

ITEM NO.40

COURT NO.8

SECTION IX

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4449/2006

(From the judgement and order dated 27/04/2005 in WP No. 2733/2004  
of The HIGH COURT OF BOMBAY)

M.T.N.L. &amp; ORS.

Petitioner(s)

VERSUS

SINGHAL &amp; BROS.ENGR.&amp; CONTRACTORS &amp; ANR.

Respondent(s)

(With appln(s) for c/delay in filing SLP and c/delay in refiling SLP  
and permission to file rejoinder affidavit and with prayer for  
interim relief and office report )

Date: 11/02/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR

HON'BLE MR. JUSTICE AFTAB ALAM

For Petitioner(s) Mr. Parag P. Tripathi, Sr. adv.

Mr. V.K. Rao, Adv.

Mr. Saket Sikri, Adv.

Ms. Nidhi, Adv.

Ms. Madhu Sikri, Adv.

For Respondent(s)

Mr. Amar Dave, Adv.

Mrs. Nandini Gore, Adv.

UPON hearing counsel the Court made the following  
ORDER

Heard learned counsel for the parties.

Learned counsel for the petitioners has invited our attention to a decision of this Court in the case of SBP & Co. Vs. Patel Engineering Ltd. And Another (2005) 8 SCC 618 and, in particular, drawn our attention to para 47(x) wherein it has been stated that all earlier orders will be governed by the ratio laid down by this Court in the case of Konkan Rly. Corpn. Ltd. Vs.Rani Construction (P) Ltd. (2002) 2 SCC 388. The Division Bench of the High Court has applied the law as laid down in Konkan Rly. (supra), as it stood earlier but now because of the

2

latest decision in the case of SBP & Co. (supra) the order passed by the Chief Justice appointing an arbitrator has now become a judicial order not an administrative order. According to him, in this background the limitation would not have come in the way of the petitioner. Be that as it may, since the decision given by Bench of Seven Judges in SBP & Co. (supra) is prospective therefore, we are not inclined to interfere with the impugned order passed by the Division

Bench of the High Court of Judicature at Bombay dated April 27, 2008. We are informed by counsel for the petitioners that earlier an arbitrator was appointed but that arbitrator has already resigned.

Be that as it may, it will be open for the petitioners now to appoint an arbitrator afresh and proceed in accordance with law. All questions are left open to be agitated before the newly appointed arbitrator.

The special leave petition is disposed of in the above terms.

(Ajay Kr. Jain)  
Court Master

(Vijay Dhawan)  
Court Master