others v. *Jiwan Lal and another* (2), as would be clear from the following observations appearing in para 8 of the report:—

> "Reading these provisions as a whole, it is obvious that if the landlord's need be genuine and he satisfies the Controller, he can obtain possession of the building or the land, as the case may be. If, however, he does not re-erect the building and puts it to any other use or lets it out to another tenant, the former tenant can apply to be put back in possession."

(7) For the reasons aforementioned, I allow the revision petition and set aside the order of both the Courts below and dismiss the application. However, in the circumstances of this case, I make no order as to costs.

N.K.S.

Before D. S. Tewatia and S. S. Kang, JJ.

UNION OF INDIA,—*Appellant.*

versus

HARBANS SINGH TULI AND SONS,—*Respondent.*

First Appeal From Order No. 77 of 1980.

July 19, 1980.

Code of Civil Procedure (V of 1908)—Order 27, Rule 8-B(a)—Punjab Reorganisation Act (XXXI of 1966)—Sections 32 and 88—Arbitration Act (X of 1940)—Sections 15, 16, 30, 33 and 39—Notification issued by the erstwhile State of Punjab appointing Government pleaders for purposes of order 27—Whether legislative in character and a law within the meaning of sections 32 and 88—Government pleader so appointed by the Union Territory Administration—Whether competent to present an appeal on behalf of the Union of India—Objection petition challenging an award—Whether should be accompanied with affidavits—Arbitration clause stating that the award shall be final and conclusive—Such clause—Whether makes the award unimpeachable on any ground whatsoever—Pleas of limitation and estoppel raised before the Arbitrator—Such pleas—Whether a dispute

(2) A.I.R. 1963 S.C. 499.

arising from or pertaining to the contract—Test for determining such a dispute—Stated Arbitrator not giving a speaking award—Whether could be said to be guilty of legal misconduct.

Held, that by virtue of section 88 of the Reorganisation Act, 1966, the notification issued by the erstwhile State of Punjab appointing Government pleaders for the purpose of Order 27 of the Code of Civil Procedure 1908, having the status of existing law would continue to hold good for the area which was part of the erstwhile State of Punjab despite the provisions of part II of the Reorganisation Act, which envisages parcelling out of the territory of the existing State of Punjab into the State of Haryana, Union Territory Chandigarh, partly Himachal Pradesh and the remaining to the Punjab State. That means for the purpose of the said notification Government pleaders under Union Territory Administration or the Haryana State or the new Punjab State or the Government pleaders of the Himachal Pradesh for the area which had earlier formed part of the erstwhile Punjab State, shall continue to be Government pleaders duly appointed for the purpose of order 27 of the Code till such time the said notification was to be modified. Thus. a Government pleader appointed by the Union Territory Administration for the purpose of Order 27 of the Code is competent to prefer an appeal on behalf of the Union of India. (Para 6).

Held, that a notification appointing Government pleaders for the purposes of Order 27 of the Code is definitely legislative in character in that it has been promulgated by the Government as delegate of the Legislature, Rule 8-B of Order 27 of the Code has sought to define the expression 'Government pleader'. The Legislature, instead of defining this expression itself, has delegated this power to the Government by expressly envisaging that a 'Government pleader' for the purpose of Order 27 means a 'pleader', whom the Government by general or special order appoints. The Government, therefore, passed the order as delegate of the Legislature and the order, therefore, is legislative in character and not executive in character. (Para 9).

Held, that the expression 'affidavits' occurs at the fagend of section 33 of the Arbitration Act, 1940, that is, when commanding the court as to how it was to decide the question raised before it and what is therein provided is that the court shall decide the questions on affidavits. That means that issues arising from the objections raised before the court could, in the first instance, be decided on affidavits of the parties. It does not mean that the objections had to be accompanied with affidavits. The discretion is with the court having regard to the proviso as to whether it would like to dispose of the questions raised on affidavits alone. If it does so, it can call for the evidence in the form of affidavits of the parties. (Para 29).

Held, that addition of the word 'conclusive' to the existing words 'final and binding' in relation to the award had not added at all to the authority of the award. The binding nature of the award *qua* the parties even without addition of the word 'conclusive' was the same. If by adding the word 'conclusive' the purpose sought to be achieved was that the award was to be made unimpeachable on any ground whatsoever mentioned in the Arbitration Act, then the parties singularly failed in their attempt. This object could have been achieved only if the words 'the award shall not be impeached by any party on any ground whatsoever mentioned in the Arbitration Act or otherwise' had been added to the arbitration clause but even then the award could have been set aside if it had been established that the contract itself, of which the arbitration clause of the kind suggested was a part, was illegal in that the objecting party had either been induced to enter into that contract or had been forced to enter into that contract or undue influence had been brought to bear on that to enter into that contract. (Para 32).

Held, that if a party has to refer or has to have recourse to the contract either in support of its claim or by way of defence against a claimant, such a dispute is a dispute under the contract. Whether the claim is barred by limitation, one would have to look into the relevant clauses of the agreement between the parties. Again, to find out as to whether the claimant was estopped from claiming a given amount or any amount, one would again have to refer to clauses of the contract in question. Such dispute pertaining to the plea of limitation or plea of estoppel necessarily arises from or pertains to the agreement and, therefore, within the jurisdiction of the arbitrator. (Paras 39 and 40).

Held, that an Arbitrator is not bound to give a speaking award. Even where in the award no specific reference is made to the limitation, the arbitrator by awarding the amount must be taken by implication to have rejected the plea of limitation. (Para 50).

First appeal from the order of the Court of Shri N. K. Bansal, P.C.S., Sub-Judge, 1st Class, Chandigarh, dated the 31st October, 1979, dismissing the petition and award in question, dated 14th December, 1977 given by Shri Y. L. Subramanyam, S.E., making a rule of the Court and entitling them to future interest at the rate of 6 per cent per annum from the date of the decree till the date of the payment and leaving the parties to bear their own costs.

Civil Misc. No. 1172-CII of 1980.

Petition under section 151 C.P.C. praying that this Hon'ble Court may be pleased to consider the preliminary objections of the respondent (applicant) and to reject/dismiss the appeal on the basis of the preliminary objections in the interest of justice.

