

A ANILKUMAR JINABHAI PATEL (D) THR. LRs. & ANR.

v.

PRAVINCHANDRA JINABHAI PATEL AND ORS.

(Civil Appeal No. 3313 of 2018 Etc.)

B MARCH 27, 2018

[R. K. AGRAWAL AND R. BANUMATHI, JJ.]

Arbitration and Conciliation Act, 1996:

C *ss. 31(5) and 34 – Arbitration award – Petition by appellant No. 1 u/s. 34 for setting aside the award, filed – Award set aside by District Judge for non-compliance of s. 31(5) – High Court held that the petition u/s. 34 was time barred and hence was dismissed – On appeal, held: Facts and circumstances of the case show that appellant No. 1 was authorized by his family members to receive a copy of the award and act on their behalf – Service of arbitral award on appellant No. 1 amounts to service on his family members (other appellants & respondent) and hence cannot plead non-compliance of s. 31(5) – Petition u/s. 34 was therefore barred by limitation.*

E *s. 34 Proviso – Limitation period for – Condonation of – Held: Proviso to s. 34 gives discretion to the Court to condone the delay for a sufficient cause, but such discretion cannot be extended beyond the period of thirty days – Limitation – Delay-Condonation of.*

F **Dismissing the appeals, the Court**

G **HELD: 1. Section 34 of Arbitration and Conciliation Act, 1996 provides for filing of an application for setting aside an arbitral award. Section 34(3) provides that an application for setting aside an award shall not be entertained by the court if it is made after three months have elapsed from the date on which the applicant had received the arbitral award. The proviso to Section 34 further provides that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the prescribed time, it may entertain the application within**

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a further period of thirty days ‘*but not thereafter*’. The words ‘*but not thereafter*’ in the proviso are of mandatory nature, and couched in the negative, and leave no room for doubt. Proviso to Section 34 gives discretion to the court to condone the delay for a sufficient cause, but that discretion cannot be extended beyond the period of thirty days, which is made exclusively clear by use of the words ‘*but not thereafter*’. [Paras 13 and 14] [725-E] [726-B-D]

State of Arunachal Pradesh v. Damini Construction Co.
(2007) 10 SCC 742 – relied on.

2. The undertaking by appellant No. 1, in the award dated 03.11.1996 that he and his family members agreed and approved the award shows that he was acting for himself and on behalf of his family members. Award dated 07.07.1996 was also received by him for himself and on behalf of his family members. In interim MOU dated 29.06.1996, Appellant No. 1 signed for self and as a power of attorney holder for his wife and his all sons and daughters-in-law. Challenging the award dated 07.07.1996, he and his family members have filed a single petition under Section 34 of the Act. Likewise they have also filed a single petition for amending the arbitration petition. Appellant No. 1 being the head of his family, was a person directly connected with and involved in the proceeding and was also in control of the proceeding. Being head of the family, he would have been the best person to understand and appreciate the arbitral award and take a decision as to whether an application under Section 34 of the Act was required to be filed or not. In such facts and circumstances, service of arbitral award on appellant No. 1 amounts to service on the other appellant Nos.1 (a) to 1(d) and respondent No.10 and they cannot plead non-compliance of Section 31(5) of the Act. The application filed under Section 34 of the Act by appellant No. 1 and appellant Nos. 1(a) to 1(d) and respondent No.10 was barred by limitation. [Paras 22, 23 and 26] [729-F-H; 730-A-B; 731-D]

Union of India v. Tecco Trichy Engineers and Contractors (2005) 4 SCC 239 ; *State of Maharashtra and Ors. v. Ark Builders Pvt. Ltd.* (2011) 4 SCC 616 – referred to.

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Case Law Reference

(2007) 10 SCC 742 relied on Para 14

(2005) 4 SCC 239 referred to Para 15

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(2011) 4 SCC 616 referred to Para 16

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3313 of 2018.

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From the Judgment and Order dated 27.03.2012 of the High Court of Judicature of Bombay Bench at Aurangabad in Writ Petition No. 4669 of 2011

WITH

Civil Appeal No. 3314 of 2018.

