

Notice Invoking Arbitration After 21 Years Cannot Revive A Hopelessly Time-Barred Claim: Supreme Court

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Introduction

In ***State of West Bengal & Ors. v. M/s. B.B.M. Enterprises [2026 INSC 358]***, the Supreme Court considered whether a notice invoking arbitration issued on 2 June 2022 could validly commence arbitration in respect of a work completed on 30 July 2000.

The Supreme Court held that the claim was ex facie dead and hopelessly barred by limitation. The Supreme Court set aside the order appointing an arbitrator, holding that a stale monetary claim cannot be revived by issuing an arbitration notice after more than two decades.

The judgment reiterates that while arbitration as an alternate dispute resolution mechanism must be encouraged, it remains subject to the law of limitation. A party that sleeps over its claim cannot compel the other side to undergo arbitration for a dead dispute.

In this article, we navigate through the facts of the case and the findings rendered by the Supreme Court.

Brief Facts

The dispute arose from a work contract under which the contractor completed the work on 30 July 2000.

The contractor relied on a communication dated 4 January 2001 to contend that only part payment had been made and that the final measurement and total amount payable had not been determined by the Engineer-in-Charge.

For nearly 21 years thereafter, the contractor did not invoke arbitration. No final bill was raised, no request was made for determination of the total amount payable, and no steps were taken to commence arbitral proceedings.

On 2 June 2022, the contractor issued a notice seeking commencement of arbitration. Thereafter, the contractor approached the High Court under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator.

The High Court allowed the application. The High Court held that since the final measurement and total amount payable had not been determined by the Engineer-in-Charge, the objection of limitation could not defeat the request for arbitration at the Section 11 stage.

The State challenged the order before the Supreme Court.

Arguments from Both Sides

The State contended that the claim was hopelessly barred by limitation. It was submitted that the work had been completed in 2000 and the contractor had taken no meaningful steps until the arbitration notice was issued in 2022.

The State relied on ***Vishram Varu and Company v. Union of India [(2023) 12 SCC 588]***, where the Supreme Court held that a claim which had arisen decades earlier could not be revived merely by issuing a later notice invoking arbitration.

The contractor relied on ***Arif Azim Company Limited v. Aptech Limited [(2024) 5 SCC 313]*** and ***Aslam Ismail Khan Deshmukh v. ASAP Fluids Private Limited and Another [(2025) 1 SCC 502]*** to submit that limitation is generally an issue for the arbitral tribunal and that the referral court should not conduct a detailed inquiry into limitation at the Section 11 stage.

The contractor further submitted that limitation had not commenced because the Engineer-in-Charge had not issued a final measurement certificate or determined the total amount payable.

Findings of the Supreme Court

The Supreme Court allowed the appeal and set aside the order appointing an arbitrator.

The Supreme Court first considered ***Vishram Varu (supra)***. In that case, the work had been completed in 1985-86, but the notice invoking arbitration was issued only in 2018. The Supreme Court noted that issuance of a later arbitration notice cannot create a fresh cause of action where the monetary claim had arisen decades earlier.

The Supreme Court then considered ***Arif Azim (supra)***. In that case, the Supreme Court had examined both the limitation period for the substantive claim and the limitation period for filing an application under Section 11(6). The claim in ***Arif Azim (supra)*** was found to be within limitation. The Supreme Court held that the present case stood on a different footing because the substantive claim itself was hopelessly time-barred.

The Supreme Court referred to the principle in ***Arif Azim (supra)*** that although limitation is an admissibility issue, courts at the referral stage have a duty to prima facie examine and reject non-arbitrable or dead claims. This is necessary to protect the opposite party from being drawn into a time-consuming and costly arbitration process.

The Supreme Court also considered ***Aslam Ismail Khan Deshmukh (supra)***, where the Supreme Court had clarified that the limitation period for filing a petition seeking appointment of an arbitrator cannot be confused with the limitation period applicable to the substantive claim arising under the contract.

The Supreme Court noted that there may be cases where limitation requires an intricate evidentiary inquiry, in which event the issue may be left to the arbitral tribunal. However, where the claim is ex facie dead and no such inquiry is required, the referral court can refuse to refer the parties to arbitration.

Applying these principles, the Supreme Court held that the present case did not require any detailed evidentiary inquiry. Even if the communication dated 4 January 2001 was treated as an interim determination of dues, the contractor had slept over the claim for 21 years before issuing the arbitration notice on 2 June 2022.

The Supreme Court held that arbitration cannot deviate from the fundamental principle that law favours the diligent and not the indolent. For recovery of money, the applicable limitation period was three years. Since the arbitration notice was issued after 21 years, the claim was hopelessly time-barred.

The Supreme Court rejected the High Court's reasoning that non-determination of the final amount payable by the Engineer-in-Charge extended limitation. The Supreme Court held that if there was any such failure by the Engineer-in-Charge, the contractor ought to have invoked arbitration at that stage. The contractor could not wait for more than two decades and then seek reference to arbitration.

Accordingly, the Supreme Court held that there was no reason to sustain the order initiating arbitration. The order of the High Court was set aside.

Comment

The judgment in ***State of West Bengal (supra)*** is a significant reaffirmation that arbitration cannot be used to revive stale claims.

The Supreme Court has clarified that the limited scope of Section 11 does not mean that referral courts must mechanically appoint arbitrators even where the claim is plainly dead. If the material on record shows that the substantive claim is hopelessly barred by limitation, the referral court can refuse reference.

The decision also draws an important distinction between limitation for a Section 11 application and limitation for the underlying claim. A Section 11 application may be within time from the date of failure to appoint an arbitrator, but that does not cure a time-barred substantive claim.

The judgment is particularly relevant in construction and works contracts, where parties often rely on pending measurements, final bills or departmental inaction to justify delayed invocation of arbitration. The Supreme Court has made it clear that non-issuance of a final certificate cannot indefinitely postpone limitation. If a party considers such non-issuance to be a breach or failure, it must act with reasonable diligence.

The decision therefore reinforces procedural discipline in arbitration. Arbitration is intended to provide efficient dispute resolution, not to resurrect claims that have remained dormant for decades.

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