Cross-objection No. 16-CH of 1980.

Cross-objection under Order 41, *Rule* BB *Code of Civil Procedure praying that this Hon'ble High Court may be pleased to accept these cross-objections and to decide in favour of the objection-petitioner and against the appellant with costs of these cross-objections.*

R. K. Chhibbar, Government Pleader, U. T., Chandigarh, *for the Appellant.*

Balbir Singh Tuli, *in person.*

K. C. Puri, Advocate, *for the Respondent.*

JUDGMENT

D. S. Tewatia, J.

(1) The appellant Union of India has sought the quashing of the order, dated 31st October, 1979 of the Subordinate Judge, First Class, Chandigarh, whereby he made the award, dated 14th December, 1977, given by Shri Y. L. Subramanyam, Superintending Engineer, rule of the Court and dismissed the objections of the Union of India.

(2) Before adverting to the grounds of attack against the said order and the award in question, we have first to take note of the preliminary objections raised on behalf of the respondents to the maintainability of the present appeal.

(3) The first objection to the maintainability of the appeal that has been canvassed before us is that Shri R. K. Chhibbar, Advocate, who has presented the appeal on behalf of the Union of India, was not competent to do so, as he was not duly authorised in this behalf. It has been maintained that Shri R. K. Chhibbar had been authorised to file the appeal by the Legal Remembrancer, Union Territory, Chandigarh, who himself had no authority to do so the case not pertaining to the Union Territory Administration but to the Defence Department of the Government of India, which was an entity separate and distinct from the Union Territory Administration.

(4) Mr. Chhibbar, learned counsel for the appellant, does not dispute the proposition that the Union Territory Administration is distinct from the Central Government or any of its departments. He, however, argues that he has been duly authorised to present the appeal. In this regard, he places reliance on G.S.R. No. 1412, dated 25th November, 1960, published in the Government Gazette, dated 3rd December, 1960, and sections 32 and 88 of the Punjab Reorganisation Act, 1966. The relevant portion of the aforesaid G.S.R. is in the following terms:

"G.S.R. 1412.—In exercise of the power conferred by clause (a) of rule 8B of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), and in supersession of the notification of the Government of India in the Ministry of Law No. S.R.O. 3920, dated the 5th December, 1957, the Central Government hereby appoints the person specified in the second column of the Schedule annexed hereto as Government Pleaders for the purposes of the said Order in relation to any suit by or against the Central Government, not being a suit (other than a suit in the City Civil Court, Calcutta) relating to—

1. .. ..
to
13. .. ..

or against a public officer in the service of the Central Government in any Court specified in the first column of the said Schedule.

SCHEDULE

Courts (1)	*Officers* (2)
(a) High Court at Chandigarh.	(i) Advocate-General, Punjab. (ii) Government Pleader, Punjab.
(b)	..

Sd./- . . . .,
R. S. Gae,
Jt. Secy."

Sections 32 and 88 of the Punjab Reorganisation Act, 1966, are as follows:—

"32. Subject to the provisions of this Part, the law in force immediately before the appointed day with respect to practice and procedure in the High Court of Punjab shall, with the necessary modifications, apply in relation to the common High Court.

* * * * *

88. The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that state immediately before the appointed day."

It has been contended by Mr. Chhibbar that the notification mentioned above whereby the Punjab Government pleaders were appointed by the Government of India for the purposes of order 27, Civil Procedure Code, was a law for the purpose of sections 32 and 88 of the Punjab Reorganisation Act, 1966, hereinafter referred to as the Act. He submits that he was appointed a Government Pleader of the Union Territory of Chandigarh. It has been contended by him that presentation of appeal and pleadings pertains to the practice and procedure of the High Court. Order 27, rule 2, Civil Procedure Code, provides as to who could appear, act and make application on behalf of the Government under the Civil Procedure Code. Section 32 of the Reorganisation Act envisages that the law dealing with the practice and procedure of the High Court of Punjab that was in force immediately before the appointed day, that is, 1st November, 1966, would continue to apply in relation to the common High Court of the Punjab and Haryana. Clause (a) of rule 8B of order 27, which is in the following words, defines the expression 'Government Pleader' to be one who is appointed as such by a general or special order for the purposes of Order 27, Civil Procedure Code:

"8-B. In this Order unless otherwise expressly provided 'Government' and 'Government pleader' means repectively—

(a) in relation to any suit by or against the Central Government or against a public officer in the service of

that Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this order;

* * * * * *

(5) By the abovesaid notification dated 25th November, 1960 all Punjab Government pleaders were appointed to act for the Union Government *inter alia* for the purpose of Order 27, rule 2, Civil Procedure Code. This notification, it has been stressed, has the status of law for the purpose of section 32 of the Reorganisation Act.

(6) That by virtue of section 88 of the Reorganisation Act, the aforesaid notification having the status of existing law would continue to hold good for the area which was part of the erstwhile State of Punjab despite the provisions of Part II of the Reorganisation Act, which envisages parcelling out of the territory of the existing State of Punjab into the State of Haryana, Union Territory/ Chandigarh, partly Himachal Pradesh, and the remaining to the Punjab State. That means for the purpose of the said notification the Government pleaders under the Union Territory Administration or the Haryana State or the new Punjab State or the Government pleader of the Himachal Pradesh, for the area, which had earlier formed part of the erstwhile Punjab State, shall continue to be Government pleaders duly appointed for the purpose of order 27, Civil Procedure Code, till such time the said notification was to be modified which, it is nobody's case, has been modified.

(7) Mr. Chhibbar further contended that by virtue of the provisions of sections 56 and 57 (1) of the Evidence Act, the Court has to take judicial notice of G.S.R. 1412, dated 25th November, 1960, published in the Government Gazette dated 3rd December, 1960, as also notification No. 1560-ID-77/1614, dated 20th May, 1978, appointing him as Government pleader, Chandigarh.

(8) Mr. Balbir Singh Tuli holding General Power of Attorney on behalf of the respondents, has, however, contended that the notification in question does not have the force of law, inasmuch as only such notifications, as are legislative in character, that are said to have force of law and of which judicial notice can be taken by the Courts and in support of his submission, he places reliance on

a Full Bench decision of Madhya Bharat High Court in *State* v. *Gopal Singh* (1), and that of the Supreme Court in *Edward Mills Co., Limited, Beawar and others* v. *State of Ajmer and another* (2).

