they dispute that since the year 1966 the price of land as also of the fruit trees has seen a tremendous increase. They, however, maintain that it is difficult to determine that increase with any precision. That is true yet in these matters in the very nature of things the market value of the acquired property cannot be determined with any exactitude and has essentially to be fixed on the basis of some reasonable method. In the light of that we are of the considered opinion that the claimant at least is entitled to an increase of 100 instead of 114.2 per cent over the price of fruit trees workable on the basis of the above noted formula published by S. Harbans Singh. We are unable to accept the argument of the learned counsel for the respondent that it was primarily for the claimant to prove the inadequacy of the compensation awarded to him and the Government or the acquiring authorities had no duty in the matter and they could wait the proof of claim in complacency like a defendant, and without assisting the Court by all the materials at their command. The mere dismissal of the claim of the appellant as unsubstantiated by evidence would certainly not imply that the Court has no duty to fix the quantum of compensation payable under the Act independently and upon materials available and by all means in its power.

(13) In the light of the above we allow these appeals and while setting aside the judgments under appeal, send the cases back to the respective Land Acquisition Courts to redetermine the market price of the trees of the claimants in accordance with law and the observations made above. It is made clear that since we feel that there has been no proper or regular trial in as much as the parties to this litigation were not aware of the principles noticed above for the determination of the market value of the trees, they would be permitted to lead further evidence if they so choose. The appellants are also held entitled to the costs of these appeals throughout.

S. S. Sandhawalia, C.J.—I agree. ...

N. K. S.

Before R. N. Mittal, J.

GURDEV RAM,—*Petitioner.*

versus

Food Corporation of India and others,—*Respondents.*

Civil Revision No. 1875 *of* 1981.

February 8, 1983.

Arbitration Act (*X of* 1940)—*Section* 20—*Limitation Act* (*XXXVI of* 1963)—*Article* 137—*Agreement containing an arbitration clause—Application made under section* 20—*seeking reference of the disputes to an arbitrator—Limitation for such an application—Whether governed by Article*

137—*Article* 137—*Whether applicable to applications under the Code of Civil Procedure only—Three years period prescribed by Article* 137—Sine qua non *for computing such period.*

Held, that from a reading of Article 137 of the Limitation Act, 1963 it is evident that it is a residuary Article and provides a limitation of three years for all petitions. There is no provision in the Limitation Act on the basis of which it can be held that this Article is applicable to petitions under the Code of Civil Procedure only and not to petitions under other enactments. Therefore, a petition to a Court under any enactment for which no period of limitation is prescribed elsewhere is governed by Article 137 and can be filed within a period of three years from the date when the right to apply accrues. Consequently, the Article would apply to applications under section 20 of the Arbitration Act, 1940.

(Para 7).

Held, that Article 137 provides that the period of three years will start when the right to apply accrues. The right to apply for arbitration accrues when the opposite party fails to pay the amount alleged to be due to the applicant. Even if the agreement provides that the applicant would make an application for the appointment of the Arbitrator to the opposite party, that does not mean that the period of limitation will start when the opposite party refuses to appoint the same. The right to file a petition under section 20 is not dependent on the opposite party's refusal to refer the dispute to arbitration. A demand to refer the dispute to arbitration and the other party's refusal to do so are not ingredients of the cause of action for the right to apply to a Court that the agreement be filed and an arbitrator be appointed. (Para 10).

Petition under Section 115 *C.P.C. Act* 5 *of* 1908 *for the Revision of the order of the Court of Shri A. P. Chaudhry, District Judge, Faridabad, dated 8th May,* 1981 *affirming that of Shri L. N. Mittal, H.C.S., Sub-Judge* 1st *Class, Ballabgarh, dated* 29*th November,* 1980 *dismissing the application and under the circumstances leaving the parties to bear their own costs.*

Ashok Kumar, Advocate, *for the Petitioner.*

G. C. Garg, Advocate, with Hemant Kumar, Advocate, *for the Respondent.*

JUDGMENT

Rajendra Nath Mittal, J.—

(1) This is a revision petition by Gurdev Ram against the order of the District Judge, Faridabad, dated 8th May, 1981, dismissing his petition under section 20 of the Arbitration Act.

(2) Briefly, the facts are that Gurdev Ram petitioner entered into an agreement with the Food Corporation of India (hereinafter

referred to as the Corporation) for arranging transport for carriage of the goods of the respondent and for clearance of the railway receipts from the railway authorities at the Railway Station, Faridabad, for a period of one year from 25th February, 1974 to 24th February, 1975. It is averred by him that the railway authorities imposed demurrage upon the Corporation and the latter deducted that amount from the bills of the petitioner. It is also alleged that some of the bills were also not paid to him. The railway authorities later refunded 75 per cent of the demurrage to the Corporation. The petitioner called upon the respondents to pay the amount of Rs. 60,721 and that in case they refused to pay the amount the matter be referred to the Arbitrator in terms of the agreement. It is averred that the respondents failed to grant either of the reliefs. Consequently, he filed an application under section 20 of the Arbitration Act with a prayer that the respondents be directed to file the arbitration agreement in the Court and make a reference to the Arbitrator in terms thereof.

(3) The application was contested by the respondents who took two preliminary objections, namely, that the application was barred by limitation and also under clause 12 of the agreement, which provided that the decision of the Regional Manager regarding failure of the contractors and their liability for the losses, etc., suffered by Corporation were final and binding on the parties. It is averred that the Senior Regional Manager had already given his decision in respect of the failure of the petitioner in performing his contractual obligations and the lossess suffered by the Corporation on that account. In the circumstances, it was prayed that the petition be dismissed.

