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PUNJAB STATE & ORS.

v.

DINA NATH

MAY 14, 2007

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[TARUN CHATTERJEE AND ALTAMAS KABIR, JJ.]

Arbitration Act. 1940—Sections 2(a) & 20—Limitation Act, 1963—Article 137—Contractor filing an application before trial court for appointment of an arbitrator under a relevant clause of the Work Order to settle dispute—State opposing the application contending that the relevant clause of the Work Order is not an arbitration agreement and that the application is barred by limitation—Trial Court allowing the application of the contractor but reversed by the appellate court in State appeal—High Court upholding the judgment of the trial court—Correctness of—Held, there is no particular form of arbitration agreement—On facts, the relevant clause of the Work Order is an arbitration agreement and the application to appoint an arbitrator is not barred by limitation—Hence, appointment of arbitrator is valid in law.

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Appellant-State issued a Work Order to respondent for a construction work. After completion of the work, the respondent issued a notice to prepare final bills and take final measurements for the purpose of payment under the Work Order. Due to a dispute regarding preparation of the final bills by the appellants, the respondent issued a notice to the appellants to refer the dispute is arbitration as per the relevant clause or the Work Order. Since the appellants failed to respond to the notice, the respondent filed an application under section 20 of the Arbitration Act, 1940 before trial Court seeking appointment of an arbitrator. The trial Court allowed the application construing the relevant clause of the Work Order to be an 'arbitration agreement' under section 2(a) of the Act and holding that the application is not barred by limitation. The appellate Court allowed the State appeal. A Civil Revision Petition filed by the respondent was allowed by High Court.

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In appeal to this Court, the appellant contended that the relevant clause under the Work Order cannot be construed as an arbitration agreement; that the application is barred by limitation; and that there was no existence of any

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dispute for reference to arbitration under the Work Order since it had got the work executed at its own cost when the respondent failed to execute the work under the Work Order. A

Dismissing the appeal, the Court

HELD: 1.1. A bare perusal of the definition of 'arbitration agreement' under section 2(a) of the Arbitration Act, 1940 would clearly show that an arbitration agreement is not required to be in any particular form. What is required to be ascertained is whether the parties have agreed that if any dispute arises between them in respect of the subject matter of the contract, such dispute shall be referred to arbitration. In that case such agreement would certainly spell out of an arbitration agreement. However, from the definition of the arbitration agreement, it is also clear that the agreement must be in writing and to interpret the agreement as an 'arbitration agreement' one has to ascertain the intention of the parties and also treatment of the decision as final. If the parties had desired and intended that a dispute must be referred to arbitration for decision and they would undertake to abide by that decision, there cannot be any difficulty to hold that the intention of the parties to have an arbitration agreement; that is to say, an arbitration agreement immediately comes into existences. [Para 8] [542-C, D, E] B C D

Rupmani Bai Gupta v. *Collector of Jabalpur,* AIR (1981) SC 479, referred to. E

1.2. The Work Order between the parties can be interpreted to be an arbitration agreement. The omission to mention the words "arbitration" and "arbitrator" cannot be a ground to hold that the said clause was not an arbitration agreement within the meaning of Section 2(a) of the Act. The essential requirements are that the parties have intended to make a reference to arbitration and treat the decision of the arbitrator as final. As the condition, to constitute an 'arbitration agreement' have been satisfied, the relevant clause of the Work Order must be construed to be an arbitration agreement and dispute raised by the parties must be referred to the arbitrator. F

[Paras 9 and 10] [542-F; 543-A, B, C] G

Bihar State Mineral Development Corporation v. *Encon Building,* [2003] 7 SCC 418; *K.K. Modi* v. *K.N. Modi,* [1998] 3 SCC 573 and *State of U.P.* v. *Tippar Chand,* [1980] 3 SCC 241, referred to.