(9) It is unnecessary to go into the question as to whether it is a legislative order alone that has the force of law when published in the Government Gazette and can be taken judicial notice of by the Court, for the notifications in question are definitely legislative in character in that these had been promulgated by the Government as delegate of the Legislature. Rule 8B of Order 27, Civil Procedure Code, has sought to define the expression 'Government pleader'. The Legislature, instead of defining this expression itself, has delegated this power to the Government by expressly envisaging that a 'Government pleader', for the purpose of Order, 27, means a 'pleader', whom the Government by general or special order appoints. The Government, therefore, passed the order as a delegate of the Legislature and the order, therefore, is legislative and not executive in character.

(10) Mr. Balbir Singh then contended that Mr. Chhibbar was not competent to sign the memorandum of appeal. He stressed that by virtue of the definition of 'Government pleader' as given in subsection (7) of section 2 of the Civil Procedure Code, 'Government pleader' is an officer appointed by the State Government to perform all or any of the functions expressly imposed by the C.P.C. on the Government pleaders and that the Civil Procedure Code expressly provides for only one function to be performed by a Government pleader and that is provided in rule 4 of Order 27, Civil Procedure Code, of only receiving processes against the Government issued by any Court. According to him, Mr. Chhibbar by virtue of his being a Government pleader was not, therefore, competent to prefer the appeal.

(11) There is no merit in this contention as well. Mr. Chhibbar preferred the appeal by virtue of the fact that he was appointed a Government pleader for the purpose of order 27 of the C.P.C. by notification No. G.S.R. 1412, dated 25th November, 1960, and it was not merely on account of his being a Government pleader that he presented the appeal. He did so on account of the factum of his

(1) A.I.R. 1956 Madhya Bharat 138.
(2) A.I.R. 1955 S.C. 25.

having been appointed a Government pleader for the purpose of order 27 C.P.C. which included rule 2 within its ambit.

(12) It was, however, urged by Mr. Balbir Singh that the Government having issued a separate notification No. S.R.O. 35, dated 25th January, 1958, whereby persons other than the Government pleaders were nominated for the purpose of rules 1 and 2 of Order 27, C.P.C., it must be taken that the Government pleader appointed by G.S.R. 1412, dated 25th November, 1960, stood excluded from acting on behalf of the Central Government in terms of rule 2 of order 27, C.P.C., and, therefore, Mr. Chhibbar was not competent to sign the memorandum of appeal and present the same in this Court.

(13) There is no merit in this contention either. The factum of some persons, other than the Government pleader, being nominated to act for the Government in terms of rules 1 and 2 of order 27, C.P.C., would not exclude a Government pleader appointed by the Government for the purpose of Order 27 which included within its ambit rule 2 as well. There had to be a notification nominating some persons, other than the Government pleader, for the purpose of rules 1 and 2 of Order 27, C.P.C., as the Government pleader could not always be a person who could be acquainted with the facts of the case and be able to verify a plaint or a written statement or for that matter any application requiring verification of the facts stated therein and, therefore, the necessity of a special notification for nominating persons other than the Government pleader for the purpose of rules 1 and 2 of Order 27, C.P.C. It may be observed that a memorandum of appeal does not require verification, therefore a Government pleader would be competent to sign the same and present it before the Court.

(14) The matter is not *res integra*. Almost an identical objection to the presentation of the appeal by a Government advocate was raised before the Lahore High Court in *E. I. Rly. Co., Calcutta* v. *Piyara Lal Sohan Lal* (3). That Court, relying on a notification of the kind that we have in the form of G.S.R. 1412, dated 25th November, 1960, held that the Government advocate being an *ex-officio* Government pleader for the whole of the Province under rule 2 Order 27, Civil Procedure Code, and all Government pleaders being authorised to act for the Government as their recognised agents without any power of attorney, were competent to prefer the appeal.

(3) A.I.R. 1928 Lahore 774.

(15) In view of our upholding the competency of Mr. Chhibbar to file the appeal on the basis of the Government notification itself, it is unnecessary to take notice of the factum of his having placed on the file power of attorney from an authority whom Mr. Chhibbar claims was competent to execute it and Mr. Balbir Singh's objection thereto, and further contention that this kind of *post facto* authorisation would be of no avail.

(16) Cross-objections have been filed by the respondents and one of the cross-objections that deserves to be dealt with right at this stage pertains to a preliminary objection raised by the respondents in the Court below to the maintainability of the objection-petition of the appellant herein to the award being made a rule of the Court on the ground that the petition not having been verified by a person competent to do so and not being presented by a counsel competent to do so, the same was not entertainable by the Court below. The challenge to the competency of the counsel to present the objection petition to the Court below is identical to the challenge posed to the appellants counsel's competency to present the appeal in this Court.

(17) The objection-petition having been preferred by a Government pleader like Mr. Chhibbar, hence whatever has been held and observed in regard to the competency of Mr. Chhibbar would *mutatis mutandis* apply to the case of the Government pleader who had filed the objections in the Court below.

(18) As regards the verification of the objections, Mr Chhibbar has brought to our notice. S.R.O. No. 35, dated 25th January, 1958, whereby the Central Government authorised the officials whose names are mentioned in the schedule annexed to the said notification as the persons by whom plaints and written statements in suits in any court of Civil jurisdiction by or against the Central Government could be signed and also notified that such official, as were mentioned in the schedule, were persons who were acquainted with the facts of the case and could verify such plaints and written statements. Garrison Engineer is one of such persons, whose name is mentioned in the schedule attached to the said notification. Garrison Engineer had verified the objection-petition. Hence, there can be no doubt that the competent person had verified the objection-petition and a competent person had presented the same before the court below.

(19) Mr. Balbir Singh then contended that before an appeal could be filed some competent authority should have taken a decision that the appeal be filed. According to Mr Balbir Singh, in view of para 537(a) of Defence Services Regulations, 1962, GOC, Punjab, Haryana and Himachal Pradesh Area as the authority competent to take a decision as to whether the appeal was to be filed or not.