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Basant R., C.A. Sundaram, Ms. Meenakshi Arora, Sr. Advs., Prashant R. Dahat, Puneet Yadav, T. R. B. Sivakumar, Prashant R. Dahat, Zafar Inayat, M/s K. J. John And Co, Tapesh Kumar Singh, Mohd. Waquas, Aditya Pratap Singh, Aniruddha P. Mayee, Shashibhushan Adgaonkar, Avnish M. Oza, Chirag Jain, Advs. for the

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appearing parties.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

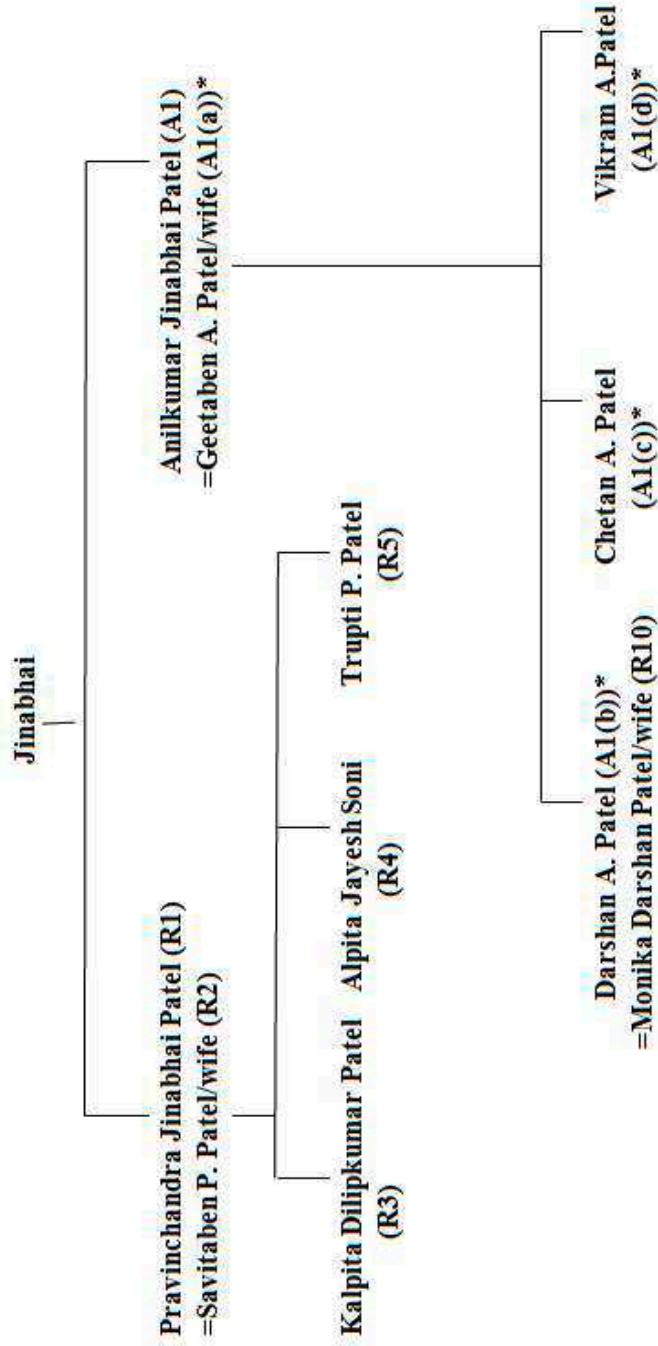
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2. Appellants have filed these appeals challenging the judgment dated 27.03.2012 of the High Court of Judicature at Bombay Bench at Aurangabad in W.P. No. 4669 of 2011 in and by which the High Court held that challenge to the arbitral award dated 07.07.1996 was time barred under the provisions of Section 34 of the Arbitration and Conciliation Act, 1996 (for short “the Act”).

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3. The facts of the case are that the appellant No.1/Anilkumar Patel and respondent No.1/Pravinchandra Patel are real brothers and sons of Jinabhai. They had three other brothers who were already separated. So far as the parties before us, they are related as under:-

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[*Respondent Nos. 6 to 9 have been deleted as respondents and added as LRs of the appellant vide order dated 30.04.2015 in the SLP]