1.3. The Work Order categorically states that the decision of the H

A Superintending Engineer shall be binding on the parties. The jurisdiction of the Superintending Engineer to decide the rights of the parties has also been derived from the consent of the parties to the Work Order. The agreement contemplates that the Superintending Engineer shall determine substantive rights of parties as the clause encompasses all varieties of disputes that may arise between the parties and does not restrict the jurisdiction of the B Superintending Engineer to specific issues only. That the agreement of the parties to refer their disputes to the decision of the Superintending Engineer is intended to the enforceable in law as it is binding in nature. The relevant Clause of the Work Order is an Arbitration Agreement. All the ingredients to hold a particular agreement as an arbitration agreement have been satisfied C in the present case. The relevant clause in the Work Order is wide in its ambit as it deals with any dispute between the contractor and the department. As the Superintending Engineer will decide the matter on reference, he has to act judicially and decide the dispute after hearing both the parties and permitting them to state their claim by adducing materials in support.

[Paras 12, 13 and 19] [543-G; 544-C, F; 547-B]

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1.4. The use of the words 'any dispute' in the relevant Clause of the Work Order is wide enough to include all disputes relating to the said Word Order. Therefore, when a party raises a dispute for non-payment of money after completion of the work, which is denied by the other party, such a dispute E would come within the meaning of 'arbitration agreement' between the parties. The relevant Clause of the Work Order also clearly provided that any dispute between the department and the contractor shall be referred to the Superintending Engineer for orders. The word 'orders' would indicate some expression of opinion, which is to be carried out or enforced and which is a conclusion of a body. Then again the conclusion and decision of the F Superintending Engineer will be final and binding on both the parties. This being the position and since the relevant Clause of the Work Order is not under challenge, the decision that would be arrived at by Superintending Engineer must also be binding on the parties as a result whereof the relevant Clause must be held to be a binding arbitration agreement.

[Para 14] [544-G-H; 545-A, B]

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State of Orissa v. *Damodar Das,* [1996] 2 SCC 216, distinguished.

Dewan Chand v. *State of Jammu & Kashmir,* AIR (1961) J&K 58, referred to.

H 1.5. The application under section 20 of the Arbitration Act, 1940 for

appointment of an arbitrator was filed with 3 years from the date of demand notice was made by the respondent under Article 137 of the Limitation Act, 1963. The right to apply accrued for the difference arising between the parties only when services of demand notice was effective, which should be the date for holding that the difference had already arisen between the parties. Hence, the application under section 20 of the Arbitration Act was clearly filed within the period of limitation. [Paras 22 and 26] [547-G; 548-G-H; 549-A]

S. Rajan **v.** *State of Kerala,* **[1992] 3 SCC 608 and** *Hari Shankar Singhania & Ors.* **v.** *Gaur Hari Singhania & Ors.,* **[2006] 4 SCC 658, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5197 of 2000.

From the Final Judgment and Order dated 05.08.1999 of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 3547 of 1997.

WITH

C.A. No. 5198 of 2000.

R.K. Rathore, AAG., Pb., M.K. Verma, Arun K. Sinha, Harinder Mohan Singh and Kaushal Yadav for the Appellants.

Manoj Swarup for the Respondent.

Rr-*Ex-parte*

The Judgment of the Court was delivered by

TARUN CHATTERJEE, J. 1. The crucial question that needs to be decided in these appeals is whether Clause 4 of Work Order No.114 dated 16th of May, 1985 (in short 'Work Order') which says that: "Any dispute arising between the department and the contractor/society shall be referred to the Superintending Engineer, Anandpur Sahib, Hydel Circle No. 1 Chandigarh for orders and his decision will be final and acceptable/binding on both the parties" constituted an arbitration agreement.

