A HARI SHANKAR SINGHANIA AND ORS.

v.

GAUR HARI SINGHANIA AND ORS.

APRIL 4, 2006

B [H.K. SEMA AND DR. AR. LAKSHMANAN, JJ.]

Arbitration:

Arbitration Act, 1940:

C

Section 20--Application under--Limitation for--Three brothers formed a partnership firm--There was disagreement between them as to the division of the assets involved in the partnership firm--Distribution of the immoveable properties could not be effected by 31.5.1987 as contemplated by the Deed of Dissolution--Nominees were appointed by each group to work out an D *arrangement--Numerous letters written by the parties to find a way to settle the dispute pertaining to the division of assets--Last communication in this regard was on 29.91989--Plaint under S. 20 filed by one group on 8.5.1992. High Court dismissed the arbitration suit on the ground of limitation being 50 days beyond the period of three years computed from 18.3.1989--Correctness* E *of--Held: Article 137 of the Limitation Act applies to an application under S. 20 of the Arbitration Act--Application is required to be filed within a period of three years when the right to apply accrues--Right to apply accrues when difference or dispute arises between the parties to the arbitration agreement--Right to apply accrued only on the date of the last correspondence i.e. 29.9.1989--Hence, suit filed on 8.5.1992 is within limitation.*

F

Limitation Act, 1963: Article 137.

Arbitration suit--Family arrangements or settlements--Dispute over distribution of immoveable properties--Duty of court--Held: Family settlement should be treated differently from any other formal commercial settlement-- G *Technicalities as limitation etc. should not be put at risk of the implementation of a settlement drawn by a family--Hence, technical considerations should give way to peace and harmony in enforcement of family arrangements or settlements.*

H

There was a disagreement between the appellants and the respondents as to the division of the assets involved in the partnership firm formed by three brothers. Therefore, the distribution of the immoveable properties could not be effected by 31.5.1987 as contemplated by the Deed of Dissolution. Ultimately, in February 1988 the three groups each of appointed nominees to work out an arrangement for satisfactory distribution of the properties of the said dissolved firm. The nominees held several meetings but no agreement of distribution could be arrived at. There were numerous letters written by both parties to find a way to settle the dispute pertaining to the division of assets. The last letter that was exchanged in this regard was a letter dated 29.9.1989.

The appellants filed a plaint under Section 20 of the Arbitration Act, 1940 before the High Court on 8.5.1992. The High Court dismissed the Arbitration Suit on the ground of limitation being 50 days beyond the period of three years computed from 18.3.1989. Hence the appeal.

On behalf of the appellants, it was contended that the date of the last communication between the parties to reach a settlement was 29.9.1989; that the right to apply under Section 20 of the Arbitration Act accrued to the appellants on 29.9.1989; and, therefore, limitation period would start running from 29.9.1989 and hence arbitration suit filed on 8.5.1992 was within limitation as laid down in Article 137 of the Schedule to the Limitation Act. 1963.

The following questions arose before the court:-

1. When the right to file the application under Section 20 of the Arbitration Act, 1940 has accrued and when it becomes time barred?

2. Whether in the context of Section 20 of the Arbitration Act, 1940 a difference or dispute can be said to have arisen between the parties without there being any denial or repudiation of a claim by a party?

Allowing the appeal, the Court

HELD: 1.1. It is now well-settled that Article 137 of the Limitation Act, 1963 applies to an application under Section 20 of the Arbitration Act, 1940. Accordingly, an application under Section 20 of the Act for filing the arbitration agreement in Court and for reference of disputes to arbitration in accordance therewith is required to be filed within a period of three years

A when the right to apply accrues. The right to apply accrues when difference or dispute arises between the parties to the arbitration agreement.

1.2. The High Court has committed an error in construing Article 137 of the Schedule to the Limitation Act, 1963 in a manner, which would unduly restrict the remedy of arbitration especially in family disputes. It is a well B settled policy of law in the first instance to promote a settlement between the parties wherever possible and particularly in family disputes. [737-D]

2.1. Where a settlement with or without conciliation is not possible, then comes the stage of adjudication by way of arbitration. Article 137, as construed in this sense, then as long as parties are in dialogue and even the differences C would have surfaced it cannot be asserted that a limitation under Article 137 has commenced. Such an interpretation will compel the parties to resort to litigation/arbitration even where there is a serious hope of the parties themselves resolving the issues. [737-E]

D 2.2. The High Court has failed to appreciate that merely because the parties did not take steps for distribution of the immovable properties it did not automatically follow that the disputes and differences had arisen between them in this regard. In fact, from the correspondence on record, it is clear that the parties were making efforts to complete the distribution of the immovable properties as per the terms of the agreement between them. The E correspondence between the parties does not indicate that any dispute or difference had arisen between them on or before 18.3.1989 and the finding of the High Court to the effect that the correspondence exchanged between the parties leaves no manner of doubt that the dispute had arisen between the parties in any case on 18.03.1989 is erroneous, contrary to the record and F unsustainable. [738-C, D]

3. In the instant case, the correspondence exchanged between the parties was not merely in the nature of reminders but also instruments to resolve the matter and amicably negotiate. Therefore, when the negotiations were taking place between the parties by way of various letters written by both G the parties the right to apply can be said to accrue when it becomes necessary to apply, that is to say when a dispute in fact arose. Furthermore, the respondent did not ever dispute the claim of the appellants. [739-G]

Vulcan Insurance Co. Ltd. v. *Maharaj Singh,* AIR (1976) SC 287, *State of Orissa* v. *Damodar Das,* AIR (1996) SC 942; *S. Rajan* v. *State of Kerala,* AIR H (1992) SC 1918 and *Major (Retd.) Inder Singh Rekhi* v. *Delhi Development*

Authority, [1998] 2 SCC 388, relied on. A

Oriental Building and Furnishing Co. Ltd. v. *Union of India,* AIR (1981) Del 293, approved.