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- A Pravinchandra Patel and Anilkumar Patel together started the business of fertilizer manufacturing, chemical and real estate at Jalgaon. In the course of business, they set up number of companies and partnership concerns and acquired numerous immovable and movable properties. Pravinchandra Patel has three daughters, who are married and settled outside Jalgaon. Anilkumar Patel has three sons, who are residing with
- B him at Jalgaon. As children of Pravinchandra Patel and Anilkumar Patel grew up and in order to avoid any possible litigation, both the brothers and their family members decided to make division of the assets of the family. For this purpose, they approached Latikaben (respondent No.12) and Bhikhalal Nathalal Patel (respondent No.11) who is the sister and
- C brother-in-law of Pravinchandra Patel and Anilkumar Patel and parties have agreed to appoint them as arbitrators. It culminated into an MOU dated 21.05.1996 appointing Latikaben and Bhikhalal Nathalal Patel as arbitrators which was signed by all the members of the family that is the appellants and respondents.
- D 4. While arbitrators were away to Rajkot due to emergency work, both Pravinchandra Patel and Anilkumar Patel decided to streamline the ongoing business of firms and companies by signing of an interim MOU on 29.06.1996 (IMOU). The covenants of the said IMOU covered the matters relating to bank accounts and withdrawal power, NPK allocation etc. The said IMOU was signed by Pravinchandra Patel for himself and
- E on behalf of his family members. Similarly, Anilkumar Patel signed in the IMOU for himself and also as a power of attorney holder for his wife, his all sons and daughter-in-law.
- F 5. The arbitrators arrived at Jalgaon on 04.07.1996 and continued with the arbitration proceeding and passed the award on 07.07.1996 (with a mention of IMOU dated 29.06.1996) under which certain properties were given to Pravinchandra Patel and Anilkumar Patel whereas some other assets were kept undivided with equal rights and interest thereon of both groups. The award was written in Gujarati language by hand by the arbitrators and signed by the arbitrators. The
- G copy of the award was given to Pravinchandra Patel and Anilkumar Patel by arbitrators in person which was duly acknowledged by them. Copy of the award bears signature of both Pravinchandra Patel and Anilkumar Patel with recital that they and their family members will act as per the award and will give effect to the same. Then by an award
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dated 03.11.1996, the issues between appellants and respondents were finally decided taking note of earlier awards. According to Pravinchandra Patel, Anilkumar Patel accepted and acted upon the awards on more than one occasion. A

6. However, Anilkumar Patel and his family members (appellant Nos. 1(a) to 1(d) and respondent No.10) filed an arbitration petition No.202 of 2005 under Section 34 of the Act before the District Judge, Jalgaon on 29.11.2005 challenging the award dated 07.07.1996 contending that they learnt about the arbitral award only on 11.08.2005 when they were served with the notice of execution petition filed by Pravinchandra Patel alongwith the xerox of the award dated 07.07.1996. Therefore, as per the appellant-Anilkumar Patel, period of limitation starts only from 11.08.2005, from the date of their receipt of copy of the award. It was further alleged that, appellant Nos. 1(a) to 1(d) and respondent No.10 were not included as party in the award dated 07.07.1996 and the award is not binding on them. They have, *inter alia*, alleged that the award is a false and fraudulent document. They also emphasized that the signature of Anilkumar Patel in the arbitral award showing his acknowledgement was forged and therefore, could not be acted upon. B C D

7. Later on, an application came to be filed by Anilkumar Patel for himself and on behalf of his family members for an amendment under Order VI Rule 17 C.P.C. stating that the arbitration petition No.202 of 2005 filed initially, did not contain the challenge to award dated 03.11.1996 and hence, by an amendment sought to challenge award dated 03.11.1996 as well. The said application was dismissed on 30.06.2006 by the District Court on the ground of limitation which was further challenged through W.P. No.5502 of 2006 before the High Court. The same was remanded to the District Judge on 21.08.2006 for consideration of the matter afresh. After remand, the District Judge by order dated 28.09.2006 again dismissed the amendment application on the ground of limitation. The said order dated 28.09.2006 was again challenged by Anilkumar Patel under W.P. No.7614 of 2006. The High Court *vide* order dated 13.11.2006 dismissed the writ petition observing that Anilkumar Patel is adopting tactics of approbate and reprobate and Anilkumar Patel is acting as per his convenience by denying the knowledge of award dated 03.11.1996 in some court proceedings though in some other proceedings, he has relied on the said award and sought to take advantage on the basis of the said award. E F G