2. Before proceeding further, we may bring it on record that though the facts in both the appeals are identical, but for purposes of disposal of these appeals, the facts in CA No. 5197 are being considered which are as follows:

A 3. The parties entered into a contract for the work of dowel drain and wire crate at RD No. 9400 to 10400 kms. in the State of Punjab. The appellants made running payments to the respondent during the period of execution of the works in terms of the Work Order. However, after completion of the work, the final measurements were not made, nor the final bills were prepared. The dispute remained pending with the department for which the respondent B called upon the appellants to finalise the dispute and prepare the final bill as per the rates quoted by the respondent and accepted by the appellants. A final notice was issued on 16th April, 1990, calling upon the appellants to refer the dispute to an arbitrator as per Clause 4 of the Work Order. Since the appellants had failed to appoint an Arbitrator, the respondent filed an C application before the Additional Senior Subordinate Judge, Ropar, Punjab under Section 20 of the Arbitration Act, 1940 (in short 'the Act') seeking appointment of an Arbitrator.

4. By an order dated 20th October, 1993 the learned Additional Senior Subordinate Judge, Ropar, Punjab after hearing both the parties, allowed the D application filed by the respondent and referred the dispute for decision to the Superintending Engineer, Anandpur Sahib, Hydel Circle No. 1 Chandigarh. The Additional Senior Subordinate Judge, Ropar, while allowing the application, held that Clause 4 of the Work Order must be construed to be an arbitration agreement within the meaning of Section 2(a) of the Act and that the application E filed under Section 20 of the Act was filed within the period of limitation. According to the learned Additional Senior Subordinate Judge, Ropar, the cause of action arose from the date the final notice of demand was sent, i.e., 16th April 1990, which was well within the period of 3 years from the date of filing the application as contemplated under Article 137 of the Limitation Act 1963. Feeling aggrieved by the aforesaid order, the appellants preferred an F appeal in the Court of the District Judge, Roopnagar, Punjab, which by an order dated 24th April, 1997 was allowed, *inter alia*, on a finding that Clause 4 of the Work Order could not be held to be an 'arbitration agreement' nor the dispute was covered within the ambit of the Act. On the question of limitation in filing the application under Section 20 of the Act, the appellate G court held that the application under Section 20 of the Act was barred by limitation. Feeling aggrieved by the order of the learned Additional District Judge, Roopnagar, Punjab, reversing the order of the Additional Senior Subordinate Judge, Ropar, the respondent filed a Civil Revision Case before the High Court of Punjab and Haryana at Chandigarh, which by the impugned order was allowed and the order of the Additional Subordinate Judge, Ropar H was restored. Dissatisfied with this order of the High Court, a special leave

petition was filed by the appellants, which on grant of leave was heard in the presence of the learned counsel for the parties. A

5. Having heard the learned counsel for the parties and after going through the impugned order of the High Court as well as the orders of the appellate court and the trial court and the materials on record and considering the clauses in the Work Order, we are of the view that the High Court was fully justified in setting aside the order of the appellate court and restoring the order of the Additional Subordinate Judge by which the dispute was referred to arbitration for decision. Before proceeding further, we may, however, take note of some of the relevant clauses in the Work Order which read as under: - B C

> "Clause 13 of the Work Order: - "If the contractor does not carry out the work as per the registered specifications, the department will have the option to employ its own labour or any other agency to being the work to the departmental specification and recover the cost therefrom."
>
> Clause 4: "Any dispute arising between the department and the contractor/society shall be referred to the Superintending Engineer, Anandpur Sahib, Hydel Construct Circle No. 1, Chandigarh for orders and his decision will be final and acceptable/binding on both parties." D

6. As pointed out herein earlier, the trial court on consideration of Clause 4 of the Work Order held that Clause 4 of the Work Order must be held to be an arbitration agreement and accordingly an arbitrator was appointed in compliance with Clause 4 of the Work Order At this stage we feel it appropriate to examine in detail whether clause 4 of the Work Order can be held to be an arbitration agreement within the meaning of Section 2(a) of the Act. E F