(20) Mr. Chhibbar in reply urged that the decision had been taken by the competent authority in this case to file the appeal before the appeal was filed and drew our attention to the correspondence that passed between the Chief Engineer, the Commander Works Engineers, and the Legal Remembrancer, Union Territory, Chandigarh, reference to which has not been objected to by Balbir Singh. The Chief Engineer addressed the following letter on 12th January, 1980 (copy marked 'A' and placed on the record) to the Commander Works Engineer requesting him to obtain legal opinion of the Legal Remembrancer and take necessary action, as advised by him (Legal Remembrancer):

1. "Reference G.E. Chandigarh letter No. 8061/530/E8, dated 2nd January, 1980, and 8061/529/E8, dated 2nd January, 1980.

2. Advice of Ministry of Law is required to be taken only in cases where arbitrators have upheld claims of contractors in respect of prolongation of contract periods as a result of suspension of works due to financial stringency. In the present case, you are requested to obtain copy of the judgment and legal opinion of Legal Remembrancer on 'priority' basis by personal liaison with the Legal Remembrancer and take necessary action as advised by the Legal Remembrancer."

It may be stated here that the Commander Works Engineer, in anticipation of the above requisition, had already moved the legal Remembrancer,—vide his letter No. 8463/AF-23/ARB/322/E8, dated 15th December, 1979, to give his legal opinion (copy marked 'B' and placed on the record) and the Legal Remembrancer, by his memo No. 3992-AI-80/132, dated 11th January, 1980, (copy marked 'C' and placed on the record) had requested Shri R. K. Chhibbar to file appeal in the High Court against the judgment in question and the appeal was then filed by him on 18th February, 1980.

(21) The parties had entered into contract I.A.F.W. 2249. Sub-clause (f) of clause 1 of the said contract defines the expression 'Government' for the purpose of the contract as—

> (f) 'Government' means the President of India, his successors in office and assigns and the .... Chief Engineer and Deputy Chief Engineer (if specially authorised by the Chief Engineer) shall exercise the same powers in respect of contracts concluded by either of them on behalf of President and subject as otherwise provided in this contract, all notices to be given and all actions to be taken on behalf of Government in respect of such contracts may be given or taken by either the Chief Engineer or the Deputy Chief Engineer."

A perusal of this sub-clause would show that the Chief Engineer was to exercise the power of the Government in regard to notices that were to be given and actions that were to be taken on behalf of the Government in respect of the contract in question. Looking at the powers of the Chief Engineer alongwith the correspondence noted already, it becomes clear that the Chief Engineer, as the competent authority, had taken the decision in the matter to file the appeal, in that he had advised the Commander Works Engineers to consult with Legal Remembrancer and take all actions in the matters and the latter had sought the opinion of the Legal Remembrancer who had decided that the appeal should be filed and accordingly advised the Government pleader, Shri R. K. Chhibbar, to file the appeal.

(22) We are unable to agree with Shri Balbir Singh that GOC Punjab, Haryana and Himachal Pradesh Area was alone competent to decide as to whether the appeal was to be filed or not. Para 537 (a) abovesaid merely contained the internal functioning of the department for the purpose of Audit and Accounts, etc. The authority under the agreement between the parties, as already observed, which was alone competent to decide as to whether any action by way of appeal, etc., was or was not to be taken, was the Chief Engineer, who was also the accepting officer.

(23) The next preliminary objection taken by Shri Balbir Singh is that in the objection petition before the Court below the grounds for quashing of the award that had been taken were such that would

involve either the modification of the award or the remitting of the same in terms of sections 15 and 16 of the Arbitration Act and the order of the Court below has to be treated as refusing to modify the award or refusing to remit the same and no such order is appealable under section 39 of the Arbitration Act, whereunder only following orders are appealable:

"An order—

(i) superseding an arbitration;

(ii) on an award stated in the form of a special case;

(iii) modifying or correcting an award;

(iv) filing or refusing to file an arbitration agreement;

(v) staying or refusing to stay legal proceedings where there is an arbitration agreement;

(vi) setting aside or refusing to set aside an award."

Mr. Chhibbar, counsel for the appellant, made a statement that he would limit his challenge in appeal to the award of Claim No. I and Claim No. 2.

(24) The respondents have filed on 5th July, 1974, their first claim petition in which they briefly indicated their claim. In a latter petition dated 12th/20th September, 1975, they merely amplified the same. Hence Claim No. 1 and Claim No. 2 indicated in the first claim petition alone require noticing which are in the following terms:

"Claim No. 1:

Claim of compensation for damages due to departmental delays and defaults resulting into much extra time and cost of execution of the work.

Amount claimed: extra 15 per cent premium on the contract sum.

(1) Government failed to provide the sites in time.

(2) Government failed to place works and deviation orders in time.

(3) Government failed to provide drawings and details in time.

(4) Government failed to give decisions and directions in time.

(5) Government failed to provide stores in time.

(6) Government failed to provide MES Supervisory staff for round the clock working facility.

(7) Government failed to give timely extensions in time and to make due and timely payment of RARS and Final Bill. Further details will be given before or during the hearings.

Claim No. 2:

Claim of compensation for increase in prices of bricks and other items payable under condition 63 of IAFW-2249.

The objector-appellant in its reply dated 26th December, 1975, took preliminary objection to Claims Nos. 1 and 2, which is in the following terms:—

"1. The works under the contract were completed on 15 November, 1964, on which date amount payable to the contractor under the contract became due to him. As per provision under the Limitation Act (Act 36 of 1963) any claim under the contract should have been preferred by the contractor within three years from that date, i.e., before 14th November, 1967. The claims have been preferred nearly 8 years after the expiry of limitation period provided under the law. As per section 3 of the Limitation Act referred to all the claims have become time-barred and it is beyond the jurisdiction of any court, more so of an arbitrator's Court, to entertain such time barred claims. The learned arbitrator is, therefore, requested to reject all the claims put forward by the claimant in his statement of claims being time-barred and clearly forbidden by law.

