2016 M L D 506 [Sindh]

Before Aqeel Ahmed Abbasi and Muhammad Junaid Ghaffar, JJ

Messrs PORT SERVICES (PVT.) LTD.---Appellant

Versus

PORT QASIM AUTHORITY---Respondent

H.C.A. No.49 of 2012, decided on 13th November, 2014.
Arbitration Act (X of 1940)---

----Ss. 17, 30, 33, 34---Port Qasim Act (XLIII of 1973), S. 65---Specific Relief Act (I of 1877), Ss. 42 & 54---Limitation Act (IX of 1908), Ss. 19 & 29---Law Reforms Ordinance (XII of 1972), S. 3---Suit for declaration, injunction, recovery of money and damages---Intra court appeal---Arbitration proceedings---Recovery of money---Limitation---Contract of plaintiff company was cancelled by defendant Authority---Plaintiff sought recovery of its outstanding bills and damages from defendant Authority---With consent of both the parties matter was referred to sole arbitrator who announced award---Objections were filed by defendant Authority and Single Judge of High Court declined to make award rule of the court on the ground that claim of plaintiff was barred by limitation---Validity---While hearing objections to award under Ss.30 and 33 of Arbitration Act, 1940, Court could not sit in appeal on award which had been passed after recording of evidence led by both the parties---Court was not to launch itself into an exercise of reappraisement of evidence or set itself as appellate Court, except when there was error on the face of award---Division Bench of High Court declined to interfere with findings of sole arbitrator as the award had been made in favour of plaintiff on the basis of evidence of defendant Authority itself, as barring limitation issue---Defendant Authority was not able to raise any substantial question and or objections which regard to merits of the case---High Court set aside the findings of Single Judge of High Court and award of sole arbitrator was made rule of the court---Intra Court Appeal was allowed in circumstances.

Abdul Halim v. Faizunnessa Bibi alias Sarada and others PLD 1969 Dacca 670; Messrs M.G. Kadir and Co. v. Abdul Latif PLD 1970 Kar. 708; Maniram Shah v. Seth Repchand (33 I A 165); Sitayya v. Rangareddi and others ILR 10 Mad. 259; Messrs M.G. Kadir and Co. v. Abdul Latif PLD 1974 SC 174; Karachi Electirc Supply Corporation v. Deputy Custodian of Enemy Property 1989 ALD 468 and Federation of Pakistan through Secretary, Ministry of Food, Islamabad and others v. Messrs Joint Venture Kocks K.G/Rist PLD 2011 SC 506 ref.

Khalid Mahmood Siddiqui for Appellant.

M.A. Issani for Respondent.

Date of hearing: 13th November, 2014.

JUDGMENT

MUHAMMAD JUNAID GHAFFAR, J.---Through instant Appeal filed under section 39 of the Arbitration Act, 1940 the appellant has impugned judgment and decree dated 10.1.2012 passed by a learned Single Judge in Suit No.535 of 2008, whereby the objections filed by the respondent have been sustained and the Award dated 5-4-2008 passed by the Sole Arbitrator in favour of the appellant has been set aside.

2. Briefly, the facts of the case are that the appellant is engaged in Maritime business including rendering Dredging services in the Port Area. It is further stated that the respondent awarded a contract for Channel Maintenance Dredging Works at Port Qasim through letter of intent dated 1.4.1993, whereafter, the appellant commenced dredging operations from 7.4.1993 and formal contract to this effect was signed between the parties on 15.5.1993. It has been further stated that after completion of the Dredging Works, the appellant submitted six bills to the respondent, whereas the respondent terminated the contract in terms of clause 63 of the Contract, prematurely on 4.5.1994, though it was valid up to 30.6.1994. The respondent thereafter refused to settle the bills issued by the appellant, which compelled the appellant to file a Suit bearing No. 1156 of 2003 for Declaration, Injunction, Recovery of Money and Damages against the respondent. Subsequently, an application under Section 34 of the Arbitration Act, 1940 was filed in Suit No. 1156 of 2003 and by a consent order dated 5.4.2005, a Sole Arbitrator was appointed, before whom the parties filed their claims and the learned Sole Arbitrator passed his Award on 5.4.2008, whereby an amount of Rs. 23.84 million along with interest at the rate of 2% above Bank rate from the date of award till the decree was awarded in favour of the appellant. The said award was filed before a learned Single Judge of this Court pursuant to Section 14 of the Arbitration Act, 1940, before whom the respondent also filed their objections under Sections 30 and 33 of the Arbitration Act, 1940, whereas, the appellant filed an application under Section 15(b) of the Arbitration Act 1940, for modification and correction of the Award. The learned Single Judge vide impugned order dated 10.1.2012 has been pleased to uphold the objection raised on behalf of the respondent with regard to limitation and by holding that the claim of the appellant was time barred, has set aside the award, which has now been assailed by the appellant through instant appeal.