7. Section 2[a] of the Act defines 'arbitration agreement' which means a written agreement to submit present or future differences to arbitration whether arbitrator is named therein or not. Mr. Tathore learned Additional Solicitor General appearing on behalf of the appellants contended that although the Work Order was allotted to the respondent on 16th May, 1985, the respondent had failed to execute the work allotted to him and the appellants had got the work executed at its own cost in terms of clause 13 of the Work Order which, as noted herein earlier, provides that in case the contractor does not execute the allotted work, the department could get the same executed by other agencies or by itself. He further contended that owing to such failure G H

A on the part of the respondent, final bills were not prepared nor were the final measurements taken for the purpose of payment to the respondent. Accordingly, Mr. Tathore contended that there was no existence of any dispute and accordingly the question of referring such disputes in terms of Clause 4 of the Work Order could not arise at all. This submission of Mr. Tathore was contested by the learned counsel for the respondent. Therefore, a dispute B arose as to whether the respondent had completed the work allotted to him under the Work Order. This is an issue, according to the High Court as well as the Subordinate Court, which should be referred for decision to an arbitrator.

8. A bare perusal of the definition of arbitration agreement would clearly C show that an arbitration agreement is not required to be in any particular form. What is required to be ascertained is whether the parties have agreed that if any dispute arises between them in respect of the subject matter of the contract, such dispute shall be referred to arbitration. In that case such agreement would certainly spell out an arbitration agreement. [See *Rupmani Bai Gupta* v. *Collector of Jabalpur,* AIR (1981) SC 479] However, from the D definition of the arbitration agreement, it is also clear that the agreement must be in writing and to interpret the agreement as an 'arbitration agreement' one has to ascertain the intention of the parties and also treatment of the decision as final. If the parties had desired and intended that a dispute must be referred to arbitration for decision and they would undertake to abide by that decision, E there cannot be any difficulty to hold that the intention of the parties to have an arbitration agreement; that is to say, an arbitration agreement immediately comes into existence.

9. In the case of *Bihar State Mineral Development Corporation* v. *Encon Building,* [2003] 7 SCC 418, this Court held that "there is no dispute F with regard to the proposition that for the purpose of construing an arbitration agreement, the term "arbitration" is not required to be specifically mentioned therein." Looking to the opinion of the Hon'ble Judges in the said case and also considering clause 4 of the Work Order in depth, we are of the opinion that Clause 4 of the Work Order between the parties can be interpreted to be an arbitration agreement even though the term "arbitration" is not expressly G mentioned in the agreement. In this decision of this Court the test of 'dispute' and 'reference' was again reiterated. In Para 17, it was stated that there cannot be any doubt whatsoever that an arbitration agreement must contain broad consensus between the parties that the disputes and differences should be referred to a domestic tribunal.

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10. We have already noted Clause 4 of the Work Order as discussed hereinabove. It is true that in the aforesaid Clause 4 of the Work Order the words "arbitration" and "arbitrator" are not indicated; but in our view, omission to mention the words "arbitration" and "arbitrator" as noted herein earlier cannot be a ground to hold that the said clause was not an arbitration agreement within the meaning of Section 2[a] of the Act. The essential requirements as pointed out herein earlier are that the parties have intended to make a reference to an arbitration and treat the decision of the arbitrator as final. As the conditions to constitute an 'arbitration agreement' have been satisfied, we hold that clause 4 of the Work Order must be construed to be an arbitration agreement and dispute raised by the parties must be referred to the arbitrator. In the case of *K.K. Modi* v. *K.N. Modi* [1998] 3 SCC 573, this Court had laid down the test as to when a clause can be construed to be an arbitration agreement when it appears from the same that there was an agreement between the parties that any dispute shall be referred to the arbitrator. This would be clear when we read Para 17 of the said judgment and points 5 and 6 of the same which read as under:

> "5. That the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law; and
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> 6. Agreement must contemplate that the tribunal will make a decision upon a dispute, which is already formulated at the time when reference is made to tribunal."