2. The contractor has signed and accepted the final bill with a clear No. Claim Certificate stating that he has no further claims under the contract beyond the net amount of the bill. The contractor is, therefore, estopped in law from

bringing any claim now for works carried out under the same contract. Such claims are also for expressly forbidden under condition 65 of IAFW-2249.

Item-wise statement of defence submitted hereinafter is without prejudice to the aforesaid stand. The respondent will be apearing before the arbitrator during the hearing without prejudice to the aforesaid stand.

Claim No. 1:

The allegations regarding any breach of performance on the part of the respondent are denied. The allegations are also vague. It is common knowledge that a contractor cannot and does not start work on all the sites from the very first day and definitely does not procure all the labour and materials required for all the buildings right from the first day. The question of the contractor incurring any loss of extra expenditure consequent to delay if any in handing over sites for one or two small buildings or a slight delay if any in issue of some stores, therefore, does not arise. All such alleged delays have been included in contractor's letter No. C-5054, dated 29th July, 1964, exhibit 1 wherein the contractor has claimed an extension of time for two months on account of all such delays. This request was granted by the respondent and extension of time for two months, i.e., upto the actual date of completion was granted and the relevant do has been signed and accepted by him stating financial effect as nil. It is, therefore, pertinent to note that the contractor has not brought out in his said letter any loss or damage occasioned to him consequent to such delays. The contract conditions also do not provide for any compensation other than a reasonable extension of time consequent to such delays. This is crystal clear,—*vide* condition 11(c) of IAFW-2249.

Claim No. 2:

Condition 63 of IAFW-2249 (General Conditions of contract) provides for adjustment of prices in materials proved to have actually occasioned owing to Act of Legislature (other than sales tax) and not for rise in prices on account of any

other reason. The onus of proof to the effect that the rise in prices had actually occasioned due to the effect that he has actually incurred an increase in expenditure claimed lies on the contractor and that the claim has to be made within a reasonable time, as expressly stipulated in the said condition of contract.

First of all the contractor did not make any claim in respect of any of the materials under the said condition of contract till 26 September, 1968 (Contractor's letter No. CH-343/63, dated 26th September, 1968, Exhibit 2) is till about four years after the works were completed and limitation period had expired. Even this letter refers only to 'bricks and brick tiles' and not to any other material. Production vouchers on 22nd October, 1964, under the contractor's letter No. C-5370, dated 21st October, 1964, indicated that he had used bricks, etc., as specified in the contract and the said letter does not refer to any claim under condition 63 of IAFW-2249. Secondly the contractor has never proved that the increase in price if any was due to Act of Legislature as contemplated under conditions of contract. Thirdly, the contractor has also not proved that he has actually incurred any extra expenditure as claimed. Even the amounts of the claim is being mentioned for the first time through the contractor's statement of claim dated 12th/20th September, 1975.

The claims are, therefore, baseless and uncontractual besides being time-barred. The learned Arbitrator is requested to reject the claim *in toto*."

A perusal of the preliminary objection would show that the two claims were claimed to be time-barred and as such not entertainable by the arbitrator. Regarding Claim No. 2, it was additionally asserted that the claimant was not entitled to claim any amount as he was expressly forbidden to do so under condition No. 65 of the contract in question.

(25) Clause 70 of the contract in question is in the following terms:

"70. All disputes, between the parties to the contract (other than those for which the decision of the C.W.E or any

other person is by the contract expressed to be final and binding) shall, after written notice by either party to the contract to the other of them be referred to the sole arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender documents.

Unless the parties otherwise agree such reference shall not take place until after the completion, alleged completion or abandonment of the works or the determination of the contract.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason what-so-ever, the authority appointing him may appoint a new arbitrator to act in his place.

The arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, fixing the date of hearing.

The arbitrator may, from time to time with the consent of the parties, enlarge the time for making and publishing the award.

The arbitrator shall give his award on all matters referred to him and shall indicate his findings, along with the sums awarded, separately on each individual items of dispute.

The venue of arbitration shall be such place or places as may be fixed by the arbitrator in his sole discretion.

The award of the arbitrator shall be final and binding on both parties to the contract."

A perusal of the said clause would show that the arbitrator was to give separate award for individual claim. That means, there were as many number of the awards as there were the claims. That further means, if the Court below was to hold that the arbitrator had no jurisdiction to entertain Claims Nos. 1 and 2 — these being barred by limitation — then that would have involved the setting aside the individual awards for Claims Nos. 1 and 2 and, therefore, neither any modification in the award was involved nor any remitting of the

award was involved if the objections had prevailed. The order overruling objections, therefore, has to be treated as being one refusing to set aside the individual awards and not as refusing to modify or remit the award.

(26) The next preliminary objection raised by Shri Balbir Singh is that, in view of section 17 of the Arbitration Act, no appeal was competent against the judgment, as after the pronouncement of the judgment, a decree had to follow and no appeal against such a decree was competent except on the ground that it was in excess of or not in accordance with the award.

(27) This objection has to be noted to be rejected. Provisions of section 17 of the Arbitration Act, 1940 are attracted only where the judgment given by the Court below is accepted and what is impugned is the decree and it is then provided that such a decree would be final except when it is either in excess of or not in accordance with the award.

(28) The next preliminary objection raised before the Court below and which is reiterated was that the objection-petition had to be accompanied by affidavits and since no affidavit accompanied the objections when filed before the Court below the same were not competent. For this view, Shri Balbir Singh sought support from the language of section 33 of the Arbitration Act, 1940. Section 33 *ibid* is in the following terms:

> "33. Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits:
>
> Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit."

(29) A perusal of section 33 *ibid* would show that, by no stretch of imagination, it warrants the submission advanced on behalf of the respondents. The expression 'affidavits' occurs at the fag-end of the said section, that is, when commanding the Court as to how it was

to decide the question raised before it, and what is therein provided is that the Court shall decide the questions on affidavits. That means, that issues arising from the objections raised before the Court could, in the first instance, be decided on affidavits of the parties. It does not mean that the objections had to be accompanied with affidavits. The discretion is with the Court having regard to the proviso as to whether it would like to dispose of the question raised on affidavits alone. If it does so, it can call for the evidence in the form of affidavits fo the parties.