3. Mr. Khalid Mahmood Siddiqui learned Counsel for the appellant, contended that the award of the Sole Arbitrator was unexceptional, whereas the learned Single Judge has sat in appeal over the award, which is not legally permissible under the law. Learned Counsel further contended that the learned Single Judge has given its findings; issue wise, like an Appellate Court and instead of making the award rule of the Court; the learned Single Judge has set aside the same on the ground of limitation, holding therein that the claim of the appellant was time barred. Learned Counsel further contended that the documents placed before the learned Sole Arbitrator, clearly established that the claim of the appellant was within time, as the respondent No. 1 had acknowledged such claim from time to time which falls within the provisions of Section 19 of the Limitation Act, 1908; hence, the claim of the appellant cannot be held to be time barred. Learned Counsel also submitted that in the alternative, the claim of the appellant was covered under Section 25(3) of the Contract Act, 1872 as the respondent had categorically asked the appellant, not to initiate any further legal proceedings, which amounts to an implied promise to pay the claim of the appellant. In support of his contention, the learned Counsel relied upon the case of Abdul Halim v. Faizunnessa Bibi alias Sarada and others (PLD 1969 Dacca 670).

4. Mr. M. A. Issani, learned Counsel for the respondent contended that the contract was terminated by the respondent on 4.5.1994 before its expiry with 14 days notice, and the period of limitation for the claim to be within time or not would start after 14 days i.e. from 18.5.1994, whereas the Suit was filed on 20.10.2003 by the appellant which was time barred as it was filed after 9 years and 5 months of the relevant date. Learned Counsel further contended that the learned Sole Arbitrator had fallen in error, by considering and relying upon certain documents which were obtained by the appellant unlawfully, which had no official sanction; hence they cannot be termed as an acknowledgement within the meaning of Section 19 of the Limitation Act, 1908. Learned Counsel further contended that the learned Sole Arbitrator has also relied upon the minutes of the meeting of respondent, which is in fact an internal matter of the respondent and could not have been considered by the learned Sole Arbitrator, while deciding the question of limitation. Learned Counsel further contended that the issue in hand is required to be governed by the provisions of Section 65 of the Port Qasim Act, 1973 which provides a limitation period of six months; hence, in view of Section 29 of the Limitation Act, Section 19 is not applicable in the instant matter. Learned Counsel further contended that since the appellant had abandoned the proceedings on its own, therefore, the learned Single Judge has correctly held that the claim was time barred.

5. We have heard both the learned Counsel and perused the entire record including the R&P of the proceedings at the forums below. By consent instant High Court Appeal is being finally decided at Katcha peshi stage.

6. It appears that the respondent awarded a contract for Channel Maintenance Dredging Works on or about 15.5.1993 to the appellant in order to maintain the Channel at Port Qasim, which was valid up to 30.6.1994; however, the same was prematurely terminated on 4.5.1994. The appellant thereafter submitted six invoices/bills to the respondent in accordance with the terms of the Contract for payment of services rendered for Dredging works before termination of the contract. The total amount being claimed through these invoices was to the extent of US$ 16,08,239.92 out of which the respondent paid an amount US$ 184,327.06. It further appears that thereafter, the matter was referred to Arbitration as the contract itself provided for the same, however, no further progress was made and the arbitration proceedings were abandoned. Thereafter, the matter lingered on for several years between the parties until finally a recovery Suit was filed by the appellant being Suit No. 1156 of 2003 on 20.10.2003 before a learned Single Judge of this Court on its original side, in which the respondent filed an application under Section 34 of the Arbitration Act, 1940 for referring the matter to Arbitration. A learned Single Judge of this Court vide order dated 5.4.2005 allowed the application by consent of the parties and the dispute was referred to the learned Sole Arbitrator. The learned Sole Arbitrator framed three issues that were required to be decided by him and vide its award dated 5.4.2008, all the issues have been decided against the respondent, whereby the award has been made in favour of the appellant for an amount of Rs. 23.847 Million along with interest at the rate of 2% above the Bank rate from the date of award till the decree, thereafter, the matter was placed before a learned Single Judge of this Court pursuant to Section 14 of the Arbitration Act, 1940, wherein, the respondent filed its objections against the award and the appellant also filed an application under Section 15(b) of the Arbitration Act, 1940 for modification and correction in the award. The learned Single Judge after a detailed examination of the award has upheld the objection in respect of limitation raised on behalf of the respondent and has set aside the award vide judgment dated 10.1.2012 by holding that the claim of the appellant was barred by limitation.