11. That apart, in Para 23 of the decision in the case of *K.K. Modi* (supra), this Court also noticed its earlier decision in the case of *State of U.P.* v. *Tippar Chand,* [1980] 3 SCC 241. In that case, the test as indicated above was also recorded in which it was stated that "this court said that there was no mention in this clause in any dispute much less any reference thereof."

12. Keeping the ingredients as indicated by this Court in the case of *K. K. Modi* (supra) in mind for holding a particular agreement as an arbitration agreement, we now proceed to examine the aforesaid ingredients in the context of the present case.

(a) Clause 4 of the Work Order categorically states that the decision of the Superintending Engineer shall be binding on the parties.

(b) The jurisdiction of the Superintending Engineer to decide the rights

A of the parties has also been derived from the consent of the parties to the Work Order.

(c) The agreement contemplates that the Superintending Engineer shall determine substantive rights of parties as the clause encompasses all varieties of disputes that may arise between the parties and does not restrict the B jurisdiction of the Superintending Engineer to specific issues only.

(d) That the agreement of the parties to refer their disputes to the decision of the Superintending Engineer is intended to be enforceable in law as it is binding in nature.

C 13. In view of the aforesaid conditions being satisfied, which were based on the principles laid down by this Court in *K.K. Modi's* case (supra), there cannot be any doubt in our mind that the arbitration agreement does exist. Clause 4 of the Work Order is an Arbitration Agreement. The learned Counsel appearing on behalf of the appellants contended that the ingredients D laid down in the case of K.K. Modi are not satisfied in the present case and therefore following the principles laid down in that case, this Court must hold that clause 4 of the Work order cannot be construed as an arbitration agreement. We are unable to accept this contention of the learned counsel of the appellants for two reasons. First, in view of our discussions herein earlier, to the effect that all the ingredients to hold a particular agreement as an arbitration E agreement have been satisfied in the preset case. Secondly, the factual situations in the case of *K.K. Modi* (supra) and in the case before us are very different. That case dealt with the evaluation and distribution of assets, which required expert decision rather than arbitration. The clause in the *K.K. Modi* case (supra) had a very restricted operation as it dealt with only disputes F regarding implementation of contract whereas, in the case before us, Clause 4 is much wider in its ambit as it deals with any dispute between the contractor and the department.

14. The words "any dispute" appears in Clause 4 of the Work Order. Therefore only on the basis of the materials produced by the parties in G support of their respective claims a decision can be arrived at in resolving the dispute between the parties. The use of the words 'any dispute' in Clause 4 of the Work Order is wide enough to include all disputes relating to the said Work Order. Therefore, when a party raises a dispute for non-payment of money after completion of the work, which is denied by the other party, such a dispute would come within the meaning of 'arbitration agreement' between H the parties. Clause 4 of the Work Order also clearly provides that any dispute

between the department and the contractor shall be referred to the Superintending Engineer, Hydel Circle No. 1, Chandigarh for orders. The word 'orders' would indicate some expression of opinion, which is to be carried out, or enforced and which is a conclusion of a body (in this case Superintending Engineer, Hydel Circle No. 1, Chandigarh). Then again the conclusion and decision of the Superintending Engineer will be final and binding on both the parties. This being the position in the present case and in view of the fact that Clause 4 of the Work Order is not under challenge before us, the decision that would be arrived at by Superintending Engineer, Hydel Circle No. 1, Chandigarh must also be binding on the parties as a result whereof Clause 4 must be held to be a binding arbitration agreement.