4.1. It cannot be said that merely because nominees were appointed for working out an arrangement, which could not ultimately be arrived at, a B dispute or difference arose way back in February, 1988. In fact, even immediately after this, the correspondence exchanged between the parties reveals a forthcoming attitude and amiable efforts made towards implementing the deed of dissolution. [740-E]

4.2. Therefore, the right to apply under Section 20 of the Arbitration C Act, 1940 accrued to the appellants only on the date of the last correspondence between the parties and the period of limitation commences from the date of the last communication between the parties. Therefore, the finding of the High Court that the application under Section 20 of the Arbitration Act, 1940 is beyond the period of limitation is erroneous. [741-A]

D

5. Furthermore, the contesting respondents cannot allege that moving the Court is a better-suited remedy than arbitration proceedings as they have of their own free will only adopted the arbitration clause in the Deed of Dissolution. [741-F]

E

6.1. A family settlement is treated differently from any other formal commercial settlement as such settlement in the eyes of law ensures peace and goodwill among the family members. Such family settlements generally meet with the approval of the Courts. Such settlements are governed by a special equity principle where the terms are fair and *bona fide,* taking into account the well being of a family. [741-G; 742-A] F

6.2. The concept of *'family arrangement or settlement'* and the present one in hand should be treated differently. Technicalities of limitation etc. should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family. Any such arrangement would be upheld if family settlements were entered into to G allay disputes *existing or apprehended* and even any dispute or difference apart, *if it was entered into bona fide to maintain peace or to bring about harmony in the family.* Even a semblance of a claim or some other ground, as say affection, may suffice. [742-A, B]

H

A *Ram Charan* v. *Girija Nandini,* **AIR (1996) SC 323,** *Sahu Madho Das* v. *Pandit Mukand Ram,* **[1995] 2 SCR 22,** *Maturi Pullaiah* v. *Maturi Narasimham,* **AIR (1966) SC 1836,** *Krishna Biharilal* v. *Gulabchand,* **[1971] 1 SCC 837,** *S. Shanmugam Pillai* v. *K. Shanmugaon Pillai,* **[1973] 2 SCC 312,** *Kale* v. *Deputy Director of Consolidation,* **[1976] 3 SCC 119 and** *K.K. Modi* v. *K.N. Modi,* **[1998] 3 SCC 573, relied on.**

B

Clifton v. *Cockburn,* **(1834) 3 my & 76 and** *William* v. *William,* **(1866) LR 2 Ch 29, referred to.**

Kerr: "On Fraud" p. 364, referred to.

C **6.3.** *Technical considerations should give way to peace and harmony in enforcement of family arrangements or settlements.* **[744-F]**

7.1. The observation made by the High Court was that, *an oral application for condonation of delay will not be* **entertained in a Court of law. This observation is not pertinent in the present case because, condonation of** D **delay needs to be asked for only if there is a delay in filing a suit and in the fact situation of this case, there is no delay in the filing of the Arbitration suit and the suit for arbitration filed by the appellants is within time prescribed under Article 137 of the Schedule to the Limitation Act, 1963. [744-G]**

E **7.2. The arbitration suit filed by the appellants is well within time as the dispute is deemed to have arisen only after the last communication between the parties dated 29.9.1989, whereby there were efforts made to amicably settle the dispute between the parties. [745-A]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 126/2005.

F

From the Judgment and Order dated 8/9th June 2004 of the High Court of Bombay in Appeal No. 440/1996 in Arbitration Suit No. 1904/1992.

Dr. A.M. Singhavi, Prag P. Tripathi, Pradip Kumar Khaitan, Ms. Gauri Rasgotra and Shiladitya Rakshit for M/s. Khaitan & Co. A.O.R. for the G Appellants.

Anil B. Divan, S. Ganesh, Bhargava V. Desai, S.V. Mehta, Rahul Gupta, Ms. Nupur Kanungo, Vinod B. Agarwala and Arvind Kumar for M/s. Gagrat & Co. for the Respondent.

H The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. This appeal was directed against the final judgment and order dated 8/9th June, 2004 passed by the Division Bench of the High Court of Judicature at Bombay in Appeal No. 440 of 1996 in Arbitration Suit No. 1904 of 1992 whereby the High Court dismissed the appellants' appeal and upheld the order of the learned single Judge dismissing the appellants' application under Section 20 of the Arbitration Act, 1940 as being barred by the law of limitation.

The short facts of the case are as follows:—

A partnership firm was formed by three brothers of the Singhania family. The family owned considerable amount of immovable property, which was brought into the firm's business. In 1987, the partnership firm was dissolved by way of dissolution deed as a family settlement. Under the dissolution deed, clause 13 which enabled the parties or any party to go for arbitration in case there was a dispute between them reads as follows:

> "13. That if at any time any dispute, doubt or question shall arise between the parties hereto or their respective legal representative, either on the construction of interpretation of these presents or respecting the accounts, transactions, profit or loss of business or their respective rights and obligations of the parties hereto or otherwise in relation to the winding up of the partnership, then any such dispute, doubt or question shall be referred to the arbitration of a single Arbitrator. In case, however, the parties are unable to agree upon a single Arbitrator, a panel of three Arbitrators shall be appointed, one of them to be appointed by Shri Hari Shankar Singhania or failing him by the Sixth Party, or failing the Sixth Party by the Seventh Party, or failing the Seventh party, by the Eighth party and the second to be appointed by Dr. Gaur Hari Singhania and failing him by the second party and failing the second party by the ninth party and the third to be appointed by Shri Vijaypat Singhania and failing him by the fourth party, provided always that the decision and/or award by the said panel of the arbitrators shall have to be unanimous and in the event of unanimity not being reached by the panel of arbitrators, they shall appoint an Umpire whose decision shall be final. All the proceedings, before the sole arbitrator and/or panel of arbitrators shall be governed by the provisions contained in the Arbitration Act, 1940 or by any statutory modification or re-enactment thereof."

