$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 17.09.2025***
Judgment pronounced on: 13.10.2025

\+ FAO(OS) 426/2009, CM APPL. 13498/2009 and CM APPL. 2498/2020

M/S H P SPINNING MILLS PVT. LTD. .....Appellant

Through: Mr. Sameer Nandwani, Ms. Niyati Jadaun, Ms. Heeba Ansari and Ms. Sanya Arora, Advocates.

versus

UNITED INDIA INSURANCE CO. LTD. .....Respondent

Through: Mr. Prithvi Raj Sikka, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal, filed under Section 37 of the **Arbitration & Conciliation, 1996**[1], read with Section 151 of the Code of Civil Procedure, 1908, assails the **Judgment dated 13.08.2009**[2] passed by the learned Single Judge of this Court in OMP No. 609/2007, titled *M/s. United India Insurance Co. Ltd. v. Karan Chand Goel*. By the said Judgment, the objections filed by the Respondent herein under

[1] A&C Act
[2] Impugned Judgement

Section 34 of the A&C Act were allowed, resulting in the setting aside of the **Arbitral Award dated 01.08.2007**[3] passed by the learned Arbitrator.

2. Under the said Arbitral Award, the learned Arbitrator had allowed the claims of the Appellant herein to the extent of Rs. 40,84,716.25/-, together with interest at the rate of 9% per annum on the awarded sum with effect from 24.10.2001 until the date of actual payment, in addition to the costs of arbitration.

3. The controversy arising for determination in the present Appeal is narrow and pertains to the interpretation of Clause 6(b)(ii) of the **Insurance Policy**[4] issued by the Respondent in favour of the Appellant. The relevant clause reads as follows:-

> "**6.** …….
> **(b).** ……..
> **(ii).** In no case whatsoever shall the Company be liable for any loss or damage after the expiry of 12 months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration; it being expressly agreed and declared that if the Company shall disclaim liability for any claim hereunder and such claim shall not within 12 calendar months from the date of the disclaimer have been made the subject matter of a suit in a court of law then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder."

4. While deciding in favour of the Respondent, the learned Single Judge placed reliance on the judgment of the Hon'ble Supreme Court in ***H.P. State Forest Co. Ltd. v. United India Insurance Co. Ltd.***[5], which itself followed the earlier decision in ***National Insurance Co. Ltd. v. Sujir Ganesh Nayak & Co.***[6].

---

[3] Arbitral Award
[4] The Policy
[5] (2009) 2 SCC 252
[6] (1997) 4 SCC 366

5. The Appellant, in the present appeal, would contend that the reliance placed on the judgments in the Impugned Judgement is misplaced, as Clause 6(b)(ii) of the Policy, reproduced above, is in direct contravention of Section 28 of the **Indian Contract Act, 1872**[7], and is therefore void. According to the Appellant, the impugned clause imposes a restriction contrary to the statutory mandate and unlawfully curtails the period of limitation prescribed under law.

BRIEF FACTS:

6. At the outset, it is noted that the present Appellant came to be substituted in place of the erstwhile owner pursuant to the order of the learned Single Judge dated 17.11.2008, after having purchased the complete assets of *M/s Goel Spinning & Weaving Mills* from its sole proprietor, late Sh. Karam Chand Goel.

7. Shorn of unnecessary details, the brief facts relevant for adjudication of the present *lis* are as follows:-

(a) The Appellant obtained three fire insurance policies covering its building, machinery, stock, raw materials, etc., which contained Clause 6(b)(ii) of the Policy, the clause presently under dispute.

(b) On 13.04.2001, the Appellant's factory suffered extensive damage due to a fire, which destroyed its plant and machinery etc. The Respondent was duly informed of the incident on 14.04.2001, following which its surveyor and assessor visited the site on 16.04.2001. While the Appellant raised a revised claim of Rs. 1,21,78,020/-, the Respondent approved the claim at Rs. 52,55,660/- on reinstatement basis.

[7] IC Act

(c) The surveyor's assessment was approved on 18.09.2001, pursuant to which the Respondent made an *ad hoc* payment of Rs. 20 lakh. Subsequently, upon the Appellant raising an additional claim by letter dated 13.12.2001, a further sum of Rs. 47,93,851/- was released by the Respondent.