7. The learned Sole Arbitrator had formulated the following issues while deciding the award which are being reproduced for the sake of convenience:--

1. Whether the PSL is M.S. Port Services (Pvt.) Ltd. or Port Services (Pvt.) Ltd, if it is former, is there any privity of contract with the PQA?

2. Whether the claim made in the Statement of Claim is barred under Section 3 of Limitation Act?

3. Whether any payment under the Contract dated 15.5.1993 is due from the PQA to the PSL, if so to what extent?

4. What should the Award be?

8. Insofar as issue No.1 is concerned, the same was decided against the respondent by the learned Sole Arbitrator, whereas, the objection raised in this regard by the respondent before the learned Single Judge, has also been decided against the respondent, though with its own reasoning, as the learned Single Judge did not agree with the reasoning of the learned Sole Arbitrator in this regard. It is pertinent to note that the respondent has not filed any appeal against such findings of the learned Signal Judge, insofar as Issue No.1 is concerned, therefore, the same has attained finality. Though the learned Counsel appearing on behalf of the respondent attempted to argue the case on this issue as well, however, since no appeal has been preferred by the respondent against such findings of the learned Single Judge, as such, the same cannot be entertained by this Court in instant appeal. The core issue which needs to be decided by this Court in the instant appeal is issue No. 2, that is, as to whether; the claim of the appellant was barred under Section 3 of the Limitation Act, 1908. This issue was decided in favour of the appellant by the learned Sole Arbitrator, whereas, the learned single Judge has overruled the same by deciding it in favour of respondent.

9. The learned Single Judge while deciding the above issue against the appellant has examined various documents on the basis of which the chain of acknowledgement of liability had been decided in favour of the appellant by the learned Sole Arbitrator. The learned Single Judge has further observed that even if it is assumed that the learned Sole Arbitrator was correct in concluding that each of the four documents that constituted the chain, was an acknowledgement of liability in terms of Section 19 of the Limitation Act, the finding arrived at by the learned Sole Arbitrator cannot be sustained, as according to the learned Single Judge, the claim on the face of it, appears to be time barred. The learned Single Judge on his reasoning (to be discussed later on) has taken a contrary view to what has been held in the Award by the learned Sole Arbitrator, as according to the learned Single Judge this chain of acknowledgement broke at the very first link; hence the learned Single Judge came to the conclusion that the claim of the appellant on the basis of such broken link of chain, is barred by limitation. It would be advantageous to reproduce the details of all the four documents which have been relied upon by the learned Sole Arbitrator as well as by the learned Single Judge, which are as follows:--

i) Brief dated 15.6.1996 prepared by the General Manager (Engineering) which was forwarded to Ministry of Communication vide letter dated 12.03.1997

ii) Draft Audit Report for the year 1997-98 along with covering letter dated 08.12.2000.

iii) Certificate dated 22.3.2001 issued by respondent.

iv) Minutes of the 49th Board Meeting of the respondent held on 24.4.2003.

10. The first of these documents is a brief, dated 15.6.1996 that was prepared by the General Manager (Engineering) of the respondent with regard to the dispute concerning the dredging contract. This brief was apparently forwarded to the Secretary, Ministry of Communication, Government of Pakistan under cover of letter dated 12.3.1997. The learned Sole Arbitrator concluded that this document dated 15.6.1996 was an acknowledgment of liability by the respondent, within the meaning of Section 19 of the Limitation Act; hence a fresh period of limitation began from that date. The learned Single Judge while considering the chain of acknowledgement has accepted the findings of the learned Sole Arbitrator as correct and has observed that counting from 15.6.1996, the three years period of limitation ended on 14.6.1999. The learned Sole Arbitrator also concluded that there was, in between, another acknowledgment of liability in terms of the draft audit report which was prepared by the auditors of the respondent for the year 1997-98, i.e. the financial year ending on 30.6.1998, on the basis of which, the learned Sole Arbitrator, came to the conclusion that the period of limitation once again stood extended and would thus end on 29.6.2001. The learned Sole Arbitrator had then referred to a third document, which was a certificate dated 22.3.2001 issued by the respondent, and concluded that this certificate also amounted to an admission of liability in terms of Section 19 of the limitation Act. The learned Sole Arbitrator had further relied on a fourth document, being the minutes of the 49th meeting of the respondent Board dated 24.4.2003,which constituted yet another admission of liability in terms of Section 19 thereof, therefore, the claim made against the respondent was within time. Hence, on the basis of such conclusion, according to the learned Sole Arbitrator, yet another period of limitation started, whereas the plaint in Suit No. 1156 of 2003 was presented on 20.10.2003, hence the Suit for Recovery of the Amount was within time on such basis. However, though the learned Single Judge has taken into consideration all these four documents, but has come to the conclusion, that in fact, the link broke at the very first stage i.e. starting from the date of brief i.e. 15.6.1996, as according to the learned Single Judge on the basis of this brief, the period of limitation ended on 14.6.1999 whereas according to the learned Single Judge, the learned Sole Arbitrator had erred in accepting the draft audit report for the year 1997-98, as an acknowledgment of liability in terms of Section 19 of the Limitation Act; hence the learned Single Judge concluded that reliance on any such document cannot be made basis for accepting that the claim was within time, as the limitation period stood expired on 14.06.1999 i.e. much before all the subsequent documents. According to the learned Single Judge, this audit report of 1997-98 for the year ending on 30.6.1998, came into picture on 08.12.2000, when the Deputy General Manager (FA.) wrote to the General Manager (Engineering), with specific reference to the audit report being prepared for the year 1997-98 by the external auditors. The Deputy General Manager (F.A.) enclosed the extract from the draft audit report and asked the General Manager (Engineering) to provide the latest status of the matter, relating to the dredging contract. The learned Single Judge observed that on 8.12.2000, there was no audit report as such, that had been prepared for the year 1997-98, and observed that the learned Sole Arbitrator had confused two separate matters and dates. According to the learned Single Judge, there was no draft report on record; hence the same cannot be considered as an acknowledgment of liability and when on the first time the draft audit report came