Disagreement between the parties took place as to the division of the

A assets involved in the partnership firm. Therefore, the distribution of the said immoveable properties could not be effected by 31st May 1987 as contemplated by the Deed of Dissolution. Ultimately in February 1988, the three groups each appointed a nominee to work out an arrangement whereby distribution of the said immoveable properties of the said dissolved firm could be made and effected in the manner acceptable to all. The nominees held several meetings but no agreement of distribution could be arrived at. Further it can be observed that there were numerous letters written by both parties to find a way to settle the dispute pertaining to the division of assets involved in the partnership firm which was dissolved. The last letter that was exchanged in this regard was a letter dated 29 September, 1989.

On May 8, 1992, a plaint under section 20 of the Arbitration Act, 1940 was filed before the High Court of Judicature at Bombay by the appellants (1-7 ousted group). On September 19, 1992, respondent No.1 herein, Dr. Gaur Hari Singhania group (contesting respondent Nos.1-9) filed an affidavit in opposition stating and submitting that, the suit filed by the appellant in the High Court is barred by limitation and that the High Court had no jurisdiction to entertain the suit and, therefore, the same is liable to be dismissed.

It is pertinent to notice that respondent Nos. 10-20 supported the claim made by the appellants. A learned Single Judge of the Bombay High Court on April 09, 1996 dismissed the Arbitration Suit of the appellants on the ground of limitation being 50 days beyond the period of three years computed from March 18, 1989. An appeal was preferred by appellant Nos. 1-7 and learned Judges of the Division Bench of the Bombay High Court dismissed the appeal on the ground of limitation and that oral prayer for condonation of delay will not be entertained by the Courts.

Against this order of the Bombay High Court, the appellants have come by way of special leave petition before this Court. Leave was granted on 03.01.2005 by this Court.

We heard Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing for appellants 1-7, Mr. S. Ganesh, learned senior counsel appearing for respondents 10-20 and Mr. Anil Diwan, learned Senior Counsel appearing for the respondents 1-9.

The claim of the appellants was that, after the dissolution of the partnership there were a series of communication between the appellants and the respondents on the division of the assets which was a part of the dissolved

firm in order to arrive at an amicable settlement as evident from the words used in the letters of correspondence like, *to not cause unduly delay in the distribution of the property/expedite the matter of dissolution (letter dated 29th September, 1989) etc.* Therefore, according to Dr. Abhishek Manu Singhvi, learned counsel appearing for the appellants, the right to apply under section 20 of the Arbitration Act, 1940 accrued to the appellants on the date of the last communication between the parties to reach a settlement, which is the letter dated 29th September, 1989. Therefore, limitation period will start running for three years as stated under Article 137 of the Limitation Act, 1963 only from that date. The thrust of the argument on behalf of the appellants is that the right to apply under section 20 of the Arbitration Act, 1940 accrued to the appellants on receipt of the letter dated 29th September, 1989.

According to the contesting respondents, the differences and disputes with respect to distribution of immovable properties amongst the partners of the dissolved firm arose before 31st May, 1987 and that is why the distribution of the said immovable properties could not be effected as contemplated by the Deed of Dissolution. The respondents further claimed that the appointment of nominees by the parties was enough evidence of disagreement and differences between the parties which arose on 29th February, 1988. Further the respondent also relied on communications dated 4th October, 1988, 13th February, 1989 [notice] and 18th March 1989, to prove differences among the parties.

It is now well settled that Article 137 of the Limitation Act, 1963 applies to an application under Section 20 of the Arbitration Act, 1940. Accordingly, an application under Section 20 of the Act for filing the arbitration agreement in Court and for reference of disputes to arbitration in accordance therewith is required to be filed within a period of three years when the right to apply accrues. The right to apply accrues when difference or dispute arises between the parties to the arbitration agreement. In the facts of the case, it is therefore necessary to find out as to when the right to apply accrued.

Therefore, the questions before us that deserve consideration are:

1. When the right to file the application under Section 20 of the Arbitration Act has accrued and when it becomes time barred; and

2. Whether in the context of Section 20 of the Arbitration Act, 1940

A a difference or dispute can be said to have arisen between the parties without there being any denial or repudiation of a claim by a party?

We have heard both the parties extensively. We have carefully perused all the letters, annexures and the orders passed by the High Court produced B in Court.

Letter dated 16th September, 1988 is a letter by Shri Hari Shankar Singhania to Shri Gaur Hari Singhania specifically stating that "*I request that the distribution of immovable properties is being delayed and I will request you to please make all attempts to expedite the same.*" C

Letter dated 4th October, 1988 is a letter by Shri Gaur Hari Singhania to Shri Hari Shankar Singhania stating that "*I on my part have given all the information and materials and done everything possible to expedite the distribution. The Committee appointed by the partners is seized of the matter. I am equally anxious that the matter should be amicably sorted out as early as possible.*" D

Letter dated 18th October, 1988 is a letter by Shri Hari Shankar Singhania to Shri Gaur Hari Singhania wherein it is stated that "*I only requested you to make all attempts to expedite. You can judge for yourselves* E *what is the reason for the delay. In my view, unless there is sincere desire to solve the matter expeditiously the matter will drag on and I can only repeat that this will not be to the benefit of any one. I can only request you to do all you can to get the matter expedited.*"

Letter dated 24th November, 1988 is a letter by Shri Gaur Hari Singhania F to Shri Hari Shankar Singhania wherein it is stated that, "*I am sending the modified account for your kindly returning the same duly signed by you and all the other partners at your end.*"

Letter dated 13th February, 1989 is a letter by Shri Vijaypat Singhania, Shri Ajaypat Singhania, Shri Raghupati Singhania, Shri Hari Shankar Singhania G and Shri Bharat Hari Singhania to Shri Gaur Hari Singhania wherein it is stated that "*As regards Ganga Kuti, your comments on the Licence Agreement dated 2.1.1986 do not meet the issue raised in the letter of Shri Hari Shankar, dated 18th October, 1988. As pointed out, the said agreement stipulates payment of Licence fee of Rs.24,000 per annum payable by monthly instalments* H *of Rs.2000 to be paid in advance on the 5th day of every month. Neither the*

mode of payment nor the amount paid were in conformity with the said agreement. Due to violation of this key provision, the licence is no more valid and it should be treated as such and the monies received on this account should be returned and suitable corrective entries made in the accounts. Moreover, such arrears of rent were received after the dissolution which should not be accepted and given effect to, in the spirit of the terms of dissolutions. Apparently it is not bona fide. We are returning the accounts for the period (20th March, 1987 to 31st March, 1988) for necessary rectification. The property should henceforth not be rented/licensed to anyone."