(d) The Appellant received the aforesaid amounts in January 2002 and thereafter executed a disbursement voucher on 05.03.2002.

(e) On 23.04.2004, the Appellant raised a dispute against the Respondent alleging that it had been compelled and coerced into accepting the aforesaid amounts far lesser than its actual losses.

(f) Although the Respondent refuted the said claims, the Appellant invoked Section 11 of the A&C Act, seeking appointment of an Arbitrator.

(g) Pursuant to this Court's order dated 09.12.2004, an Arbitrator was appointed, who, by the Arbitral Award dated 01.08.2007, allowed the Appellant's claim and awarded a sum of Rs. 40,84,716.25/- with interest at 9% per annum from 24.10.2001 till actual payment, along with costs of arbitration.

(h) Aggrieved, the Respondent herein filed objections under Section 34 of the A&C Act. The learned Single Judge, *vide* the Impugned Judgment, allowed the objections and set aside the Arbitral Award on the ground that the claim stood barred under Clause 6(b)(ii) of the Policy.

(i) Aggrieved by the Impugned Judgment, the Appellant filed the present appeal under Section 37 of the A&C Act.

(j) The appeal was admitted by this Court *vide* order dated 29.01.2010 but has remained pending ever since.

(k) The matter was subsequently listed on several occasions, including 17.07.2023 and 19.02.2025, when this Court directed the parties to file written submissions. Despite repeated indulgence, the Appellant filed its written submissions only on 03.05.2025.

(l) By order dated 15.05.2025, the Co-ordinate Bench clarified that no further adjournments would be granted. Nevertheless, the Respondent was granted a final two-week extension to file its written submissions. For convenience, the operative portion of the order dated 15.05.2025 is reproduced below:-

> "1. The parties have jointly sought an adjournment.
> 2. Making it clear that no further adjournment shall be granted, relist on 9th July, 2025, immediately after the 'For Admission' category matters.
> 3. The written submissions filed by the appellant have been returned under office objections. The same be brought on record after removal of objections by the learned counsel of the appellant. If the objection is one of delay in filing the written submissions, the same shall be treated as condoned.
> 4. The learned counsel for the respondent is granted two weeks' further time to file written submissions."

(m) Despite the caveat that no further adjournments would be granted, the Respondent, even on 17.09.2025 (Date when the matter was reserved for Judgment), had failed to file its written submissions and sought yet another adjournment. Considering that the matter has remained pending since 2009, i.e., for over sixteen years, this Court deemed it fit to proceed with the hearing and adjudication of the appeal.

(n) Faced with this circumstance, the counsel for the Respondent made a request for filing Written Submissions at least and undertook to have the same placed on record within two

working days. The Appellant had already concluded its arguments, and the matter was reserved for judgment on 17.09.2025. We are happy to observe that the Respondent finally deemed it appropriate to file its written submissions on 19.09.2025.

ANALYSIS:

8. We have heard the submissions advanced by the learned counsel for the Appellant and have also carefully examined the Impugned Judgment as well as the material placed on record.

9. In addition, we have perused the post-hearing written submissions filed by the Respondent, wherein the Respondent has reiterated its stand and supported the findings recorded in the Impugned Judgment.

10. At the outset, we are conscious of the limited scope of interference available to this Court while adjudicating an appeal under Section 37 of the A&C Act. It is a well-settled proposition that the jurisdiction under Section 37 of the A&C Act is extremely circumscribed, permitting interference only on specific and narrow grounds. The contours of such jurisdiction have been delineated by the Hon'ble Supreme Court in a catena of decisions. Most recently, in ***Punjab State Civil Supplies Corpn. Ltd. v & Anr. Sanman Rice Mills & Ors*** [8], the Hon'ble Supreme Court succinctly reiterated and summarized the settled legal position in this regard, holding as under:

> "**11.** Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.

[8] 2024 SCC OnLine SC 2632

12. It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.

13. In paragraph 11 of **Bharat Coking Coal Ltd. v. L.K. Ahuja**, it has been observed as under:

> "11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."

14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

15. In **Dyna Technology Private Limited v. Crompton Greaves Limited**, the court observed as under:

> "24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with

> the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.
>
> 25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. In paragraph 14 of **MMTC Limited v. Vedanta Limited**, it has been held as under:

> "14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

18. Recently a three-Judge Bench in **Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking referring to MMTC Limited** (supra) held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.