on surface on 8.12.2000 the period of limitation had already long expired as acknowledgment of liability pursuant to Section 19 of the Limitation Act, was to be made within the period of limitation and not thereafter. The learned Single Judge also observed that the learned Counsel for the respondent had placed on record the actual audit accounts for the period 1995 to 2000, to show that there had not been any admission of liability at all, by the respondent in these audited accounts, and therefore, an extract from the draft audit report which was still under preparation, cannot be accepted in preference over the actual audited accounts for the relevant period.

11. On a careful examination of the impugned order, the award of the learned Sole Arbitrator, R & P of the case including that of the learned Sole Arbitrator and the four documents referred to herein above, it appears that issue of limitation has been decided by the learned Single Judge against the appellant primarily on the basis that the discussion / indirect acknowledgment in respect of the claim of the appellant in the draft audit report of the external auditors for the year 1997-98, was in fact based on a broken link of chain of acknowledgement through which the claim of the appellant was held to be within the limitation period by the learned Sole Arbitrator. Insofar as the authenticity of the documents relied upon by the learned Sole Arbitrator is concerned, the same have been observed not to have been disputed by the respondent except that these were not legally procured. The case of the respondent in this regard seems to be on the premise that since these documents were not procured officially, hence cannot be relied upon while deciding instant controversy. However, insofar as the genuineness of these documents is concerned, nothing has been said or argued or brought on record, to rebut these documents, therefore no exception can be taken at this stage of the proceedings. In fact the learned Single Judge while hearing the objections to the Award filed by the respondent, has also taken all such documents to be correct for the purposes of deciding the issue of chain of acknowledgement and their continuity, if any. It is pertinent to note that the respondent, as already discussed herein above, has not challenged the findings of the learned Single Judge, either through any independent appeal or by filing any cross objections in the instant appeal. Therefore, the findings of facts so recorded by the learned Single Judge are concerned, the same have attained finality. Hence, it is in this context that we have to examine these documents on record and as discussed by the learned Sole Arbitrator and by the learned Single Judge. As noted hereinabove, the core issue before us in the instant appeal is that as to whether the chain of acknowledgement had broken at the first link or it continued thereafter without any such break in between. For this we need to examine the first two documents of the link threadbare. The first of these documents is the brief dated 15.6.1996 prepared by the General Manager (Engineering) and forwarded to the Secretary, Ministry of Communications, Government of Pakistan. The period of limitation for instituting a suit/claim of recovery, being three years, if counted from this brief would end on 14.6.1999. The second document which has been discussed is the draft audit report for the year 1997-98, which has been referred to, in the letter dated 8.12.2000 by the Deputy General Manager (F.A.) to General Manager (Engineering) with specific reference to the said audit report. Now, if the period of limitation is to be counted from 8.12.2000 without their being any continuity from the draft audit report for the year 1997-98 (i.e. 30.6.1998) by terming it to be an acknowledgment of liability in terms of Section 19 of the Limitation Act, the claim becomes time barred, however, if any weightage is to be given to the draft audit report for the year ending on 30.6.1998, or thereof, then the link would not break and the chain of acknowledgement would continue thereafter. For further clarity and for having an overall view of the issue in hand, it would be advantageous to refer to the contents of the letter dated 8.12.2000 which has been addressed to General Manager (Engineering) available at page 497 of instant appeal. The same is as under:--

"PQA/AG/5/45/2000
Dated 8.12.2000

Manager (Engineering)
(PQA)

DRAFT AUIDT REPORT FOR THE YEAR 1997-98 FROM EXTERNAL AUDITORS

An extract of draft audit report on the accounts of the Authority for the year 1997-98 is enclosed for ready reference. Please provide the latest status of the case against M/S Port Services regarding the work of Channel dredging amounting to Rs. 29.00 million which can be communicated to the auditors.