Letter dated 18th March, 1989 is a letter by Shri Gaur Hari Singhania to Shri Hari Shankar Singhania wherein it is stated that *"The licence is subsisting and cannot be treated as null and void. Since you have returned the account unsigned, I am sending the accounts once again to you with a request to kindly sign the accounts and forward the same to me for signature of Shri Vijaypat and Shri Ajaypat."*

Letter dated 22nd May, 1989 is a letter by Shri Vijaypat Singhania, Shri Ajaypat Singhania, Shri Raghupati Singhania, Shri Hari Shankar Singhania and Shri Bharat Hari Singhania to Shri Gaur Hari Singhania wherein it is stated that *"As regards Ganga Kuti, we had in our letter dated February 13, 1989 stated the factual position in regard to the licence agreement dated 2nd January, 1986 and the fact of the licence remaining no more valid particularly in view of the continuous violation of the essential provisions of the licence agreement for two years from 1.4.1985.....*The spirit of the terms of dissolution has certainly not been adhered to in this regard and it is only fair in the fitness of the circumstances that the licence agreement should no more be treated as valid and appropriate amendment be made in that regard by returning the monies received and making suitable corrective entries in the accounts. We are returning the accounts for the period 20th March, 1987 to 31st March, 1988 for necessary rectification."

Letter dated 8th July, 1989 is a letter by Shri Gaur Hari Singhania to Shri Hari Shankar Singhania wherein it is stated that *"However, as stated above, the distribution of the immovable properties is being delayed due to entirely the unreasonable stand taken by or on your behalf and due to insistence on your behalf of the distribution to be effected in a particular mode which is neither feasible nor reasonable and proper.....It is, therefore, not only in the interest of all the partners but imperative that you should not hold up the signing of the accounts. I, therefore, once again send to you the*

said accounts with a request to return the same duly signed. I need not add that if as a result of your not signing the said accounts any adverse orders are passed by the Income Tax Officer in the pending assessment of the said firm for the said two assessment years 1987-1988 and 1988-1989, you alone will be held responsible."

Letter dated 29th September, 1989 is a letter from Shri Vijaypat Singhania, Shri Ajaypat Singhania, Shri Raghupati Singhania, Shri Hari Shankar Singhania and Shri Bharat Hari Singhania to Shri Gaur Hari Singhania wherein it is stated that "It is not fair to impute impropriety or to say that the stand taken by us is an attempt to bring pressure upon immovable properties of the dissolved partnership. *It is equally not fair to say that the distribution of immovable properties remains pending because of the unreasonable or improper stand taken by us. The Deed of Dissolution and the understanding among the partners is quite clear as to the mode of distribution and as such there is no question of any partner dictating the mode of distribution.....We are sure that you will expedite the matter of dissolution of the immovable properties in the same spirit as was envisaged at the time of dissolving the firm.*"

It is seen from the above letters that on 29.02.1988, the parties decided to appoint one representative each who would endeavour to arrive at an agreed distribution acceptable to all parties. This only shows that it is the modality of distribution which were tried to be worked out. The contemporary correspondence, above referred to, would also show that the letters exchanged between the brothers were in amiable language. It is thus clear that at this stage the parties had not reached a stage of break where an adjudication of dispute had become inevitable. Thereafter, in September, 1988 letters were written as to the distribution of properties. The letter written by the appellants on 16.09.1988 and its reply of 04.10.1998 clearly show that there was not yet a break down of the agreement, in fact, on behalf of the respondents. It was suggested that a Committee appointed by the partners is seized of the matter. It is clear from a reading of this letter that the parties, as late as in October, 1988 were trying to obtain an amicable resolution. This situation continued on 18.03.1989 as well. The accounts were sent by the respondents. The letter, *inter alia*, annexed certain confirmatory letters and requested that the accounts be confirmed by the appellants. In reply thereto in May, 1989 the accounts were sent back, as the letter disclosed that there were some differences as to one of the properties. On 08.07.1989, the respondent reiterated that the accounts were correct and sent back for the confirmation and also alleged

that the matter of distribution of immovable properties remained pending because of the unreasonable and improper stand taken by the appellants. It was argued that at best it could be suggested that by this date, the stage has reached where the partners could have contemplated the adjudication of their disputes. This would show that the petition would clearly be within time. Suit under Section 20 of the Arbitration Act was filed on 8.5.1992.

On 29.09.1989, a letter was written by Shri Vijaypat Singhania, Shri Ajaypat Singhania, Shri Hari Shankar Singhania and Bharat Hari Singhania to Shri Gaur Hari Singhania, respondent wherein it is stated that it is not fair to impute impropriety or to say that the stand taken by the appellants is an attempt to bring pressure upon immovable properties of dissolved partnership. It is also stated therein that the respondent will expedite the matter of dissolution of the immovable properties in the same spirit as was envisaged at the time of dissolving the firm. If this letter dated 29.09.1989 is taken into account, it would show that Section 20 suit would clearly be within time. In our opinion, the High Court has committed an error in construing Article 137 in a manner, which would unduly restrict the remedy of arbitration especially in family disputes of the present kind. It is a well-settled policy of law in the first instance is always to promote a settlement between the parties wherever possible and particularly in family disputes.