***

CONCLUSION:

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually

> prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. **It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act.** Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.
>
> **21.** It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."
>
> ***(emphasis supplied)***

11. From the foregoing, it is evident that the appellate court's jurisdiction under Section 37 of the A&C Act is narrowly circumscribed and must be exercised with utmost caution. Interference is justified in cases where the court deciding a Section 34 petition has either failed to exercise the jurisdiction vested in it by law or has exceeded those limits by venturing beyond its authority. In such circumstances, intervention by the appellate court is not only permissible but necessary. The appellate court thus bears the duty of

safeguarding the integrity of arbitral proceedings by correcting jurisdictional lapses committed under Section 34 of the A&C Act.

12. Upon careful consideration of the record of the present appeal, along with the applicable legal principles, we are of the considered opinion that the present appeal warrants interference. The Impugned Judgment suffers from serious infirmities and, therefore, cannot be sustained.

13. In particular, the reliance placed by the learned Single Judge on ***Himachal Pradesh State Forest Co. Ltd.*** *(supra)* and ***National Insurance Co. Ltd.*** *(supra)* was misplaced, since both decisions were rendered in the context of Section 28 of the IC Act, as it stood prior to its amendment in 1997.

14. Section 28 of the IC Act, as it stands today, is reproduced below for ready reference:

> "**28. Agreements in restraint of legal proceedings, void. -** Every agreement, -
>
> (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
>
> (b) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.
>
> *Exception* 1. —**Saving of contract to refer to arbitration dispute that may arise**. —This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.
>
> *Exception* 2. —**Saving of contract to refer questions that have already arisen**. —Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or

affect any provision of any law in force for the time being as to references to arbitration.

Exception 3.—**Saving of a guarantee agreement of a bank or a financial institution**.—This section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee for extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of such party from the said liability.

Explanation. —*(i)* In *Exception* 3, the expression "bank" means—

(a) a "banking company" as defined in clause *(c)* of section 5 of the Banking Regulation Act, 1949(10 of 1949);

(b) "a corresponding new bank" as defined in clause *(da)* of section 5 of the Banking Regulation Act, 1949(10 of 1949);

(c) "State Bank of India" constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);

(d) "a subsidiary bank" as defined in clause *(k)* of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959(38 of 1959);

(e) "a Regional Rural Bank" established under section 3 of the Regional Rural Banks Act, 1976(21 of 1976);

(f) "a Co-operative Bank" as defined in clause *(cci)* of section 5 of the Banking Regulation Act, 1949(10 of 1949);

(g) "a multi-State co-operative bank" as defined in clause *(cciiia)* of section 5 of the Banking Regulation Act, 1949(10 of 1949); and

(ii) In *Exception* 3, the expression "a financial institution" means any public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956)."

(emphasis supplied)

15. In plain terms, the amended Section 28 of the IC Act declares void any agreement that restrains a party from enforcing their legal rights through ordinary courts. Such agreements are void if they either (a) absolutely prohibit a party from approaching legal tribunals, or prescribe a shortened period for filing a claim, or (b) extinguish rights or discharge liabilities upon the expiry of a specified period in a way

that restricts enforcement. The principle underlying this provision is that every individual must have free and fair access to legal remedies, and private contracts cannot take away or undermine this right.

16. At the same time, Section 28 of the IC Act carves out certain well-defined exceptions where restrictions are permissible as they serve efficiency and certainty in dispute resolution. First, agreements that provide for the arbitration of future disputes are valid and parties may mutually agree to refer such disputes to arbitration and accept that only the arbitral award shall be enforceable. Second, agreements to submit disputes that have already arisen to arbitration are equally valid. Both these exceptions preserve the statutory framework of arbitration as an alternative dispute resolution mechanism, without denying parties fair access to a legal forum for enforcement.

17. A third exception, inserted with effect from 18.01.2013, specifically relates to banks and financial institutions. It permits written guarantee agreements to lawfully stipulate the extinguishment of rights or the discharge of liabilities after a specified period, provided that the period is not less than one year from the occurrence or non-occurrence of a specified event. This exception was introduced to ensure certainty in financial transactions, while simultaneously safeguarding parties from unreasonably short limitation periods. Thus, while Section 28 of the IC Act generally invalidates contractual provisions restricting access to courts, it recognizes limited exceptions in favour of arbitration and certain financial guarantees.