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- A 8. Insofar as the challenge to the award dated 07.07.1996, the District Judge *vide* order dated 14.02.2011 allowed the application under Section 34 of the Act *inter alia*, holding that the period of limitation prescribed under Section 34(3) of the Act is to be computed from the point of time when the party concerned received the copy of the arbitral award. The District Judge set aside the award holding that number of
- B serious issues have been raised in application under Section 34 and there is nothing to show that Anilkumar Patel was authorised by the other applicants to receive a copy of the award on their behalf and it cannot be said that the appellant Nos.1(a) to 1(d) and respondent No.10 had received the award in terms of Section 31(5) of the Act.
- C 9. Being aggrieved, Pravinchandra Patel filed W.P. No.4669 of 2011. The High Court by the impugned judgment dated 27.03.2012 set aside the order of the District Judge holding that the petition filed in the year 2005 under Section 34 of the Act was time barred. The High Court held that sofaras the award dated 03.11.1996, the findings in W.P.No.7614
- D of 2006 have attained finality which has foreclosed the right of Anilkumar Patel to challenge the award dated 07.07.1996. The High Court enumerated various circumstances to hold that Anilkumar Patel and his family members were well aware of the award dated 07.07.1996. The High Court also relied upon various correspondence between the parties, legal proceedings etc. (O.A. No.298A/2001 etc.) to arrive at the
- E conclusion that Anilkumar Patel received the award dated 07.07.1996. On those findings, the High Court held that the petition filed in the year 2005 under Section 34 of the Act is time barred and the petition filed under Section 34 of the Act challenging the award dated 07.07.1996 came to be dismissed.
- F 10. On behalf of legal heirs of Anilkumar Patel, it was contended that as contemplated under Section 31(5) of the Act, copy of the award dated 07.07.1996 was not served upon the family members of Anilkumar Patel and mere knowledge as to the existence of the award would not in any manner result in the commencement of period of limitation. The
- G learned senior counsel for the appellants contended that the limitation period can be computed only from the day on which the original signed copy of the arbitral award is received under the provision of Section 31(5) of the Arbitration and Conciliation Act, 1996.
- H 11. Per contra, learned senior counsel for the respondents has drawn our attention to number of documents to refute appellant's

contention wherein appellant-Anilkumar Patel himself admitted many times that the arbitral award was within his knowledge and used the awards dated 07.07.1996 and 03.11.1996 on number of occasions including legal proceedings. Further contention of Pravinchandra Patel is that arbitrators who were none other than their sister Latikaben (respondent No.12) and Bhikhalal Nathalal Patel (respondent No.11) husband of Latikaben who came from Rajkot to Jalgaon to settle the matter amicably between two brothers which was at the instance of both the parties and while so, the award cannot be assailed as fabricated or a biased one.

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12. On the aforesaid rival contentions advanced on behalf of both the parties and upon perusal of the impugned judgment and materials placed on record, the following points arise for consideration:-

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- (1) Whether Anilkumar Patel represented his family in the arbitration proceedings and whether respondents are right in contending that receipt of copy of award by Anilkumar Patel was for himself and on behalf of his family members?
- (2) Whether the High Court was right in holding that the application under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award was barred by limitation?

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13. Section 34 of the Act provides for filing of an application for setting aside an arbitral award. Sub-section (3) of Section 34 of the Act lays down the period of limitation for making the application. Section 34(3) of the Arbitration and Conciliation Act, 1996, reads as follows:-

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34. Application for setting aside arbitral award.-(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

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(2)

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

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Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within

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A the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

14. Section 34(3) provides that an application for setting aside an award shall not be entertained by the court if it is made after three months have elapsed from the date on which the applicant had received the arbitral award. The proviso to Section 34 further provides that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the prescribed time, it may entertain the application within a further period of thirty days ‘*but not thereafter*’. (vide *State of Arunachal Pradesh v. Damini Construction Co.*(2007) 10 SCC 742). The words ‘*but not thereafter*’ in the proviso are of mandatory nature, and couched in the negative, and leave no room for doubt. Proviso to Section 34 gives discretion to the court to condone the delay for a sufficient cause, but that discretion cannot be extended beyond the period of thirty days, which is made exclusively clear by use of the words ‘*but not thereafter*’.

D 15. In *Union of India v. Tecco Trichy Engineers and Contractors*(2005) 4 SCC 239, a three Judge Bench of this Court, in respect to the issue of limitation for filing application under Section 34 of the Act for setting aside the arbitral award, held that the period of limitation would commence only after a valid delivery of an arbitral award takes place under Section 31(5) of the Act. In para (8), this Court held as under:-

F “8. The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be “received” by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those

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rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.” A

16. In *State of Maharashtra and Ors. v. Ark Builders Pvt. Ltd.*, (2011) 4 SCC 616, while following the judgment in *Tecco Trichy Engineers case*, held that the expression “...party making that application had received the arbitral award...” cannot be read in isolation and it must be understood that Section 31(5) of the Act requires a signed copy of the award to be delivered to each party. By cumulative reading of Section 34(3) and Section 31(5) of the Act, it is clear that the limitation period prescribed under Section 34(3) of the Act would commence only from the date of signed copy of the award delivered to the party making the application for setting it aside. B C