Where a settlement with or without conciliation is not possible, then comes the stage of adjudication by way of arbitration. Article 137, as construed in this sense, then as long as parties are in dialogue and even the differences would have surfaced it cannot be asserted that a limitation under Article 137 has commenced. Such an interpretation will compel the parties to resort to litigation/arbitration even where there is serious hope of the parties themselves resolving the issues. The learned Judges of the High Court, in our view, have erred in dismissing the appellants appeal and affirming the findings of the learned Single Judge to the effect that the application made by the appellants under Section 20 of the Act, 1940 asking for reference was beyond time under Article 137 of the Limitation Act. The learned Judges ought to have allowed the appeal and quashed and set aside the impugned order passed by the learned Single Judge and ought to have restored and allowed arbitration suit filed by the appellants. As already noticed, the correspondence between the parties, in fact, bears out that every attempt was being made to comply with and carry out the reciprocal obligations spelt out in the agreement between the parties. As rightly pointed out by learned counsel for the appellant that the learned Judges of the Division Bench have erred in coming to the

A conclusion that the distribution of immovable properties in specie as provided in the Deed of Dissolution dated 26.03.1987 and a Supplementary Agreement dated 20.03.1987 could not be done before 31.05.1987 due to some differences. There is absolutely no material on record on the basis of which the learned Judges could have come to such a conclusion. None of the correspondence referred to by the learned Judges spells out the existence of any disputes as
B a result of which the properties could not be distributed prior to 31.05.1987.

The High Court, in our view, has erred in coming to the conclusion that because no distribution of the property had been made till 29.02.1988, it was indicative of the fact that there were disputes and differences between the
C parties. The High Court, in our view, has failed to appreciate that merely because parties did not take steps for distribution of the immovable properties it did not automatically follow that disputes and differences had arisen between them in this regard. In fact, from the correspondence on record, it is clear that the parties were making efforts to complete the distribution of the immovable properties as per the terms of the agreement between them. It is submitted
D that the correspondence between the parties does not indicate that any dispute or difference had arisen between them on or before 18.03.1989 and the finding of the learned Judges to the effect that the correspondence exchanged between the parties leaves no manner of doubt that the dispute had arisen between the parties in any case on 18.03.1989 is erroneous, contrary to the
E record and unsustainable.

We shall now advert to the various decisions cited by both the parties.

Law on the Subject:

Article 137 of the Limitation Act is reproduced hereunder:

F

Description of application	period of Limitation	Time from which period begins to run
"Any other application for which no period of limitation is provided elsewhere in this division."	Three years	When the right to apply accrues.

G

The period of three years prescribed in Art. 137 of the Limitation Act, 1963 is applicable to file an application under section 20 of the Arbitration
H Act, 1940 as decided by this Court in the case of *Vulcan Insurance Co. Ltd.*

v *Maharaj Singh,* AIR (1976) SC 287. The limitation period starts running from the time the right to apply accrue. An application filed under section 20 of the Arbitration Act has to be filed within three years from the date when the right to apply accrues. A

In the case of *State of Orissa* v. *Damodar Das,* AIR (1996) SC 942, this Court held that, the right to apply accrues under section 20, Arbitration Act, 1940, as soon as dispute or difference arises on unequivocal denial of claim by one party to the other party as a result of which the claimant acquires a right to refer the dispute to arbitration. B

In the case of *S. Rajan* v. *State of Kerala,* AIR (1992) SC 1918, the right to apply accrues when the difference arises or differences arise between the parties involved. It is thus a question of fact, not a question of law as urged by the respondents, and should be determined in each case having regard to the facts of the case. C

In *Major (Retd.) Inder Singh Rekhi* v. *Delhi Development Authority,* [1988] 2 SCC 338 at 340, this Court holding that the application under section 20 was filed within time examined that: D

> "*...a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by the claimant is the accrual of cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim....There should be a dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion of denying, not merely inaction to accede to a claim or request. Whether in a particular case dispute has arisen or not has to be found out from the facts and circumstances of the case.*" E F

In the instant case, correspondence was not merely in the nature of reminders but also instruments to resolve the matter and amicably negotiate. Therefore, when the negotiations were taking place between the parties by way of various letters written by both parties the right to apply can be said to accrue when it becomes necessary to apply, that is to say when a dispute in fact arose. Furthermore, the respondent did not ever dispute the claim of the appellants. G H

A Learned counsel appearing for the appellants placed reliance on *Oriental Building and Furnishing Co. Ltd.* v. *Union of India,* AIR (1981) Del 293, where the material question was what is the starting point of limitation for moving a petition under section 20 of the Arbitration Act, 1940. It was held that: "Neither party can move the Court without the existence of a difference between them. So, the material question is, when the difference arose between
B the parties and not when the lease expired, nor when it was entered into." The court further observed, "*.....a difference can arise long after some work has been done under a contract. There can be negotiations between the parties and all sorts of correspondence. But it is only when they come to the conclusion that they cannot resolve the dispute between them, it can be said that a*
C *difference arises. A difference under the arbitration agreement is a claim made by one party, which is refuted by the other party. At that stage, it is open to the parties or any one of them to go for arbitration to get this difference or differences settled and it is only at this stage it is possible to say that a difference has arisen between the parties.*"

D This decision of the Delhi High Court squarely covers the case on hand as a close perusal of the letters exchanged between the parties show clearly that there was intention to arrive at an amicable settlement between the family members with regard to the division of assets in question.

It cannot be said that merely because nominees were appointed for
E working out an arrangement, which could not ultimately be arrived at, a dispute or difference arose way back in February 1988. In fact, even immediately after this, the correspondence exchanged between the parties reveals a forthcoming attitude and amiable efforts made towards implementing the deed of dissolution.

F An examination of the correspondence can give us valuable insight as to the "differences" if any among the parties. The first such communication was made on 16 September, 1988 from Shri Hari Shankar Singhania [appellant] to Gaur Hari Singhania [Respondent] requesting the respondent to make all attempts to expedite distribution of the immovable properties. In reply to this
G was the communication relied on by the respondents from Dr. Gaur Hari Singhania [Respondent] to Shri Hari Shankar Singhania [appellant No.1] dated 4th October, 1988. This communication also does not reveal either hostility or dispute and only exposes an effort *"to expedite the distribution"*. The last sentence of the above mentioned communication reads: "I am equally
H anxious that this matter should be *amicably sorted out as early as possible.*"

Therefore, we observe that the right to apply under section 20 of the Arbitration Act, 1940 accrued to the appellants only on the date of the last correspondence between the parties and the period of limitation commences from the date of the last communication between the parties. Therefore, the finding of the High Court that the application under section 20 of the Arbitration Act, 1940, is beyond the period of limitation is erroneous.