18. It is significant to note that the amended clauses (a) and (b) of Section 28 of the IC Act, came into force on 08.01.1997. The purpose and effect of this amendment is clear and unequivocal. Any contractual stipulation that either shortens the statutory limitation

period prescribed by law, or extinguishes substantive rights and discharges liabilities upon the expiry of a period shorter than the statutory limitation, is rendered void. Clause (b), in particular, is of critical importance in the facts of the present case, as it expressly prohibits agreements that attempt to extinguish rights or discharge liabilities merely upon the expiry of a contractually fixed period. The legislative intent behind this amendment is to safeguard the right of parties to have unrestricted access to legal remedies and to prevent private agreements from undermining statutory protections.

19. Viewed against this statutory framework, Clause 6(b)(ii) of the Policy is manifestly void and unenforceable. By stipulating that the insurer shall not be liable if arbitration or legal proceedings are not initiated within twelve months, the clause seeks to extinguish the insured's rights prematurely, irrespective of the limitation periods prescribed under the Limitation Act, 1963, or the A&C Act. In effect, the clause attempts to create a contractual bar, which is precisely what the amended Section 28 of the IC Act sought to prohibit. Such a stipulation not only curtails the insured's lawful right to enforce its claim but also contravenes the legislative policy of ensuring fair and reasonable access to remedies.

20. A careful examination of the Respondent's reply to the claim, as before the learned Arbitrator, and its objections, under Section 34 of the A&C Act before the learned Single Judge, demonstrates that the defence of the Respondent herein was not directed at the maintainability of the arbitration proceedings themselves. Instead, the Respondent's case rested solely on the contention that its liability had been extinguished by operation of Clause 6(b)(ii) of the Policy. This narrow defence underscores that the Impugned Judgment failed to

appreciate the broader statutory mandate of Section 28 of the IC Act, which renders such contractual restrictions void.

21. The Hon'ble Supreme Court, in ***Union of India v. Indusind Bank Ltd.***[9], examined the nature and effect of the amendment to Section 28, both before and after 1997, and its applicability. The Apex Court also considered the very case laws relied upon in the Impugned Judgment, and made certain significant observations. The relevant excerpt of the said judgment is reproduced below:

> "**12.** The primary contention with which we are faced is whether Section 28 applies in its original form or whether it applies after amendment in 1997. In order to answer this question, it is first necessary to set out Section 28 in its original form and Section 28 after amendment. The section reads as under:
>
> **12.1. Original section**
>
> "**28.** ***Agreements in restraint of legal proceedings, void***. —Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent."
>
> **12.2. Amendment w.e.f. 8-1-1997**
>
> "**28.** ***Agreements in restraint of legal proceedings, void***.—*Every agreement—*
>
> (*a*) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
>
> (*b*) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights,
>
> is void to that extent."
>
> (emphasis supplied)
>
> **13.** In order to answer this primary question, we have first to see whether the change made in Section 28 could be said to be clarificatory or declaratory of the law, and hence retrospective. It is common ground that the statute has not made the aforesaid

[9] (2016) 9 SCC 720

amendment retrospective as it is to come into force only with effect from 8-1-1997.

14. The original section is of 1872 vintage. It remained in this incarnation for over 100 years and was the subject-matter of two Law Commission Reports. The 13th Report of the Law Commission of India, September 1958 examined the section and ultimately decided that it was not necessary to amend it, given the fact that there is a well-known distinction between agreements providing for relinquishment of rights as well as remedies as against agreements for relinquishing remedies only. This was reflected in Para 55 of the Report as follows:

> "55. *Section 28*.—Decided cases reveal [*Hirabhai* v. *Manufacturer's Life Insurance Co.*, (1912) 14 Bom LR 741: 16 IC 1001. Cf. *Baroda Spg. and Wvg. Co. Ltd.* v. *Satyanarayana Marine and Fire Insurance Co. Ltd.*, 1913 SCC OnLine Bom 17: ILR (1914) 38 Bom 344 at pp. 348-49.] a divergence of opinion in relation to certain clauses of insurance policies with reference to the applicability of this section. On examination, it would appear that these cases do not really turn on the interpretation of the section, but hinge on the construction of the insurance policies in question. The principle itself is well recognised that an agreement providing for the relinquishment of rights and remedies is valid, but an agreement for relinquishment of remedies only falls within the mischief of Section 28. Thus, in our opinion, no change is called for by reason of the aforesaid conflict of judicial authority."