17. Contention of the appellants is that the other members of Anilkumar’s family viz., appellant Nos. 1(a) to 1(d) and respondent No.10, appellant No.1(d) and respondent No.10 did not receive the copy of the award and that they had knowledge of the award only when the execution petition was filed and when they received the notice in the execution petition. Contention of appellant Nos. 1(a) to 1(d) and respondent No.10 is that in terms of Section 31(5) of the Act, copy of the award to be delivered to each party to enable them to challenge the award and since the copy of the award not individually served to them, the period of limitation would start only from the date when they got the copy of the award. D E

18. As pointed out earlier, Anilkumar Patel has signed the award and received the copy of the award with the following endorsement:- F

“For myself and on behalf of my family members”.

Whether the receipt of the award by Anilkumar Patel with the above endorsement could be construed as the receipt of the award by his family members- appellant Nos.1(a) to 1(d) and respondent No.10, is the point falling for consideration. G

19. In MOU dated 21.05.1996, Pravinchandra Patel and Anilkumar Patel have appointed their sister Latikaben and her husband Bhikhalal Nathalal Patel for effecting partition between the two families and both the families have consented for the same. The MOU was signed by H

A Pravinchandra Patel and his wife and daughters (respondents No.1 to 5) and Anilkumar Patel and his wife and his three sons and one daughter-in-law (appellant No.1 (dead) and appellant Nos. 1(a) to 1(d) and respondent No.10). The MOU appointing arbitrators (21.05.1996) stipulates that: (i) the award to be in writing; and (ii) to furnish copy of the award to each of the members of the families. The relevant portion

B of MOU reads as under:-

C “.....The arbitrators shall write down the particulars of the partition as well as the terms and conditions for effecting the partition and the arbitrators shall sign it. The arbitrators shall make as many copies of it as there are members and shall give each member a copy of it. And after that both the families shall act as per the particulars of partition given by the arbitrators and get the properties and business properties partitioned....”

D 20. As pointed out earlier, while arbitrators were away to Rajkot due to emergency work, both Pravinchandra Patel and Anilkumar Patel decided to streamline the ongoing business of firms and companies by signing an interim MOU on 29.06.1996 (IMOU). The covenants of the said IMOU covered the matters relating to bank account and withdrawal of power, NPK allocation etc. The said IMOU was signed by Pravinchandra Patel with the following endorsement:-

E “P.J. Patel (Group No.1) for self and also as Power of Attorney Holder for wife and all daughters”.

Similarly in the said IMOU, Anilkumar Patel signed for himself and on behalf of his family members, as seen from the following endorsement:-

F “A.J. Patel (Group No.2) for Self and also as Power of Attorney Holder for wife, all sons and daughter-in-law.”

G 21. The award dated 07.07.1996 was signed by both the arbitrators. The award was also signed by Pravinchandra Patel and Anilkumar Patel. Both of them have undertaken to implement the award with their free will and pleasure, as seen from the following:-

H “As per this Arbitration “Award”, both the groups and their family members have to honestly, wholeheartedly and faithfully act in accordance with and implement the transaction of the property, the IMOU which is now considered as MOU and the accounting chart in respect of the companies and the firms.

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The aforesaid Arbitration Award I agreed to and approved of by A
and our descendant guardian and heirs. We undertake to implement
the same with free-will and pleasure.”

After their signature in the award which is in Gujarati language B
for having received the copy of the award, Pravinchandra Patel and
Anilkumar Patel have stated as under:-

“...For ourselves and on behalf of our family members.”

It is pertinent to note that the award also referred to IMOU dated C
29.06.1996 in and by which the members of the respective families have
authorized Pravinchandra Patel and Anilkumar Patel to act on behalf of
their family members.

22. The award dated 03.11.1996 also refers to the award dated D
07.07.1996. The award dated 03.11.1996 was also signed by
Pravinchandra Patel and Anilkumar Patel and both of them have
undertaken that the arbitration award is duly agreed and approved by
them and their family members and further undertaken to act in D
accordance with the award and to give effect to the same. The said
endorsement in the award dated 03.11.1996 reads as under:-

“The aforesaid arbitration award is duly agreed to and approved E
of by me and my family members, descendants heirs and other.