Sd/-
DY. GENERAL MANAGER (F.A.)"

12. The draft audit report was enclosed with this letter and the relevant observation in the draft audit report with regard to the claim of the appellant has been discussed in the following manner:-
"Out of 62,728,350/- in 1993-94 PQA has withheld a payment of Rs. 29,000,000/- to M/S Port Services for channel dredging work. The matter has gone into litigation and remained undecided during the year.
We would not see any comments from the legal advisor. This point is being repeatedly raised. The progress may kindly be communicated to us."
(Emphasis supplied)

13. It could be seen from the above that insofar as the contents of the draft audit report for the year (1997-98) as prepared by the external auditors is concerned, the same acknowledges that the respondent has to make payment of Rs. 29.0 Million to the appellant and the auditors are seeking some explanation with regard to the amount payable to the appellant. The auditors have referred to a total amount of Rs.62,728,350/- for the year 1993-94 and have observed that out of this, an amount of Rs. 29.0 Million has been withheld for payment to Messrs Port Services (Private) Limited. It has been further observed that the matter has gone into litigation and remained undecided "during the year". It is pertinent to note that the External Auditors are referring to the accounts for the year 1997-98 which reflects that a provision of Rs.29.0 Million has been provided in the annual accounts for payment to the appellant though in dispute. This is and must be an entry in the accounts as on 30.06.1998, the latest, hence in our view it would amount to acknowledging the liability in terms of Section 19 of the Limitation Act. However what is being disputed is and which has also prevailed upon the learned Single Judge in arriving at a conclusion other than what the learned Sole Arbitrator has awarded, is, that since this was a draft audit report, as such, the same cannot be relied upon, and further the same was brought on record for the first time on 08.12.2000 by which time the limitation stood expired. However, we are not inclined to agree with such findings of the learned Single Judge for the simple reason, that if such report is to be termed as a draft audit report and not being a true and correct reflection of the audited accounts for the same year, then one fails to understand, as to why on 8.12.2000, the Deputy General Manager (F.A.) is communicating with General Manager (Engineering), with regard to the contents of such observations of the external auditors in the draft report. If for the sake of arguments, it is assumed that it did not have any relevance, then how any reference could have been made to such report of

the year 1997-98 in the year 2000. It would not be wrong to presume, that there was something pending with regard to the finalization of the external auditors report for that year, otherwise if audited accounts from 1995-2000 already stood finalized, as discussed in the impugned order by the learned Single Judge, then why would any reference be made by the Deputy General Manager (F.A.) to the General Manager (Engineering) to any such withholding of payments and objections of External Auditor. This observation of ours is further strengthened from the fact that the annual accounts of the respondent were not being audited timely, and for such purposes we had summoned the R&P of the proceedings before the lower forums. On scrutiny of the R&P, placed before the learned Sole Arbitrator, it further appears that the accounts of respondent were not being audited in time or immediately as required under the law or on the basis of well settled principles of Accounting. For example, the annual accounts for the year 1994-95, were audited on 30.01.1999 with a qualified report dated 28.4.1998 (not available on record), for the year 1995-96, on 5.6.1999 again with a qualified report dated 5.11.1998 (not available on record), for the year 1996-97, somewhere after 30.3.2000 as no date is mentioned on the covering letter of Auditors and finally for the year 1997-98 (in dispute) on 5.7.2001 again with a qualified report dated 29.5.2001, which again is not available as the same has not been produced in the record / evidence before the learned Sole Arbitrator. Further, even the audited accounts for the year 1995-2000 produced in evidence before the learned Sole Arbitrator, though has reference to several amounts as payable, but, does not specifically provide for the details of such payable amounts with names and other details of the creditors; hence it cannot be said with certainty that such outstanding payable amount does not include the amount payable to the appellant. Therefore, in our view this acknowledgment of liability communicated through letter dated 08.12.2000 cannot be out rightly discarded, while considering the period of limitation, specially, when subsequently the same has been acknowledged more specifically, otherwise, if the claim stood time barred, then there was no need for the respondent and its management to acknowledge any such liability, subsequently through the minutes of meetings by the respondent Board held on 24.4.2003, through which the issue of outstanding payment of the appellant has again been discussed. It is further reflected from the draft audit report referred to herein above. that the amount payable to the appellant is being brought forward from the year 1993-94 and must have been available in the accounts for the subsequent years and finally for the year 1997-98. If any such amount would not have been shown as payable or as a liability in the accounts for the year 1993-94 and onwards, then the external auditors would not have made any observation in respect of such outstanding amount, seeking further progress while auditing the accounts for the year 1997-98. It is now an admitted position that the accounts for the year 1997-98 were not audited till the communication vide letter dated 08.12.2000 took place between the Deputy General Manager (F.A.) and General Manager (Engineering) and on that date the liability was acknowledged and in our view fulfills the requirement of section 19 of the Limitation Act 1908, hence on that date i.e. 08,12.2000 the limitation period stood further extended for 3 years i.e. upto 07.12.2003, whereas the plaint was presented on 20.10.2003, as such was within time.