15. Several decades passed, until the Law Commission in its 97th Report of March 1984 suo motu decided that the section required amendment. An introduction to the Report stated the point for consideration thus:

> "1.2. *Point for consideration*.—Under Section 28 of the Indian Contract Act, 1872—to state the point in brief—an agreement which limits the time within which a party to an agreement may enforce his rights under any contract by proceedings in a court of law is void to that extent. But the section does not invalidate an agreement in the nature of prescription, that is to say, an agreement which provides that, at the end of a specified period. If the rights thereunder are not enforced, the rights shall cease to exist. As will be explained in greater detail in later Chapters of this Report, this position creates serious anomalies and hardship, apart from leading to unnecessary litigation. Prima facie, it appeared to the Commission that the section stood in need of reform on this point. The arguments for

and against amendment of the section will be set out later. For the present, it is sufficient to state that the problem is one of considerable practical importance as such stipulations are frequently found in agreements entered into in the course of business."

16. After going through the existing case law and finding that the existing case law resulted in economic injustice because of unequal bargaining power, the Law Commission decided to recommend a change in the section. This was done as follows:

> "5.1. *Need for reform of the law*.—We now come to the changes that are needed in the present law. In our opinion, the present legal position as to prescriptive clauses in contracts cannot be defended as a matter of justice, logic, commonsense or convenience. When accepting such clauses, consumers either do not realise the possible adverse impact of such clauses, or are forced to agree because big corporations are not prepared to enter into contracts except on these onerous terms. "Take it or leave it all", is their general attitude, and because of their superior bargaining power, they naturally have the upper hand. We are not, at present, dealing with the much wider field of "standard form contracts" or "standard" terms. But confining ourselves to the narrow issue under discussion, it would appear that the present legal position is open to serious objection from the common man's point of view. Further, such clauses introduce an element of uncertainty in transactions which are entered into daily by hundreds of persons.
>
> 5.2. *Demerits of the present law*.— It is hardly necessary to repeat all that we have said in the preceding Chapters about the demerits of the present law. Briefly, one can say that the present law, which regards prescriptive clauses as valid while invalidating time-limit clauses which merely bar the remedy, suffers from the following principal defects:
>
> > (*a*) It causes serious hardship to those who are economically disadvantaged and is violative of economic justice.
> >
> > (*b*) In particular, it harms the interests of the consumer, dealing with big corporations.
> >
> > (*c*) It is illogical, being based on a distinction which treats the more severe flaw as valid, while invalidating a lesser one.
> >
> > (*d*) It rests on a distinction too subtle and refined to admit of easy application in practice. It thus, throws

a cloud on the rights of parties, who do not know with certainty where they stand, ultimately leading to avoidable litigation.

5.3. *Recommendation to amend Section 28, Contract Act*.— On a consideration of all aspects of the matter, we recommend that Section 28 of the Indian Contract Act, 1872 should be suitably amended so as to amend to render invalid contractual clauses which purport to extinguish, on the expiry of a specified term, right accruing from the contract. Here is a suggestion for re-drafting the main paragraph of Section 28.

Revised Section 28, main paragraph, Contract Act as recommended

28. Every agreement—

(*a*) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals, or

(*b*) which limits the time within which he may thus enforce his rights, or

(c) which extinguishes the rights of any party thereto under or in respect of any contract on the expiry of a specified period or on failure to make a claim or to institute a suit or other legal proceeding within a specified period, or

(*d*) *which discharges any party thereto from any liability under or in respect of any contract in the circumstances specified in clause (c), is void to that extent*."