(30) The next preliminary objection taken on behalf of the respondents before the Court below, and reiterated herein, is that by Exhibit A. 1/2 the parties had agreed to the addition to the arbitration clause in the agreement, (which is Condition No. 70 of the agreement) the word 'conclusive' to the already existing words 'final and binding' in relation to the award made the resultant award unimpeachable on any ground mentioned in the Arbitration Act or otherwise.

(31) Mr. Balbir Singh drew our attention to the meaning of the word 'conclusive' appearing in various authoritative compilations like the Dictionary of English Law, 1959—London Sweet and Maxwell Ltd; Whatton's Law Lexicon (4th Edn.)—London Sweet and Maxwell Ltd:. Redin Law Dictionary (2nd Edn), 1970—Oceana Publications Ind., Dobbs Ferry, N.Y.P. Ramatirtha Aiyar's Law Lexicon of British India (Madras Law Journal Office, Mylapore, 1980); The Concise Oxford Dictionary of Current English; Black's Law Dictionary (4th Edn.)—St. Paul, Minn, West Publishing Co. 1951, and Funk and Wangnalls Standard Handbook of Synonyms, Antonyms and Preposition (Funk and Wangnalls Company, Inc. New York); and also to a decision construing sub-section (4) of section 225 of the Income Tax Act (see in this connection *Union of India* v. *D. P. Wadia and Sons,* (4) and further to the wordings of section 4 of the Indian Evidence Act.

(32) In our opinion, it is unnecessary to burden this judgment with the various quotations that Shri Balbir Singh has quoted from the Law Dictionaries and one with the details and ratio of the Bombay decision aforesaid for we are firmly of the opinion that addition of the word 'conclusive' to the existing words 'final and binding' in relation to the award had not added at all to the authority of the award. To our mind, this is a case of 'over-kill'. The binding nature of the

(4) A.I.R. 1977 Bom. 10.

award *qua* the parties even without addition of the word 'conclusive' was the same. If by adding the word 'conclusive' the purpose sought to be achieved was that the award was to be made unimpeachable on any ground whatsoever mentioned in the Arbitration Act, then the parties, in our view, singularly failed in their attempt. This object could have been achieved only if the words 'the award shall not be impeached by any party on any ground whatsoever mentioned in the Arbitration Act or otherwise' had been added to the arbitration clause. Even when the suggested addition had been made to the arbitration clause, then too the award could have been set aside if it had been established that the contract itself, of which the arbitration clause of the kind suggested was a part, was illegal in that the objecting party had either been induced to enter into that contract or undue influence had been brought to bear on that to enter into that contract.

(33) For the reasons aforesaid, we find no merit in this submission of the learned counsel.

(34) Now the stage is set for considering the appeal on merits.

(35) The contention put forward by Mr. Chhibbar in substance, is that claims Nos. 1 and 2 were not referable to the arbitrator by reason of clauses 11 (C) and 63 respectively of the contract in question. In the alternative, his submission is that both the claims were barred by limitation and, therefore, the arbitrator had no jurisdiction.

(36) Their Lordships of the Privy Council in *Champsey Bhara Company* v. *The Jivraj Balloo Spinning and Weaving Company* Ltd: (5), have clearly indicated that in order to find out as to what dispute has been referred, one has to look at the referring clause in the agreement, that is, the arbitration clause and not other clauses and conditions in the agreement. In that case, the parties had entered into an agreement to purchase cotton. A dispute arose in regard to the quality of the cotton. The quality that arbitrator, who was appointed in terms of rule 12 of the Rules and Regulations of the Bombay Cotton Trade Association Ltd: (hereinafter referred to as the Association), judged was such that under the agreement the purchaser could reject the cotton. The purchaser accordingly rejected the cotton. Clause 52 of the agreement in that case gave the option to the purchaser in such an event either to buy the cotton from the market and claim compensation from the seller if he had to pay more

(5) A.I.R. 1923 P.C. 66.

for the cotton than what he had contracted to pay to the seller or to place an order with the contractor for the cotton at the market rate, prevailing at the relevant date. The purchaser in that case did neither. It was, thereafter, that the seller claimed Rs. 25,000/- as damages and got the matter referred to the arbitrator under rule 13 of the Association. The matter reached the High Court. The Single Judge held that the award did not suffer from any error. This order was set aside by the Division Bench. Though the award was a non-speaking one, yet the Division Bench so interpreted it that they thought that they could refer to the correspondence between the parties and the Rules and Regulations of the Bombay Cotton Trade Association Limited. Their Lordships observed that "the only way that the learned judges, have arrived at finding what the mistake was is by saying: 'inasmuch as the arbitrators awarded so and so, and inasmuch as the letter shows that buyer rejected the cotton, the arbitrators can only have arrived at that result by totally misinterpreting clause 52....." Their Lordships continued that the arbitrators were entitled to give their own interpretation to clause 52 or any other article of the Association and the award would stand unless, on the face of it, the arbitrators had tied themselves down to some special legal proposition which then, when examined, appeared to be unsound upon that point.

(37) Then an argument was raised before their Lordships to the effect that upon a proper construction of the contract the moment the buyer rejected the cotton by virtue of the decision of the arbitrators as to its quality, he was entitled to do so, and the contract was repudiated or came to an end and that then the arbitration clause could no longer be appealed to, and since that was a plea to jurisdiction, the Court ought to have decided it. Rejecting the said argument impugning the jurisdiction of the arbitrators, their Lordships observed as follows:

> "Their Lordships think that this argument is based upon a confusion of thought. The question of whether an arbitrator acts within his jurisdiction is, of course, for the Court to decide, but whether the arbitrator acts within his jurisdiction or not depends solely upon the clause of reference....."

In that case, the arbitration clause was clause 13 and, their Lordships, therefore, observed that it was for the Court to decide in that case

whether the dispute which had arisen was a dispute covered by clause 13 of the agreement or not.

(38) In the present case, the arbitration clause is clause 70 which had already been reproduced earlier. The expression "all disputes between the parties to the contract ..... be referred to the sole arbitration of an engineer officer to be appointed by the authority mentioned in the 'tender documents'" used in the arbitration clause is rather of very wide amplitude, although in the context in which it has been used only such disputes, as arise from the contract in question alone except those, which are expressly excepted, are referrable to the determination of the arbitrator. The question that falls for consideration therefore is as to what is the test to determine as to whether a particular dispute arises from or pertains to a contract.