Further, in an English decision rendered by the Court of Appeal in *Hughes* v. *Metropolitan Rly. Co.,* it was held that, where negotiations for settlement are pending, the strict rights of the parties do not come into play.

It is also pertinent to note that under the new Act, namely the Arbitration and Conciliation Act, 1996 that came into force in 1996, the intervention of the Court in the matter of arbitration proceedings has been minimized to a great extent. Further, there is no provision in the Arbitration and Conciliation Act, 1996 that is similar to section 8 (power of court to appoint arbitrator), section 20 (application to file in Court the Arbitration Agreement) and section 33 (Arbitration agreement or award to be contested by application), which were present in the Arbitration Act of 1940.

Another thing that should not miss the attention of the Court is that, the assets in question are with the contesting respondent Nos.1 to 9 and an amicable settlement for the division of the assets have not been arrived at since last 18 years as clear from the facts. Hence it is observed that the contesting respondents are the ones who are enjoying the assets in question and therefore we observe that, the respondents are merely trying to drag the proceedings endlessly forever and for another period of uninterrupted enjoyment of the assets.

Furthermore the contesting respondents cannot allege that moving the Court is a better-suited remedy than arbitration proceeding as they have of their own free will only adopted the arbitration clause in the Deed of Dissolution.

Family Arrangement/Family Settlement:-

Another fact that assumes importance at this stage is that, a family settlement is treated differently from any other formal commercial settlement as such settlement in the eyes of law ensures peace and goodwill among the family members. Such family settlements generally meet with approval of the Courts. Such settlements are governed by a special equity principle where the

A terms are fair and *bona fide*, taking into account the well being of a family.

The concept of *'family arrangement or settlement'* and the present one in hand, in our opinion, should be treated differently. Technicalities of limitation etc. should not be put at risk of the implementation of a settlement *drawn by a family, which is essential for maintaining peace and harmony in* B *a family*. Also it can be seen from decided cases of this Court that, any such arrangement would be upheld if family settlements were entered into to allay disputes *existing or apprehended* and even any dispute or difference apart, if *it was entered into bona fide to maintain peace or to bring about harmony in the family*. Even a semblance of a claim or some other ground, as say C affection, may suffice as observed by this Court in the case of *Ram Charan* v. *Girija Nandini,* AIR (1966) SC 323.

In *Lala Khunni Lal* v. *Kunwar Gobind Krishna Narain,* the Privy Council examined that it is the duty of the courts to uphold and give full effect to a family arrangement.

D

In *Sahu Madho Das & Ors.* v. *Pandit Mukand Ram & Anr.,* [1955] 2 SCR 22 [Vivian Bose Jagannadhadas and BP Sinha JJ.] placing reliance on *Clifton* v. *Cockburn,* (1834) 3 My & K 76 and *William* v. *William,* (1866) LR 2Ch 29, this Court held that a family arrangement can, as a matter of law, be implied from a long course of dealings between the parties. It was held E that "..so strongly do the courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all, that we have no hesitation in taking the next step (fraud apart) and upholding an arrangement.."

F

The real question in this case as framed by the Court was whether the appellant/plaintiff assented to the family arrangement. The court examined that "the family arrangement was one composite whole in which the several dispositions formed parts of the same transaction."

G In *Ram Charan Das* v. *Girjanadini Devi,* (Supra), this Court observed as follows:

> "Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family.....The consideration for such H a settlement will result in establishing or ensuring amity and good

will amongst persons bearing relationship with one another." A

In *Maturi Pullaiah* v. *Maturi Narasimham,* AIR (1966) SC 1836, this court held that "although conflict of legal claims in praesenti or in future is generally a condition for the validity of family arrangements, it is not necessarily so. Even *bona fide* disputes, present or possible, which may not involve legal claims, will suffice. Members of a joint Hindu family may, to B maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, courts will more readily give assent to such an arrangement than to avoid it."

Further in *Krishna Biharilal* v. *Gulabchand,* [1971] 1 SCC 837, this C Court reiterated the approach of courts to lean strongly in favour of family arrangements to bring about harmony in a family and do justice to its various members and avoid in anticipation future disputes which might ruin them all. This approach was again re-emphasised in *S. Shanmugam Pillai* v. *K. Shanmugam Pillai,* [1973] 2 SCC 312 where it was declared that this court D will be reluctant to disturb a family arrangement.

In *Kale & Ors.* v. *Deputy Director of Consolidation and Ors.,* [1976] 3 SCC 119 [VR Krishna Iyer, RS Sarkaria & S Murtaza Fazal Ali, JJ.] this Court examined the effect and value of family arrangements entered into between the parties with a view to resolving disputes for all. This Court E observed that "By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are F governed by a special equity peculiar to themselves and would be enforced if honestly.....made the object of the arrangement is to protect the family from long drawn litigation or perpetual strives which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain G and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and therefore, of the entire country, is the prime need of the hour....the *courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical trivial grounds.* Where the courts find that the family arrangement *suffers* H

A *from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement....*The law in England on this point is almost the same."

B The valuable treatise *Kerr on Fraud at p. 364 explains* the position of law, "the principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they C have not been meant as a compromise, but have proceeded from an error of all parties originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend." Halsbury's Laws of England, Vol.17, Third edition at pp.215-216.

In *KK Modi* v. *KN Modi & Ors.*, [1998] 3 SCC 573 [Sujata Manohar D & DP Wadhwa, JJ.], it was held that the true intent and purport of the arbitration agreement must be examined- [para 21] Further the court examined that ".....a family settlement which settles disputes within the family *should not be lightly interfered with* especially when the settlement has been already acted upon by some members of the family. In the present case, from 1989 E to 1995 the Memorandum of Understanding has been substantially acted upon and hence the parties must be held to the settlement which is in the interest of the family and which avoids disputes between the members of the family. Such settlements have to be *viewed a little differently from ordinary contracts and their internal mechanism* for working out the settlement should not be lightly disturbed."