14. It must be kept in mind that it is also a matter of routine practice that when external audit is being conducted, communication is done by the External Auditors directly with the lawyers/legal advisors of the company of which the audit is being conducted. Through such communication, the external auditors normally seek assistance from legal advisors, as to what number of cases they are handling on behalf of the company, the nature and the financial impact, if any, on the company of such pending litigation. This exercise is carried out by the external auditors directly and

independently with the legal advisors of the company, to ascertain the actual financial impact and or burden of such litigation. On minute examination of the observations of the external auditors, it is observed that the external auditors have commented that they could not see any comments of the legal advisors of the company and this issue is being raised repeatedly, (i.e. it must have been reflected in previous years as well), hence, the progress may kindly be communicated to them, therefore, we are of the view that it would not be unjustified, at least to draw an inference that some amount as an acknowledged liability was being reflected and was being carried forward since 1993-94 and finally in the accounts for the year 1997-98, when presented to the external auditors as on 30.6.1998. Though the learned Single Judge has correctly observed that the draft audit report would not have been prepared on 30.6.1998 as it was an impossibility, but subsequently, however, in our view, even if it was prepared on a date subsequent to 30.6.1998, the same would not break the link of chain of acknowledgment, as the learned Single Judge has erred in observing that the date for considering the existence of the draft audit report for the year 1997-98 would be 8.12.2000 on which date according to the learned Single Judge, it came on record for the first time, when the Deputy General Manager (F.A.) was still making query from the General Manager (Engineering) about the auditors objections, by which time the limitation had long expired,. In our view the link has not broken from 15.06.1996, as it has continued in the Annual unaudited accounts for the year 1997-98 (as it must have been there on 30.06.1998) when the un-audited accounts must have been prepared, hence the period of limitation would not be counted from 8.12.2000. From the audited accounts produced in evidence by the respondent, pertaining to the years 1995-2000, it has been noticed as discussed hereinabove, (See Para 12) that the accounts of the respondent were never audited on time and this would lead to a presumption that the annual accounts, though unaudited, were reflective of the amount payable to the appellant and finally, in the accounts for the year 1997-98, such amount of Rs. 29.00 Million was shown as payable to the appellant. This entry in the accounts as pointed out by the external auditors was and must have been on record from the date the accounts were sent for audit and continued to be there till 8.12.2000, without there being any break of link in the chain of acknowledgment in terms of Section 19 of the Limitation Act, 1908. It is also a matter of record that subsequently in the 49th Board Meeting of respondent held on 24.04.2003 the issue of payment to the appellant was discussed and on perusal of R & P of the Suit file, it appears that the witness of the respondent i.e. Admiral Asad Qureshi who appeared before the learned Sole Arbitrator in his cross examination, has admitted that, "It is correct that after arrival of settlement of PQA at the board, payment advice dated 24.5,2003 for Rs. 18.667 million was prepared in favour of Messrs Port Services (Pvt.) Limited (appellant) and signed by PQA officials including him as Director General Technical and then Chairman of PQA."

15. The question that as to whether any entry which is being reflected in the annual accounts or in the draft audit report thereafter, can be taken as an acknowledgment within the meaning of section 19 of the Limitation Act 1908 and the explanation appended thereto, came for scrutiny before a learned Division Bench of this Court in the case of Messrs M.G. Kadir & Co. v. Abdul Latif reported in PLD 1970 Kar. 708. The issue in short before the learned Division Bench of this Court was that whether, Ex-P/11 dated 19.6.1952 which was a letter addressed by the appellant to the respondent in which the appellant had informed the respondent that though there exists a credit entry or balance of Rs.20,500.00 in your personal account in my Books, but the amount of Rs.44,234 being claimed by you is disputed, was in fact an acknowledg-ment within the meaning of section 19 of Limitation Act or not, and if not then the Suit of the respondent was barred by limitation. The learned Division Bench after considering a plethora of cases and relying on the

