of raw materials by the Government, it (sic) less than the agreed quantity of two lakhs tones in any year, the company shall be entitled to claim compensation from the Government. Subject to clause 8, where the Company does not extract the agreed quantity of two lakhs tones of raw materials supplied in any year fully, the Government shall be entitled to claim compensation from the Company.

The compensation mentioned above shall be determined by a Tribunal, consisting of a representative each of the Government and the Company and an independent Chairman agreed upon by the parties. This Tribunal shall determine the compensation, if any, within a period of 30 days from the end of each contract year, and shall be payable immediately thereafter by the parties concerned. The Company shall have the option to adjust the amount of compensation against the price of raw materials supplied in subsequent years.â- \235

7. Based on the aforesaid clause, the High Court had recorded its conclusion as under:

â- S In view of the specific provision in the arbitration clause for raising the claim within the same year and to have it settled by the arbitral Tribunal within the specified time, the above request for arbitration was beyond the period prescribed in the arbitration clause. When the arbitration clause itself prescribes a time limit for raising the disputes by appointing an arbitral Tribunal and to have it settled within 30 days, the same procedure should be followed or adopted within the time

specified. The applicant did not make a demand for appointment of an arbitral Tribunal within the stipulated time. The notice itself was issued long after the time stipulated in the arbitration agreement. It appears that the company was closed down and the Company wanted to dispose of the raw materials and the State did not permit as materials had been supplied to the Company at a concessional rate. It was at that time the notice was issued for

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the arbitration.â- \235

Having perused clause 9 of the supplementary agreement dated 27.10.1988, we are of the view, that the interpretation placed by the High Court on clause 16, was wholly misconceived. The aforesaid clause, did not postulate the period within which a claim could have been raised by the parties to the contractual agreements. Even otherwise, we are of the view, that in terms of Section 28 of the Indian Contract Act, 1872, such a stipulation in a contractual obligation would not be valid and binding. Section 28 of the Act is reproduced below:

â- S 28 Agreements in restraint of legal proceedings, void. â-
Every agreement,â-

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights,
is void to that extent.

Exception 1 â- Saving of contract to refer to arbitration dispute that may arise. â- This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2. Saving of contract to refer questions that have already arisen. â- Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between

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them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Exception 3. Saving of a guarantee agreement of a bank or a financial institution - This section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee for extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of such party from the said liability.â- \235

Section 28(b) unequivocally provides, that an agreement which extinguishes the right of a party on the expiry of a specified period, would be void. Therefore, even if a restricted period for raising an arbitral dispute had actually been provided for (as was determined, in the impugned order), the same would have to be

treated as void.

8. In view of the legal position expressed hereinabove, the limitation with reference to the claim raised by the appellant, would have to be determined only under Article 137 of the Limitation Act. Insofar as the instant aspect of the matter is concerned, the High Court found that the claim raised by the appellant was even beyond the period postulated under Article 137 of the Limitation Act. In this behalf, the High Court recorded the following observations:

â- S 7. It is not actually a decision on the claim made under Annexure-X; but it is a decision of the arbitration clause in the agreement. Apart from that the claim put forward by the applicant in respect of the shortage of supply of raw materials from 1988-89 onwards also is barred by limitation under Article 137 of the Limitation Act. The Supreme Court in Steel Authority of India Limited Vs. J.C.Budharaja [(1999) (8) SCC 122] held that the provisions of Art.137 of

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the Limitation Act would apply and any action should be brought within three years from the date when the cause of action to recover the amount rose. Thus the request for appointment of arbitrator will have only to be rejected.â- \235

9. It is not possible for us to accept the aforesaid determination rendered by the High Court for the simple reason, that in the claim raised by the appellant in the notice, dated 01.02.2002, it was inter alia asserted as under:

â- SWhile the matter was so pending before the Industrial Tribunal at the instance of the Labour Department of Government of Kerala, through the Labour Commissioner and the Additional Labour Commissioner, a settlement was eventually entered into with the Unions in the presence of the Hon'ble Minister for Labour on 7.7.2001, agreeing to the closure of the Undertakings with effect from 1.7.2001. The fact that the Government was not in a position to supply raw material in required quantity and in the proportion agreed to on account of its not having taken enough steps to ensure continued availability of eucalyptus by planting the same is also clear from the orders of the Secretary to the Government, Labour department, in the applications for closure of the company's units at Mavoor. This has also been admitted by your department. The total amount that was paid to the employees inclusive of fixed overheads and idle wages during the period referred to above i.e. June, 1999 to June 2001 came to Rs.5999.43 lakhs is enclosed, marked as Annexure â- 2 and the compensation paid to the employees as a result of the settlement came to Rs.5559.72 lakhs is enclosed, marked as Annexure â- 3.â- \235

It is, therefore, apparent, that the appellant raised a grievance with reference to issues, that emerged even upto June, 2001. Under Article 137 of the Limitation Act, the postulated period of limitation is 3 years. In the instant case, the period of limitation would be, three years prior to the date of invocation of arbitration. After the appellant issued the notice dated

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01.02.2002, it invoked the arbitral clause on 08.05.2002, and therefore, the period of limitation in terms of Article 137, would bar all claims prior to 09.05.1999.

10. In view of the findings recorded on the issues debated hereinabove, the impugned order dated 21.11.2003, passed by the High Court, is liable to be set aside. The same is accordingly set aside.

11. With the consent of the learned counsel for the rival

parties, we consider it just and appropriate to appoint Hon'ble Mr. Justice (Retd.) K.T. Thomas, a former Judge of this Court, as the sole arbitrator, to adjudicate the dispute between the parties. The arbitrator appointed by us, will proceed with the matter, after complying with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996.

12. The arbitrator shall have the liberty to fix his own remuneration, and the place of arbitration

13. The instant appeal is disposed of, in the above terms.

.....CJI.
(JAGDISH SINGH KHEHAR)

.....J.
(Dr.D.Y.CHANDRACHUD)

â- |.....J.
(SANJAY KISHAN KAUL)

NEW DELHI;
APRIL 19, 2017.

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ITEM NO.101 COURT NO.1 SECTION XIA
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).3180/2007
GRASIM INDUSTRIES LTD.

Appellant(s)

VERSUS

STATE OF KERALA

Respondent(s)

(With interim relief and office report)

Date : 19/04/2017 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Appellant(s) Mr. C. N. Sree Kumar, Adv.
Mr. Amit Sharma, Adv.

For Respondent(s) Mr. Nishe Rajen Shonker, Adv.
Mr. Jogy Scaria, Adv.

Upon hearing the counsel the Court made the following

O R D E R

With the consent of the learned counsel for the rival parties, we consider it just and appropriate to appoint Hon'ble Mr. Justice (Retd.) K.T. Thomas, a former Judge of this Court, as the sole arbitrator, to adjudicate the dispute between the parties. The arbitrator appointed by us, will proceed with the matter, after complying with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996.

The arbitrator shall have the liberty to fix his own remuneration, and the place of arbitration

The instant appeal is disposed of, in terms of the signed order.

(SATISH KUMAR YADAV)

(RENUKA SADANA)

AR-CUM-PS

ASSISTANT REGISTRAR

(Signed order is placed on the file)