F *Therefore, in our opinion, technical considerations should give way to peace and harmony in enforcement of family arrangements or settlements.*

The observation made by the Bombay High Court while dismissing the appeal of the appellants was that, *an oral application for condonation of* G *delay will not be* entertained in Court of law according to the laws present in our judicial system. This observation, in our opinion, is not pertinent in the present case because, condonation of delay needs to be asked for only if there is a delay in fling a suit and in the fact situation of this case, there is no delay in the filing of the Arbitration suit as observed earlier and the suit for arbitration filed by the appellants is within time prescribed under Article 137 of H

Limitation Act, 1963. A

Thus we conclude by observing that, the Arbitration suit filed by the appellants is well within time as the dispute is deemed to have arisen only after the last communication between the parties dated 29th September, 1989, whereby, there were efforts made to amicably settle the dispute between the parties. B

Also as an admitted fact the appellants and respondent Nos. 10 to 20 were at all material times and still are ready and willing to do all the things necessary for the proper conduct of the arbitration including the appointment of Arbitrator. C

Further it is not fair on the appellants to let this dispute continue, with the assets in question under the control and enjoyment of the contesting respondents 1-9.

It may be mentioned that even though the plea of extension of limitation has not been taken into account by the appellants in the application filed and D the learned counsel for the respondents has objected to the learned counsel for the appellants making submission pertaining to extension of limitation to file the present application, learned Single Judge of the High Court has permitted the learned counsel for the appellant to make submissions in this regard without the plea of extension of limitation being taken in the application. E

Why the dispute between members of family should be settled:-

In the instant case, the partnership firm was dissolved w.e.f. March, 1987 by consent of parties. The Deed of Dissolution was also entered into between the parties on March 26, 1987. In 1988, the three groups each F appointed a nominee to work out an arrangement whereby the distribution of the properties of the dissolved firm could be made and effected. The nominees held several meetings but no agreement of distribution could be arrived at. Meeting of the partners took place on various occasions in regard to the issue of distribution of assets which has been considerably delayed. Several G correspondences exchanged between the heads of three branches regarding amicable distribution of all the immovable properties in specie. It is stated that 14 properties are situated in Kanpur and 1 property in Bombay which are very valuable. Respondents 1-9 being in enjoyment were simply delaying distribution in specie. In the circumstances, appellant No.1 herein and the other members of the branch of Lakshmipat Singhania wanted to take recourse H

A to due process of law for getting distribution and allotment in specie of their one-third share in those 15 immovable properties. Hence, application under Section 20 of the Arbitration Act, 1940 was filed in the High Court of Bombay on 08.05.1992. Other group opposed the application on the ground of limitation and the lack of jurisdiction. Single Judge rejected the plea of the lack of B jurisdiction but upheld the plea of limitation on the basis that disputes and differences arose on 18.03.1989 whereas the application was filed on 08.05.1992 i.e. to say 50 days beyond the period of 3 years. The Division Bench also dismissed the appeal filed by the appellant on the ground of limitation.

It is an admitted fact that the three branches of Singhania family are C each entitled to one-third share in immovable properties. It is stated that the rents of the properties situated at Kanpur from family companies and other in whose favour tenancy had been shown at nominal rents long time back after the dissolution of the partnership firm are being collected by the branch of Padampat Singhania and deposited in the bank account titled J.K. Bankers (since dissolved). The said bank account was opened by the erstwhile partners D of J.K. Bankers upon dissolution of J.K. Bankers the rental income from the properties in Kanpur, it is alleged is being credited by the branch of Padampat Singhania to the credit of ex-partners account of J.K. Bankers in accordance with their shares i.e. one-third share each after paying their very property tax and other outgoings. Such credit balance in the account of such bankers is E being paid to the branches of Singhania family from time to time. The three branches of Singhania family are showing the rental income in their returns of income tax as income from house property and have to pay income-tax thereon in accordance with law. Furthermore, the three branches of Singhania family are showing these properties having their own undivided proportionate share in their wealth tax returns and have to pay wealth tax therein in F accordance with law. It is stated that Hari Shankar Singhania, appellant No.1 and other members of Lakshmi Pat Singhania branch are not being credited with or paid any monies/income whatsoever in respect of the Bombay property since the date of dissolution of J.K. Bankers although they have to pay wealth tax returns. It is stated by the appellants that the immovable properties G in possession of the various respondents are extremely valuable and required to be protected pending disposal of arbitration. It is also stated that similar interim reliefs have been granted to the appellants are far back as 21.05.1992 passed by the Single Judge. Also learned Division Bench had passed an interim order dated 15.04.1996. While dismissing the appeal on the ground of limitation Division Bench of the High Court has extended the interim order by H 12 weeks. This Court on 27.08.2004 suggested to counsel appearing for all

parties without looking into the relationship of the parties and the nature of disputes, why not all the disputes among the parties be directed to be placed for adjudication by an arbitrator or for resolution by a conciliator. At the time of hearing, all the learned counsel for the parties assured that the interm order passed by the High Court shall be honoured by all the parties until the matter comes up for hearing. On 03.01.2005, it was reported by learned senior counsel appearing for respondent Nos. 1-9 that the parties are not agreeable for settlement by conciliation. This Court, thereafter, granted leave and posted the appeal for final hearing in the month of March, 2005. The matter was listed on 06.09.2005. After hearing the parties, this Court passed the following order:-

"Heard the parties

Having regard to the nature of dispute and the fact that the contesting parties are close relatives, we are clearly of the view that it is still better that such dispute is resolved through conciliation, so that the past ill feelings/misunderstandings, if any, are evaporated in the thin air with the resolution of the dispute. In response to our suggestion the parties agree to refer to conciliator to be appointed by the Court. Accordingly, we appoint Hon'ble Mr. Justice N. Santosh Hegde, retired Judge of this Court to be the Conciliator to resolve the dispute through conciliation. The terms and conditions and the place of sitting shall be decided by the Conciliator himself. The fees and other expenses of the Conciliator shall be borne equally by the three disputing parties.