case of the Judicial Committee of the Privy Council in the case of Maniram Seth v. Seth Rupchand (33 1 A 165) and a decision of the Madras High Court in the case of Sitayya v. Rangareddi and others (ILR 10 Mad. 259) [sec Para 10 at pg: 719] came to the conclusion that this entry in the accounts of the appellant was an acknowledgment within the meaning of section 19 of the Limitation Act. This decision was further challenged in appeal before the Honourable Supreme Court which was also dismissed. (See Messrs M.G. Kadir & Co. v. Abdul Latif PLD 1974 SC 174). The learned Division Bench, speaking through Noorul Arfin, J. after examining various decisions of the English and Indian jurisdictions, deduced the principle that while construing a document which is set up as an acknowledgment by a party, it must he kept in mind that Limitation Act being a statute in derogation of the right to sue, exceptions in the Act must be construed liberally. It was further observed that such document must, therefore, be interpreted liberally, so as to maintain the right to sue rather than in negation or derogation of such right. The other principle which the learned Division Bench laid is that an acknowledgment, like any other document, should be construed according to the intention of the parties, but this intention is the intention as revealed by the language or the body of the deed. It would be advantageous to reproduce the relevant findings of the learned Division Bench at pgs: 716 (Para-7) and 727 (Para-14) which is as follows:--

7. The question as to when a statement can be treated as acknowledgment under section 19 of the Limitation Act and when not, has come up for consideration of the High Courts very frequently. Quite often the decisions of the various High Courts, and sometimes the decisions in the same High Court, appear to be irreconcilable. We find it therefore, necessary to dwell at length on this question. The expression "acknowledgment" itself has not been defined in the Limitation Act, but we may accept the definition followed by the Courts in England as well as by the High Courts in India and Pakistan, given by Fry, L.J. in Green v. Humphreys (I). According to this definition, as acknowledgment in an admission by the writer that there is a debt owed by him. Proceeding further, Fry. L. J. observed that in order to take the case out of the statute of limitation, there must, upon the fair construction of the letter, read in the light of the surrounding circumstances, be an admission that the writer owes the debt. Next, some rules have to be observed in construing a document which is set up as an acknowledgment of liability. One principle is that the Limitation Act being a statute in derogation of the right to sue, exceptions in the Act must be construed liberally. A writing claimed to be an acknowledgment must, therefore, be interpreted liberally, so as to maintain the right to sue rather than in negation or derogation of such right. This principle has been recognized in several cases, including two decisions on which reliance is placed by Mr. Ramchandani that is, Muhammad Akbar Khan v. Province of West Pakistan (2) and Shapoor Freedom Mazda v. Durga Prosad Chamaria and others. Another rule which has to be kept in mind is that an acknowledgment, like any other document, should be construed according to the intention of the parties, but this intention is the intention as revealed by the language circumstances may be looked into, but it is not open to the parties to come to the Court to say that their intention was wholly different from the expressed in the language of the deed. This is the Principle laid down by the Judicial Committee of the Privy Council and by the High Courts in this Sub-Continent in several decisions to which we shall refer later in this judgment.
14. ..The question then is, what is the reasonable test to determine whether a writing constitutes sufficient acknowledg-ment under Section 19 of the Limitation Act. Taking into consideration the rule laid down by the Judicial Committee in Maniram Seth v. Seth Ruuchand and in the several other decisions reviewed above, according to which an admission of liability need not be expressed

but may be inferred by implication from the language of the writing and the surrounding circumstances, we should think that the test is-

(i) Whether there is admission of liability or of jural relationship;

(ii) Whether this admission is relatable to a subsisting liability or jural relationship, so that in the later case, on ascertainment of facts constituting the jural relationship, as in the case of accounts between the parties, a debt or liability shall be found to exist against one or the other of the parties. This admission may be evident from the language of the writing itself, or may be inferred by implication, or by ascertainment from the surrounding circumstances if there [is] any ambiguity in the writing. This test, in our view, appears to be in accord with the decision in Maniram Seth v. Seth Rupchand and with several other cases which we have had occasion to review at length in this judgment."

16. Similarly another Division Bench of this Court while examining the effect of a Balance Sheet in respect of an acknowledgment in terms of section 19 of the Limitation Act in the case of Karachi Electric Supply Corporation v. Deputy Custodian of Enemy Property 1989 ALD 468 has held as under:--
"Implied and indirect admission of liability would constitute an acknowledgment and that admission of mere existence of an account is sufficient acknowledgment of liability under section 19 of the Limitation Act.
Where an entry in a balance sheet fulfils the requirement of section 19 of the Limitation Act, 1908, there is no reason why it should not amount to an acknowledgment of liability and give a fresh start to the period of limitation.
Admissions though made in discharge of their duty are nevertheless consciously and voluntary admissions. A document is not taken out of the purview of section 19 of the Limitation Act merely on the ground that it is made under compulsion of law."