(39) Their Lordships of the Supreme Court in *A. M. Mair and Co.* v. *Gordhandas Sagarmull*, (6), have indicated an easy to follow test to identify the nature of the dispute, when they ruled that if a party has to refer or has to have recourse to the contract either in support of its claim or by way of defence against a claimant, such a dispute is a dispute under the contract.

(40) Whether the claim is barred by limitation, one would have to look into the relevant clauses of the agreement between the parties. Again, to find out as to whether the claimant was estopped from claiming a given amount or any amount, one would again have to refer to clauses 11(c) and 63 of the contract in question. Going by the test indicated by their Lordships of the Supreme Court in *A. M. Mair and Co.'s case* (supra), it can be stated without fear of contradiction that a dispute pertaining to the plea of limitation or plea of estoppel necessarily arises from or pertains to the agreement and, therefore, within the jurisdiction of the arbitrator.

(41) That the plea of limitation is for the arbitrator to consider and it does not go to the root of the jurisdiction of the arbitrator is not a matter which is *res integra*. Their Lordships of the Supreme Court in *Wazir Chand Mahajan and another* v. *The Union of India* (7), have authoritatively laid down that—

> "In dealing with an application for filing an arbitration agreement, the Court must satisfy itself about the existence of

(6) A.I.R. 1951 S.C. 9.

(7) A.I.R. 1967 S.C. 990.

> a written agreement which is valid and subsisting and which has been executed before the institution of any suit, and also that a dispute has arisen with regard to the subject-matter of the agreement, which is within the jurisdiction of the Court. But the Court is not concerned in dealing that application to deal with the question whether the claim of a party to the arbitration agreement is barred by the law of limitation; that question falls within the province of the arbitrator to whom the dispute is referred."

Their Lordships of the Supreme Court while dealing with the question of limitation in the context of the Courts in general have enunciated the rule in *Ittyavira Mathia* v. *Varkey Varkey and another* (8), that the Court has the jurisdiction to decide the question of limitation which it may decide correctly or wrongly. If it decides wrongly, such an order cannot be said to be a nullity.

(42) Regarding the plea of estoppel, the position is beyond dispute. Their Lordships of the Supreme Court in *Damodar Valley Corporation* v. *K. K. Kar,* (9) had to grapple with a similar plea made before the Court which was dealing with an application under section 9(b) and 33 of he Arbitration Act. The Court was required to enquire into the truth and validity of the averment as to whether there was or was not a final settlement on the ground that if that was proved, it would bar a reference to the arbitration inasmuch as the arbitration clause itself would perish. Answering the question their Lordships held that the question whether there had been a full and final settlement of a claim under the contract was itself a dispute arising 'upon' or 'in relation to' or 'in connection with' the contract. A claim for damages was a dispute or difference which arose between the respondent and the appellant and was 'upon' or 'in relation to' or 'in connection with' the contract and the reference to the arbitrator by the respondent was not barred.

(43) In view of the above, both Claims Nos. 1 and 2 p. 28 stood validly referred to the arbitrator by virtue of clause 70 of the contract in question and the arbitrator had full jurisdiction to give his award in regard to the said claims.

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(8) A.I.R. 1964 S.C. 907.
(9) A.I.R. 1974 S.C. 158.

(44) Shri Balbir Singh, on behalf of the respondents, appears to have done considerable research in the matter and addressed us at length on pleas which could alternatively be taken proceeding on the assumption that the pleas of limitation and estoppel went to the root of the jurisdiction of the arbitrator.

(45) In view of our clear finding that the arbitrator had the jurisdiction to go into the questions of limitation and estoppel raised on behalf of the objector-appellant, as these were the mere pleas in defence to the claim of the contractors, respondents herein, which it was the duty of the arbitrator to examine with reference to the relevant clauses of the contract in question, it is unnecessary to deal with the submissions made by Shri Balbir Singh in the alternative.

(46) The important question that now survives for consideration is as to whether the arbitrator legally misconducted himself in not giving a speaking award and thus suffering the award from an error of law on the face of it on account of the same being not a speaking one.

(47) Mr. R. K. Chhibbar, learned counsel for the appellant, relying on *Brahm Nath Dutt* v. *Dhani Ram,* (10), canvassed that while dealing with the plea of limitation raised before the arbitrator by the appellant herein, the arbitrator was bound to give reasons for rejecting the same—in other words, he had to pass a reasoned award.

(48) Mr. Balbir Singh appearing for the respondents countered the plea urging that an arbitrator was not bound to give a speaking award and drew sustenance for his submission from a Supreme Court decision reported in *N. Chellappan* v. *Secretary, Kerala State Electricity Board and another* (11), and drew pointed attention to paragraph 12 of the judgment delivered by Methew, J., reproduced below:

> "The High Court did not make any pronouncement upon this question in view of the fact that it remitted the whole case to the arbitrators for passing a fresh award by its order. We do not think that there is any substance in the contention of the Board. In the award, the umpire has referred to the claims under this head and the arguments

(10) A.I.R. 1956 Pb. 125.
(11) A.I.R. 1975 S.C. 230.

of the Board for disallowing the claim and then awarded the amount *without expressly adverting to or deciding the question of limitation.. From the findings of the umpire under this head it is not seen that these claims were barred by limitation. No mistake of law appears on the face of the award.. The umpire as sole arbitrator was not bound to give a reasoned award* and if in passing the award he makes a mistake of law or of fact, that is no ground for challenging the validity of the award. It is only when a proposition of law is stated in the award and which is the basis of the award, and that is erroneous, can the award be set aside or remitted on the ground of error of law apparent on the face of the record .....".

(49) *Brahm Nath Dutt's case* (supra) does not lay down at all, by any stretch of imagination. that an arbitrator has to give a speaking award. In that case the Court had merely observed that even when the plea of limitation was raised the arbitrator could not escape the responsibility of giving his award—he was bound to give his award.