(emphasis in original)

17. A period of 13 years passed after which this Report was implemented. The Statement of Objects and Reasons of the Amendment reads as follows:

"**1.** The Law Commission of India has recommended in its 97th Report that Section 28 of the Indian Contract Act, 1872 may be amended so that the anomalous situation created by the existing section may be rectified. It has been held by the courts that the said Section 28 shall invalidate only a clause in any agreement which restricts any party thereto from enforcing his rights absolutely or which limits the time within which he may enforce his rights. The courts have, however, held that this section shall not come into operation when the contractual term spells out an extinction of the right of a party to sue or

spells out the discharge of a party from all liability in respect of the claim. What is thus hit by Section 28 is an agreement relinquishing the remedy only i.e. where the time-limit specified in the agreement is shorter than the period of limitation provided by law. A distinction is assumed to exist between remedy and right and this distinction is the basis of the present position under which a clause barring a remedy is void, but a clause extinguishing the rights is valid. This approach may be sound in theory but, in practice, it causes serious hardship and might even be abused.

2. It is felt that Section 28 of the Indian Contract Act, 1872 should be amended as it harms the interests of the consumer dealing with big corporations and causes serious hardship to those who are economically disadvantaged.

3. The Bill seeks to achieve the above objects."

18. What emerges on a reading of the Law Commission Report together with the Statement of Objects and Reasons for the Amendment is that the Amendment does not purport to be either declaratory or clarificatory. It seeks to bring about a substantive change in the law by stating, for the first time, that even where an agreement extinguishes the rights or discharges the liability of any party to an agreement, so as to restrict such party from enforcing his rights on the expiry of a specified period, such agreement would become void to that extent. The amendment therefore seeks to set aside the distinction made in the case law up to date between agreements which limit the time within which remedies can be availed and agreements which do away with the right altogether in so limiting the time. These are obviously substantive changes in the law which are remedial in nature and cannot have retrospective effect.

*****

24. On a conspectus of the aforesaid decisions, it becomes clear that Section 28, being substantive law, operates prospectively, as retrospectivity is not clearly made out by its language. Being remedial in nature, and not clarificatory or declaratory of the law, by making certain agreements covered by Section 28(*b*) void for the first time, it is clear that rights and liabilities that have already accrued as a result of agreements entered into between parties are sought to be taken away. This being the case, we are of the view that both the Single Judge [*Union of India* v. *Bhagwati Cottons Ltd.*, 2008 SCC OnLine Bom 217 : (2008) 5 Bom CR 909] and the Division Bench [*Indusind Bank Ltd.* v. *Union of India*, 2011 SCC OnLine Bom 1972] were in error in holding that the amended Section 28 would apply.

25. Considering that the unamended Section 28 is to apply, it is important to advert to the said section and see what are its essential ingredients. First, a party should be restricted *absolutely* from enforcing its rights under or in respect of any contract. Secondly, such absolute restriction should be to approach, by way of a usual legal proceeding, the ordinary tribunals set up by the State. Thirdly, such absolute restriction may also relate to the limiting of time within which the party may *thus* enforce its rights.

26. At this point, it is necessary to set out the exact clause in the bank guarantees in the facts of the present cases. One such clause reads as under:

> "… Unless a demand or claim under this guarantee is made against us within three months from the above date (i.e. on or before 30-4-1997), all your rights under the said guarantee shall be forfeited and we shall be relieved and discharged from all liabilities hereunder."

27. A similar clause contained in another bank guarantee reads thus:

> "… Provided however, unless a demand or claim under this guarantee is made on us in writing within 3 months from the date of expiry of this guarantee in respect of export of 416.500 MT 2450 bales of raw cotton, we shall be discharged from all liability under this guarantee thereafter."

28. A reading of the aforesaid clauses makes it clear that neither clause purports to limit the time within which rights are to be enforced. In other words, neither clause purports to curtail the period of limitation within which a suit may be brought to enforce the bank guarantee. This being the case, it is clear that this Court's judgment in *Food Corporation of India* v. *New India Assurance Co. Ltd.* [*Food Corporation of India* v. *New India Assurance Co. Ltd.*, (1994) 3 SCC 324] would apply on all fours to the facts of the present case.

29. The judgment in *Food Corporation of India case* [*Food Corporation of India* v. *New India Assurance Co. Ltd.*, (1994) 3 SCC 324] of Venkatachala and Bharucha, JJ. set out the relevant clause in a fidelity insurance guarantee as follows: (SCC p. 336, para 12)

> "*12. …* '*however, that the Corporation shall have no rights under this bond after the expiry of (period) six months from the date of termination of the contract*.'"
>
> (emphasis in original)

On the facts in that case, the High Court had allowed the appeals of the insurance companies stating that the said clause did not entitle

the Corporation to file suits against insurance companies after the expiry of the six months' period from the date of termination of the respective contracts entered into. In setting aside the High Court judgment, this Court held that none of the clauses in the bond required that a suit should be instituted by the Corporation for enforcing its rights under the bond within a period of six months from the date of termination of the contract. The restriction adverted to in the clauses of the bond envisaged the need for the Corporation to lodge a claim based on the bond, and that if this was done, a suit to invoke rights under the bond could be filed within the limitation period set out in the Limitation Act.