15. In the decision of this Court in the case of *State of UP* v. *Tippar Chand* (supra), this Court however held that the clause in dispute in that decision between the parties did not amount to an arbitration agreement. In that decision, this Court further held that clause under consideration before them which provided that except where otherwise specified in the contract the decision of the Superintending Engineer for the time being shall be final, conclusive and binding on all the parties to the contract upon all questions relating to the meaning of the specifications etc and the decision of the Superintending Engineer as to the quality, workmanship etc. shall be final, conclusive and binding between the parties does not constitute an arbitration agreement but while arriving at such a conclusion this Court referred to a decision of the Jammu and Kashmir High Court in the case of *Dewan Chand* v. *State of Jammu and Kashmir,* AIR (1961) J & K 58 . In the *Dewan Chand* case (supra) the relevant clause runs as follows:- "For any dispute between the contractor and the Department the decision of the Chief Engineer PWD Jammu and Kashmir, will be final and binding upon the contractor. This Court in that decision had put strong reliance on the expression "any dispute between the contractor and the department" and approved the conclusions arrived at by the J & K High Court. It came to the conclusion by interpretation of that clause that there did not exist any arbitration agreement as the decision of the Superintending Engineer in connection with the work done by the contractor was meant for supervision and execution of the work and administrative control over it from time to time. However, in Clause 4 of the Work Order in the present case, which specifically states that in case of any dispute between the appellants and the contracting parties, the matter shall be referred to the Superintending Engineer. Therefore, the use of the words "any dispute" would clearly mean that it would lead to conclude that the said agreement was in fact an arbitration agreement and thus these words do not

A restrict the scope of the contract.

16. Before parting with this aspect of the matter we may note the decision of *State of Orissa* v. *Damodar Das*, [1996] 2 SCC 216 on which strong reliance was placed before us by the learned counsel for the appellants. This decision of this court may not be helpful to the appellants as we find the B agreement in question in that case was different from Clause 4 of the Work Order. For proper appreciation, we may reproduce the agreement in the case of Damodar Das which reads as under:-

> "25. Decision of Public Health Engineer to be final - Except where C otherwise specified in this contract, the decision of the Public Health Engineer for the time being shall be final, conclusive and binding on all parties to the contract upon all questions relating to the meaning of the specifications; drawings and instructions hereinbefore mentioned and as to the quality of workmanship or materials used on the work, or as to any other question, claim, right, matter or thing, whatsoever D in any way arising our of, or relating to, the contract, drawings specifications estimates, instructions, orders or these conditions, or otherwise concerning the works or the execution or failure to execute the same, whether arising during the progress of the work or after the completion or the sooner determination thereof of the contract."

E 17. A plain reading of this clause in the case of *Damodar Das*, it is evident that the powers of the Public Health Engineer were essentially to supervise and inspect. His powers were limited to the questions relating to the meaning of the specifications; drawings and instructions, quality of workmanship or materials used on the work, or any other question, claim, F right, matter, drawings specifications estimates, instructions, orders or these conditions, or otherwise concerning the works or the execution or failure to execute the same. However, in the case before us, the Superintending Engineer was given full power to resolve any dispute arising between the parties which power in our view is wide enough to cover any nature of dispute raised by the parties. The Clause in the instant case categorically mentions the word G "dispute" which would be referred to him and states "his decision would be final and acceptable/binding on both the parties."

18. That being the position, we are of the view that the clause in the case of Damodar Das and Clause 4 of the Work Order of the present case are totally different. We accordingly do not find any reason to hold otherwise.

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19. At the risk of repetition we may also say before parting with this judgment that Clause 4 of the Work Order speaks for a dispute between the parties. It also speaks of a dispute and all such disputes between the parties to the Work Order shall be decided by the Superintending Engineer, Anandpur Sahib Hydel Circle No. 1. Obviously, such decision can be reached by the Superintending Engineer, Anandpur Sahib Hydel Circle No. 1 only when it is referred to him by either party for decision. The reference is also implied. As the Superintending Engineer will decide the matter on reference, there cannot be any doubt that he has to act judicially and decide the dispute after hearing both the parties and permitting them to state their claim by adducing materials in support. In Clause 4 of the Work Order it is also provided as noted herein earlier that the decision of the Superintending Engineer shall be final and such agreement was binding between the parties and decision shall also bind both the parties. Therefore, the result would be that the decision of the Superintending Engineer would be finally binding on the parties. Accordingly, in our view, as discussed herein above that although the expression "award" or "arbitration" does not appear in Clause 4 of the Work Order even then such expression as it stands in Clause 4 of the Work Order embodies an arbitration clause which can be enforced.