17. Insofar as the authenticity of documents referred to hereinabove is concerned, the witnesses summoned by the appellant, specially the officers of respondent, have admitted the existence of such documents, therefore the objection raised by the learned Counsel for the respondent that such documents were procured unofficially has been correctly repelled and not entertained, both by the learned Sole Arbitrator, as well as by the learned Single Judge and we are also of the view that the same is not tenable, is misconceived and is hereby repelled. It is pertinent to note that initially the production of such documents was resisted by the respondent, whereafter the appellant had filed an application in Suit No. 1156 of 2003 under section 30 read with Order XVI, Rule 6, C.P.C., to direct the respondent to produce the witnesses for evidence in support of existence of all such documents before the Arbitrator. The said application was allowed by a learned Single Judge of this Court vide order dated 08.5.2006 whereby the office was directed to issue summons to the persons named in the listed application to appear before the learned Sole Arbitrator for a date when the matter was listed before him. The witnesses then appeared before the learned Sole Arbitrator and admitted the existence of all such documents including the one on which the respondent had raised objections to the effect that the same were obtained unofficially by the appellant. The most crucial of all the four documents as referred, to hereinabove (see Para 9) had been signed by one Mr. Masood Pervez (the then Deputy General Manager F.A. Finance/Accounts) who was summoned as a witness before the learned Sole Arbitrator and had deposed that "I see letter dated

08.12.2000 which bears my signature. Page 370 is Annexure to the said letter. It is a fact that in the Audit Report pertaining to the year 1997-98 the amount of Rs. 29.0 Million is reflected in the Annexure (page 370) pertaining to the annual account 1997." The witness has further deposed that "It is a fact that a dispute with regard to payment of Dredging charges was pending pertaining to Messrs Port Services since 1994. This piece of evidence fully justifies, at least the existence of the documents including the draft audit report for 1997-98 and the document dated 08.12.2000; hence any objection in respect of its inadmissibility at this stage of the proceedings is not sustainable.

18. After having reached to the conclusion that the chain of acknowledgement continued and the link did not break in between, as such the claim of the appellant was not time barred as held by the learned Single Judge, the impugned order cannot be sustained and is hereby set aside and the award made by the learned Sole Arbitrator is made rule of the Court. Before parting with this judgment, we may observe that though the learned Single Judge had not dilated upon the merits of the case after having come to the conclusion that the claim was time barred, nonetheless, it would be in the fitness of things and pertinent to mention that even otherwise, while hearing objections to the award under sections 30 and 33 of the Arbitration Act, 1940, the Court could not sit in appeal on the award which had been passed after recording of evidence led by both the parties, with reasons thereon, as the Court ought not to launch itself into an exercise of re-appraisement of evidence or set itself as an appellate Court, except when there is an error on the face of the award. After having gone through the record before us, we do not find ourselves inclined to interfere with the findings of the learned Sole Arbitrator as the award has been made in favor of the appellant on the basis of the evidence of the respondent itself, as barring the limitation issue, the respondent had not been able to raise any substantial question and or objections with regard to the merits of the case. If any authority is needed we may refer to the case of Federation of Pakistan through Secretary, Ministry of Food, Islamabad and others v. Messrs Joint Venture Kocks K.G/Rist reported as PLD 2011 SC 506, wherein the Honorable Supreme Court has observed as follows:--

"Heard. While considering the objections under sections 30 and 33 of the Arbitration Act, 1940 the court is not supposed to sit as a court of appeal and fish for the latent errors in the arbitration proceedings or the award. The arbitration is a forum of the parties' own choice and is competent to resolve the issues of law and the fact between them, which opinion/decision should not be lightly interfered by the court while deciding the objection thereto, until a clear and definite case within the purview of the section noted above is made out, inasmuch as the error of law or fact in relation to the proceedings or the award is floating on the surface, which cannot be ignored and if left outstanding shall cause grave injustice or violate any express provision of law or the law laid down by the superior courts, or that the arbitrator has mis-conducted thereof. Obviously if there is a blatant and grave error of fact such as misreading and non-reading or clear violation of law, the interference may be justified by the courts. But for the appraisal and appreciation of the evidence, the courts should not indulge into rowing probe to dig out an error and interfere in the award on the reasoning that a different conclusion of fact could possibly be drawn. (See Premier Insurance Company and others v. Attock Textile Mills Ltd. PLD 2006 Lahore 534)"

19. In view of hereinabove facts and circumstances, we are of the view that the findings of the learned Single Judge cannot be sustained; consequently the impugned order is set aside and instant appeal is hereby allowed, however with no order as to costs. The award of the learned Sole Arbitrator is made Rule of the Court.

MH/P-33/Sindh Intra Court Appeal allowed.