We hope and trust that the parties will resolve their dispute through conciliation with a view to maintain good relationship between the parties. This order is passed without prejudice to the rights and contentions of the parties that may raise in the proceedings. But it must be grasped that the approach of the parties must be accommodative and keep no records of wrong.

List it after three months."

Hon'ble Mr. Justice N. Santosh Hegde addressed a letter on 02.02.2006 to the Registrar General, Supreme Court of India, New Delhi-110 001 with reference to the conciliation in the matter. The letter reads thus:

"The Hon'ble Supreme Court of India vide its Order dated 06.09.2005

A referred the above matter for conciliation by me. I have held many meetings between the parties and at one stage I was under the impression that a conciliation could be possible, but unfortunately at a later stage it is found that such a result could not be achieved. Having considered all the possibilities, I am to report to the Hon'ble Court that the conciliation in the case referred to above, has failed. Hence, I request you to kindly inform the Court accordingly.

I express my gratitude to the Court for having referred the conciliation to me."

It is thus seen that the above facts would clearly go to show that the contesting respondent Nos. 1-9 are not at all interested in any conciliation, mediation or arbitration but only interested in enjoying the bulk of the immovable properties of the firm and refusing to carry out their obligations under and pursuant to the said Deed of Dissolution by permitting the distribution of the said properties in specie and free from any encumbrance as contemplated by the said Deed of Dissolution dated 26.03.1987 and the supplementary agreement dated 28.03.1987.

At the time of hearing, it was argued by learned senior counsel for respondent Nos. 1-9 that since the appellants have filed the suit, the same may be continued by the appellants and a direction be issued to the Court concerned to dispose of the same within a particular time frame. In reply, it was submitted that the suit was filed by the appellants without prejudice to their rights and contentions under the arbitration clause in the agreement and that the arbitration is the only effective and quick remedy. We have extracted clause 13 of the arbitration agreement which enable the parties to go for arbitration in case there was a dispute between them. It has now come to a stage that the real dispute has arisen between the parties. Already the matter is pending adjudication from 1987 onwards, respondent Nos. 1-9 are admittedly in possession and enjoyment of the valuable immovable properties depriving the valuable rights of the appellants the other respondent Nos. 10-20. We should not, therefore, allow respondent Nos.1-9 to drag the proceedings any further. Parties have to settle their disputes one day or the other. In our opinion, the time has now come to nominate a single Arbitrator as provided under clause 13 of the agreement. It was argued that in case this Court allows the appeal, the matter may be remitted to the High Court for appointment of a single Arbitrator and in case the parties are unable to agree upon a single Arbitrator a panel of three Arbitrators shall be appointed as provided in the

said agreement. We feel that such a course, if adopted, would only enable the contesting respondent Nos. 1-9 to squat on the property and enjoy the benefits, income etc. arising therefrom. A

We, therefore, appoint Hon'ble Mr. Justice S.N. Variava, a retired Judge of this Court as a single Arbitrator and decide the dispute between the parties within 6 months from the date of entering upon the reference. The occasion, if any, warrants the sole Arbitrator may extend further reasonable time for completion of the Arbitration proceedings. Learned Arbitrator is at liberty to fix his fees etc. and other expenses which shall be borne equally by three parties. The arbitration shall be at Bombay or as decided by the Arbitrator in consultation with the parties. The proceedings before the Arbitrator shall be governed by the provisions contained in the Indian Arbitration Act, 1940 or by any statutory modification or re-enactment thereof. B C

It is seen from the plaint filed in the arbitration suit the following disputes and differences, amongst others, have arisen between the parties and which are to be resolved by the sole Arbitrator pursuant to the agreement:- D

"(a) To the extent defendant themselves are occupying such properties, the defendants should be directed to vacate the properties to enable distribution of the said properties in specie free from encumbrances;

(b) The defendants obligation to have vacant possession of the immoveable properties listed at items 1 to 13 of Exhibit D hereto and to ensure that persons other than themselves actually vacate the said properties so that the same are available for distribution in specie free from encumbrances between the plaintiffs and defendants pursuant to the said Deed of Dissolution; E F

(c) Directions and steps be taken by defendants to achieve the vacant possession mentioned in paragraph (a) and (b) above;

(d) Distribution of the abovementioned properties in specie free from encumbrances between the plaintiffs and defendants; G

(e) Distribution of the properties mentioned at items 14 and 15 of the Exhibit D hereto subject to the encumbrances;

(f) Fixation of equalization amount, if necessary;

(g) If for any reason any of the defendants do not permit and comply with direction for getting vacant possession of any of H

A the immoveable properties listed in items 1 to 13 of Ex"D" to the plaint, then the same should be valued on the basis of vacant possession and the plaintiffs should be paid their share on the basis of the vacant possession by the defendants."

The aforesaid disputes are all covered by the arbitration clause and fall B within the scope and ambit thereof. The parties are at liberty to file their further pleadings, claims etc. before the sole Arbitrator.

Conclusion: Better late than never

We have already referred to the concept of family arrangement and C settlement. Parties are members of three different groups and are leading business people. We, therefore, advise the parties instead of litigating in Court they may as well concentrate on their business and, at the same time, settle the disputes amicably which, in our opinion, is essential for maintaining peace and harmony in the family. Even though the parties with a good intention have entered into the Deed of Dissolution and to divide the properties D in equal measure in 1987, the attitude and conduct of the parties have changed, unfortunately in a different direction. Therefore, it is the duty of the Court that such an arrangement and the terms thereof should be given effect to in letter and spirit. The appellants and the respondents are the members of the family descending from a common ancestor. At least now, they must sink their E disputes and differences, settle and resolve their conflicting claims once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family.

For the foregoing reasons, we allow this appeal and set aside the orders passed by the learned Single Judge and as affirmed by the Division Bench F in Appeal No. 440/1996 in arbitration Suit No.1904/1992 dated 09.06.2004. Parties are directed to bear their own costs.

We direct all the parties to appear before the Arbitrator on 03.05.2006. The interim order passed by the High Court shall be honoured by all the parties till the disposal of the matter by the Arbitrator. Parties are at liberty G to take further orders from the Arbitrator.

V.S.S. Appeal allowed.