20. For the reasons aforesaid, we are of the view that Clause 4 of the Work Order can safely be interpreted to be an arbitration agreement even though the term 'arbitration' is not expressly mentioned in the agreement. In view of our discussions made herein earlier, we therefore conclude that Clause 4 of the Work Order constitutes an arbitration agreement and if any dispute arises, such dispute shall be referred to Superintendent Engineer for decision which shall be binding on the parties.

21. Before parting with this judgment, we may consider a short submission advanced at the Bar on the question of limitation in filing the application under Section 20 of the Act. At the risk of repetition, we may keep it on record that the Additional Senior Subordinate Judge, Ropar, held that the application was filed in time whereas the appellate court held that the application was barred by limitation. However, the High Court in revision restored the order of the Additional Senior Subordinate Judge, Ropar, by holding that application was filed within the period of limitation.

22. For the purpose of deciding the question of limitation, it may be stated that the application under Section 20 of the Act was filed within 3 years from the date the demand notice was made by the respondent as contemplated

A under Article 137 of the Limitation Act.

23. In order to determine when the cause of action arose, it is essential for us to refer to a case decided by this court. In the case of *S. Rajan* v. *State of Kerala,* [1992] 3 SCC 608 it was held by this Court that the right to apply for arbitration proceeding under Section 20 of the Arbitration Act, 1940 runs B from the date when the dispute arises. It observed:

> "Reading Article 137 and Sub-section (1) of Section 20 together, it must be said that the right to apply accrues when the difference arises or differences arise, as the case may be, between the parties. C It is thus a question of fact to be determined in each case having regard to the facts of that case."

24. Accepting the principles laid down in the case of *S. Rajan* (supra), this Court in the case of *Hari Shankar Singhania and Ors.* v. *Gaur Hari Singhania and Ors.,* [2006] 4 SCC 658 again reiterated the principle that an D application under section 20 of the Act for filing the arbitration agreement in Court and for reference of the dispute to arbitration in accordance therewith is required to be filed within a period of three years when the right to apply accrues and that the said right accrues when difference or dispute arises between the parties to the arbitration agreement. Keeping the principles in mind, let us now examine as to when difference or dispute arises between the E parties to the arbitration agreement, when the right to apply accrues. As noted herein earlier, demand notice was served on the appellants by the respondent on 16th April 1990 and the application under section 20 of the Act was filed on 13th November 1990 which is admittedly within the period of limitation as contemplated under Article 137 of the Limitation Act.

F 25. The Additional District judge, Roopnagar, Punjab, held on the question of limitation in filing the application under section 20 of the Act that the cause of action did not arise when notice of demand was served but arose when the respondent first acquired either the right of action or the right to require that arbitration takes place upon the dispute concerned.

G 26. Keeping the decisions of this court in the cases of *S. Rajan* (supra) and *Hari Shankar Singhania* (supra) in mind, in our opinion, the view of the Additional District Judge was totally erroneous. In the aforesaid two decisions, it was held that the right to apply accrued for the difference arising between the parties only when service of demand notice was effective, which should H be the date for holding that the difference had already arisen between the

parties. Such being the settled law, we are of the view that the application under section 20 of the Act was clearly filed within the period of limitation. A

27. For the reasons aforesaid we do not find any merit in these appeals. Accordingly, the appeals are disposed of with no orders as to cost.

B.S. Appeals dismissed of. B