30. In a separate concurring judgment R.M. Sahai, J. after going into the case law in para 3 of his judgment, made an extremely perceptive observation. He stated that where the filing of the suit within limitation is made dependent on any condition precedent, then such condition precedent not curtailing the limitation period within which a suit could be filed, would be valid and not hit by Section 28. In para 8 of the judgment in *Food Corporation of India case* [*Food Corporation of India* v. *New India Assurance Co. Ltd.*, (1994) 3 SCC 324], the learned Judge put it thus: (SCC p. 335)

> "*8.* … It does not directly or indirectly curtail the period of limitation nor does it anywhere provide that the Corporation shall be precluded from filing suit after expiry of six months. It can utmost be construed as a condition precedent for filing of the suit that the appellant should have exercised the right within the period agreed to between the parties. The right was enforced under the agreement when *notice* was issued and the company was required to pay the amount. Assertion of right is one thing than enforcing it in a court of law. The agreement does not anywhere deal with enforcement of right in a court of law. It only deals with assertion of right. The assertion of right, therefore, was governed by the agreement and it is imperative as well that the party concerned must put the other side on notice by asserting the right within a particular time as provided in the agreement to enable the other side not only to comply with the demand but also to put on guard that in case it is not complied it may have to face proceedings in the court of law. Since admittedly the Corporation did issue notice prior to expiry of six months from the termination of contract, it was in accordance with the Fidelity Insurance clause and, therefore, the suit filed by the appellant was within time."

31. In *National Insurance Co. Ltd.* v. *Sujir Ganesh Nayak & Co.* [*National Insurance Co. Ltd.* v. *Sujir Ganesh Nayak & Co.*, (1997) 4 SCC 366] this Court had to decide whether Condition 19

of an insurance policy was hit by the unamended Section 28. Condition 19 reads as follows: (SCC p. 370, para 5)

> "*Condition 19.*—In no case whatever shall the company be liable for any loss or damage after the expiration of 12 months from the happening of loss or the damage unless the claim is the subject of pending action or arbitration."

32. After referring to the relevant case law and a detailed reference to the *Food Corpn.* [*Food Corporation of India* v. *New India Assurance Co. Ltd.*, (1994) 3 SCC 324] judgment, this Court held: (*Sujir Ganesh Nayak case* [*National Insurance Co. Ltd.* v. *Sujir Ganesh Nayak & Co.*, (1997) 4 SCC 366], SCC pp. 376-77, para 21)

> "*21.* Clause 19 in terms said that in no case would the insurer be liable for any loss or damage after the expiration of twelve months from the happening of loss or damage unless the claim is subject of any pending action or arbitration. Here the claim was not subject to any action or arbitration proceedings. The clause says that if the claim is not pressed within twelve months from the happening of any loss or damage, the Insurance Company shall cease to be liable. There is no dispute that no claim was made nor was any arbitration proceeding pending during the said period of twelve months. The clause therefore has the effect of extinguishing the right itself and consequently the liability also. Notice the facts of the present case. The Insurance Company was informed about the strike by the letter of 28-4-1977 and by letter dated 10-5-1977. The insured was informed that under the policy it had no liability. This was reiterated by letter dated 22-9-1977. Even so more than twelve months thereafter on 25-10-1978 the notice of demand was issued and the suit was filed on 2-6-1980. It is precisely to avoid such delays and to discourage such belated claims that such insurance policies contain a clause like Clause 19. That is for the reason that if the claims are preferred with promptitude they can be easily verified and settled but if it is the other way round, we do not think it would be possible for the insurer to verify the same since evidence may not be fully and completely available and memories may have faded. The forfeiture Clause 12 also provides that if the claim is made but rejected, an action or suit must be commenced within three months after such rejection; failing which all benefits under the policy would stand forfeited. So, looked at from any point of view, the suit appears to be filed after the right stood extinguished. That is the reason why in *Vulcan Insurance case* [*Vulcan Insurance Co. Ltd.* v. *Maharaj Singh*, (1976) 1 SCC 943] while

interpreting a clause couched in similar terms this Court said : (SCC p. 952, para 23)

> '*23.* … It has been repeatedly held that such a clause is not hit by Section 28 of the Contract Act.…'

Even if the observations made are in the nature of obiter dicta we think they proceed on a correct reading of the clause."