My family members and I absolutely assure to act in accordance E
with the award and to give effect to same.”

As discussed earlier, Anilkumar Patel was unsuccessful in his F
attempt to challenge the award dated 03.11.1996 which has attained
finality in terms of the findings in W.P.No.7614 of 2006. Anilkumar Patel’s
undertaking in the award dated 03.11.1996 that he and his family members F
agreed and approved the award shows that Anilkumar Patel was acting
for himself and on behalf of his family members.

23. Award dated 07.07.1996 was received by Anilkumar Patel G
for himself and on behalf of his family members. In interim MOU dated
29.06.1996, Anilkumar Patel signed for self and as a power of attorney G
holder for his wife and his all sons and daughter-in-law. Challenging the
award dated 07.07.1996, Anilkumar Patel and his family members have
filed a single petition under Section 34 of the Act. Likewise they have
also filed a single petition for amending the arbitration petition No.202 of
2005. Anilkumar Patel, being the head of his family, was a person directly H

A connected with and involved in the proceeding and was also in control of
the proceeding. Being head of the family, Anilkumar Patel would have
been the best person to understand and appreciate the arbitral award
and take a decision as to whether an application under Section 34 of the
Act was required to be filed or not. In such facts and circumstances, in
our considered view, service of arbitral award on Anilkumar Patel amounts
B to service on the other appellant Nos.1(a) to 1(d) and respondent No.10
and they cannot plead non-compliance of Section 31(5) of the Act.

24. The High Court has enumerated various circumstances which
indicate that Anilkumar Patel was well aware of the award dated
07.07.1996 and also relied upon the award in internal communication
C between the parties and various legal proceedings. "Inter Office Memo"
dated 22.07.1996, sent by Anilkumar Patel to Pravinchandra Patel,
seeking for delivery of file of Gat No.266/2 of Bambhori, Taluka Brandol.
Anilkumar Patel has stated that in Gat No.266/2 of Bambhori, agricultural
land has come to his share and since some dispute has been raised by
D the party by whom the sale-deed is to be executed, Anilkumar Patel
requested to handover the file maintained in connection with the
agricultural land mentioned in Gat No.266/2. The said Inter Office Memo
clearly shows that even on 22.07.1996, Anilkumar Patel had acted upon
the award dated 07.07.1996.

E 25. Central Bank of India has filed recovery proceeding in
O.A.No.298-A/2001 against Pravinchandra Patel, M/s. Patel
Narayandas Bhagwandas Fertilizers Private Limited and others. In the
said proceeding before DRT, Anilkumar Patel has referred to the
arbitration award passed in July, 1996 and that he has no interest in M/s.
Patel Narayandas Bhagwandas Fertilizers Private Limited. Based on
F such stand taken by Anilkumar Patel in O.A.No.298-A/2001, DRT
observed that Anilkumar Patel had resigned from the Directorship of
the said company and exonerated him from the liability to the bank and
dismissed O.A.No.298-A/2001 against Anilkumar Patel and Atulkumar
Maganlal Patel. The High Court referred to the said DRT proceedings
G and various other circumstances in which Anilkumar Patel had taken
advantage of arbitration award and the High Court held as under:-

"...The respondents, obviously, wherever it was possible for them,
at several places, took advantage of the arbitration award and
now since obligation on their part is to be complied in favour of

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the petitioner, have started challenging the award, after nine years.....” A

Various circumstances brought on record clearly show that Anilkumar Patel was authorized by other appellant Nos. 1(a) to 1(d) and respondent No.10 to receive copy of the award and act on their behalf and we find no reason to take a different view from that of the High Court. B

26. As rightly observed by the High Court, Anilkumar Patel has gone to the extent of even disputing his signature in the award dated 07.07.1996 by drafting choreographed petition. Having accepted the award through Anilkumar Patel, being the head of the family, appellant Nos. 1(a) to 1(d) and respondent No.10 cannot turn round and contend that they had not received the copy of the award. The High Court rightly held that “....*Receiving the copy by Anilkumar on behalf of himself and respondent nos. 2 to 6, under an acknowledgment, is in terms of compliance of Section 31(5) of the Act and Section 34(3) thereof.....*” and that the application filed under Section 34 of the Act by Anilkumar Patel and appellant Nos. 1(a) to 1(d) and respondent No.10 was barred by limitation. We do not find any good ground to interfere with the impugned judgment. C
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27. In the result, the appeals are dismissed. No costs. E