(50) *N. Challapan's case* (supra) is a clincher on the point that an arbitrator is not bound to give a speaking award. Even where in the award no specific reference is made to the limitation, the arbitrator by awarding the amount must be taken by implication to have rejected the plea of limitation.

(51) Neither side had addressed arguments in regard to the fact as to whether clause 70 of the agreement would have a bearing on the issue as to whether the arbitrator in the present case had to give a speaking award or not.

(52) We had pronounced our judgment dismissing the appeal. When writing the judgment, and while dealing with this issue in particular, we perused the agreement, especially clause 70 thereof, closely, the expression 'the arbitrator shall give his award on all matters referred to him and shall indicate his findings' created some doubt as to the correctness of the opinion that we had formed on the strength of *N. Challappan's case* (supra) that the arbitrator was not bound to render a speaking award. We thought may be the parties had agreed to a mandate to the arbitrator to give a reasoned award by virtue of clause 70 of the agreement. We, therefore, set down the appeal for rehearing and informed both the parties as to what additional assistance we required of them.

(53) Mr. Chhibbar strongly urged upon us that clause 70 of the agreement, whereby it required the arbitrator to indicate his findings, required him in mandatory terms to give a speaking award.

(54) While a superficial reading of the following paragraph of clause 70 may appear to lend substance to the contention of Mr. Chhibbar, but a close analysis of the same discloses hollowness of the argument:

> "The arbitrator shall give his award on all matters referred to him and shall indicate his findings, along with the sums awarded, separately on each individual item of dispute."

The extracted portion of clause 70 in question requires the arbitrator to do two things (i) to give award on all matters referred to him, and (ii) to indicate his findings along with the sums awarded, separately on each individual item of dispute. The expression 'matters referred' would include within its ambit the disputed claim and not the pleas raised on behalf of the either side as to why the claimed amount could or could not be awarded.

(55) The respondents herein had submitted their requisite claim, which was not acceptable to the other side, and required them to refer their claim for adjudication to the arbitrator and it were those claims which had been referred to the arbitrator. It is only when the arbitrator intimated to the other side that the respondents' (contractors') claim had been referred to him for arbitration that the appellant herein filed its reply raising *inter alia* a plea of limitation and estoppel. What stood referred to the arbitrator was the disputed amounts and not either the pleas as to why the contractor were entitled to the said amount or the pleas raised in defence showing as to why the contractors were not entitled to the said amount. While dealing with the expression 'indicate his findings', it was contended on behalf of the respondent-contractors that finding is different from reasons—finding is a conclusion which is different from the reasons.

(56) We think there is considerable merit in the view projected on behalf of the respondents. The conclusion arrived at is, different from reasons which lead to the reaching of a given conclusion. The reasons have been aptly described an 'links between facts and a finding'.

(57) What is more, the findings that are required by clause 70 in question need not be express. These can be inferable even by implication and, therefore, the expression 'indicate' has been designedly used. 'To indicate' is 'to suggest'. This suggestion can be by implication also like 'smoke indicates fire'.

(58) The portion of the award relevant for our purpose has been expressed by the arbitrator in the following terms:

> "Whereas certain differences arose between the parties out of a contract in writing between them, CA No. CEW-25/63-64 for provision of certain technical buildings at Chandigarh, and whereas I was appointed sole arbitrator in the matter *vide* Director-General of Works letter No. 13660|WC|94|E8, dated 11th March, 1974. Now, I, YL SUBRAMANYAM, having taken upon myself the burden of the reference and having heard, examined and considered the statements of the parties and the documentary evidence produced before me by them, do hereby make and publish this my final Award in writing of and concerning the matters referred to me.
>
> Dealing with each claim separately I award and direct as follows:
>
> 1. *Claim No.* 1 *of the Claimant..*
>
> Extra for delayed completion of work Rs. 1,1,59,750.. The claim is partly sustained. An amount of Rs. 50,000 (Rupees fifty thousand only) is awarded to the claimant.
>
> 2. *Claim No.* 2 *of the Claimant.*
>
> Extra for increase in prices of (a) Bricks and (b) Iron/Steel items and sanitary fittings. Rs. 46,640 and (b) Rs. 5,000. The claim is partly sustained for the price of bricks. An amount of Rs. 17,500 (Rs. seventeen thousand and five hundred only) is awarded to the claimant. The claim for Rs. 5,000 (Rs. Five thousand only) is withdrawn by the claimant."

The use of the expression 'the award being given and of concerning the matters referred' has been construed by their Lordships in the *Union of India* v. *Jai Narain Misra* (12), to mean that the arbitrator

(12) A.I.R. 1970 S.C. 753.

has given his award regarding matters that concerned those claims and the claims also, and prior thereto in *Smt. Santa Sila Devi and another* v. *Dhirendra Nath Sen and others* (13), while construing this very expression, their Lordships of the Supreme Court had held that where the award was regarding of and concerning all the matters, it meant that the arbitrator had dealt with all matters including the defence pleas.

(59) A perusal of the award shows that the arbitrator has given his award on each item of dispute separately. Also when awarding a given sum regarding a particular claim he had not only complied with the other requirement of clause 70 in question, that is, of 'indicating' the amount but thereby he had also given his findings regarding all matters concerning the said claim inclusive of the pleas that may have been raised before him either for or against awarding the said amount.

(60) For the reasons aforementioned, we are clearly of the view that the arbitrator was not bound to give a speaking award and the award given by him is perfectly valid and legal.

(61) In the result, we find no merit in this appeal and dismiss the same, but with no order as to cost.

N.K.S.

Before B. S. Dhillon and M. R. Sharma, JJ.

DEPUTY CHIEF MECHANICAL ENGINEER,—*Petitioner.*

versus

JOGINDER SINGH,—*Respondent.*

Civil Revision No. 1109 *of* 1979.

July 21, 1980.

Payment of Wages Act (IV of 1936)—Sections 7 and 15—Authority set up under section 15—Jurisdiction of—Order passed by the employer taking disciplinary action against an employee—Legality of—Whether can be challenged before such authority.

Held. that the language employed in Explanation II of section 7 of the Payment of Wages Act, 1936 shows that the wages deducted as

(13) A.I.R. 1963 S.C. 1677.