33. In *H.P. State Forest Co. Ltd.* v. *United India Insurance Co. Ltd.* [*H.P. State Forest Co. Ltd.* v. *United India Insurance Co. Ltd.*, (2009) 2 SCC 252: (2009) 1 SCC (Civ) 490] this Court had to decide whether Clause 6(*ii*) of an insurance policy was hit by the unamended Section 28. This clause reads as follows: (SCC pp. 257-58, para 12)

> "6. (*ii*) In no case whatsoever shall the Company be liable for any loss or damage after the expiration of 12 months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration : it being expressly agreed and declared that if the Company shall declaim liability for any claim hereunder and such claim shall not within 12 calendar months from the date of the disclaimer have been made the subject-matter of a suit in a court of law then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder."

After a copious reference to *Food Corpn.* [*Food Corporation of India* v. *New India Assurance Co. Ltd.*, (1994) 3 SCC 324] and *Sujir Ganesh Nayak case* [*National Insurance Co. Ltd.* v. *Sujir Ganesh Nayak & Co.*, (1997) 4 SCC 366], this Court held that such clauses would not be hit by Section 28.

34. Considering that the respondents' first argument has been accepted by us, we do not think it necessary to go into the finer details of the second argument and as to whether the aforesaid clauses in the bank guarantee would be hit by Section 28(*b*) after the 1997 Amendment. It may only be noticed, in passing, that Parliament has to a large extent redressed any grievance that may arise qua bank guarantees in particular, by adding an Exception (*iii*) by an amendment made to Section 28 in 2012 with effect from 18-1-2013. Since we are not directly concerned with this amendment, suffice it to say that stipulations like the present would pass muster after 2013 if the specified period is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of a party from liability. The appeals are, therefore, dismissed with no order as to costs."

(emphasis supplied)

22. From the aforesaid, it is abundantly clear that the amended Section 28 of the IC Act, is substantive in nature and cannot be treated as merely clarificatory or declaratory. Consequently, the pre-amendment and post-amendment positions cannot be evaluated on the same parameters.

23. In the present case, the relevant insurance policy pertains to the year 2001, and therefore, the provisions of the amended Section 28 of the IC Act, which came into effect from 08.01.1997, are fully applicable. It follows that the reliance placed by the learned Single Judge on case laws decided under the unamended Section 28 of the IC Act is inapplicable and legally untenable.

24. We also take note of the decision of the Hon'ble Supreme Court in ***Oriental Insurance Co. Ltd. v. Sanjesh***[10], wherein it has been held:

> "**1.** The sole arguments raised by learned counsel for the petitioner is that the claim was not filed within a period of one month or extending condonable period of one month.
> **2.** We do not find any merit in the said arguments in view of Section 28 of the Indian Contract Act, 1872 (for short, 'the Act') which reads as under: -
>
> > "28 Agreements in restraint of legal proceedings, void. - [Every agreement, -
> > (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
> > (b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.]"
>
> **3.** In view of the aforesaid Section, the condition of lodging claim within a period of one month, extendable by another one month is contrary to Section 28 of the Act and thus void."

[10] 2022 SCC OnLine SC 806

25. No other ground was urged before us and rightly so since the Learned Single Judge has only given the singular reason of the applicability of Clause 6(b)(ii) while deciding in favour of the Respondent herein.

CONCLUSION:

26. In light of the foregoing facts, statutory framework, and settled legal position, we are of the firm view that the present appeal deserves to be allowed. Accordingly, the Impugned Judgment dated 13.08.2009 passed by the learned Single Judge in OMP No. 609/2007 is hereby set aside and the Arbitral Award dated 01.08.2007 passed by the learned Arbitrator stands restored.

27. The present appeal, along with pending application(s), if any, is disposed of in the above terms.

28. No order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 13, 2025/tk/sm/rn