(4) It was dismissed by the trial Court holding that the petition was barred by time and that the petitioner was not entitled to a reference of the dispute to the Arbitrator as the matter had been decided by the Senior Regional Manager of the Corporation. The petitioner went up in appeal before the District Judge, Faridabad, who reversed the finding of the trial Court on the point of limitation. However, he affirmed the finding of that Court on the other point and held that in view of the decision of the Senior Regional Manager, the matter could not be referred to the Arbitrator. Consequently, he dismissed the appeal. The petitioner has come up in revision against the judgment of the Appellate Court to this Court.

(5) The first question that requires determination is as to whether the petition under section 20 ibid was within limitation or not.

It is not disputed that the contract between the parties came to an end on 24th February, 1975, and the present petition was filed on 19th October, 1979.

(6) The learned appellate Court has held that Article 137 of the Limitation Act, 1963 (hereinafter referred to as the 1963 Act) applies only to petitions under the Code of Civil Procedure and, therefore, the petitions under section 20 of the Arbitration Act are not governed by it.

(7) Learned counsel for the respondents has challenged the aforesaid finding and has urged that Article 137 ibid is a residuary Article and applies to all types of petitions and not only to petitions under the Code of Civil Procedure.

I have duly considered the argument of the learned counsel for the respondents and find force in it. Article 137 belongs to Third Division of the Schedule of the 1963 Act which relate to applications. It reads as follows:—

Description of application	*Period of limitation*	*Time from which period begins to run*
137. Any other application for which no period of limitation is provided elsewhere in this Division.	Three years	When the right to apply accrues

From a reading of the Article, it is evident that it is a residuary Article and provides a limitation of three years for all petitions. My attention has not been drawn to any other provision of the 1963 Act on the basis of which it can be held that the Article is applicable to the petitions under the Code of Civil Procedure only and not to petitions under other enactments. Therefore, in my view, a petition to a Court under any enactment for which no period of limitation is prescribed elsewhere is governed by Article 137 and can be filed within a period of three years from the date when the right to apply accrues. In the said view, I am fortified by the observations of the Supreme Court in **the Kerala State Electricity Board, Trivandrum** v. **T. P. Kunhaliumma** (1). A. N. Ray, C. J., while speaking for the

(1) A.I.R. 1977 S.C. 282.

Court, after comparing this Article with Article 181 of the Limitation Act, 1908 (hereinafter referred to as the 1908 Act) observed thus:—

> "The alteration of the division as well as the change in the collocation of words in Article 137 of the Limitation Act 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act, there was no division between applications in specified cases and other application as in the 1963 Limitation Act. The words "any other application" under Article 137 cannot be said on the principle of **edjusdem generis** to be applications under the Civil Procedure Code other than those mentioned in Part I of the third division. Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when Court is closed and extension of prescribed periid if applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application during such period."

Similar views was taken by this Court in **Ramji Dass and others** v. **Durga Das** (2). It was observed therein that there was no specific article applicable for filing an application under section 20 of the Arbitration Act and, therefore, Article 137 of the 1963 Act, which was a residuary Article, was applicable.

(8) Rajasthan High Court in **State of Rajasthan** v. **M/s. Mehta Chetan Das Kishandass** (3), has also examined the question and held that Article 137 of the 1963 Act is not confined to applications contemplated by or under the Code of Civil Procedure, but is applicable to applications under any Act to a Civil Court. I am respectfully in agreement with this view.

(9) The learned Appellate Court while coming to the conclusion that Article 137 was not applicable to the petitions under section 20, relied upon the observations of the Supreme Court in **Wazir Chand**

(2) 1979 P.L.R. 673.

(3) A.I.R. 1981 Rajasthan 36.

Mahajan and another v. **The Union of India** (4), wherein Article 181 of the 1908 Act came up interpretation. The learnt Bench held that the Article was included in the group of Articles which fell under the head "Third Division—Applications". It further observed that as originally enacted, all applications contemplated to be made under Articles 158 to 180 were applications made under the Code of Civil Procedure and there was a catena of authorities holding that in Article 181 the expression "under the Code of Civil Procedure" must be deemed to be necessarily implicit. The above observations, in view of the substitution of the new Schedule in the 1963 Act, are not applicable to Article 137, though it is **pari materia** with Article 181 of the 1908 Act. A Division Bench of Kerala High Court in **Kerala State Electricity Board** v. **Illippadical Parvathi Amma** (5), after following **Wazir Chand Mahajan's case** (supra) held that Article 137 of the 1963 Act was applicable only to petitions under the Code of Civil Procedure. The said judgment was over-ruled by the Supreme Court in the **Kerala State Electricity Board's case** (supra). It is, thus, evident that though no reference was made in the said case by the Supreme Court to **Wazir Chand Mahajan's case** (supra) yet impliedly it held that the principle laid down therein was not applicable to Article 137 ibid.

(10) The second limb of the question is as to when the limitation of three years will start in this case. The contention of the learned counsel for the petitioner is that the limitation of three years will start from the date when the Corporation, on the application of the petitioner, refused to appoint an Arbitrator. I am not impressed with the submission. The Article provides that the period of three years will start when the right to apply accrues. The right to apply for arbitration accrued in the present case when Corporation failed to pay the amount alleged to be due to the petitioner. It is true that it was provided in clause 12 of the agreement that the petitioner would make an application for appointment of the Arbitrator but that does not mean that the period of limitation will start when the Corporation refused to appoint the same. In the aforesaid view, I find support from the observations of the Delhi High Court in **Bhagwat Dayal Galgotia** v. **Pritam Dayal Galgotia** (6). In that case too, a contention was raised by the counsel for the petitioner that the right to file a petition under section 20 of the Arbitration Act arose when the notice requiring the respondent to appoint an arbitrator

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

(5) A.I.R. 1974 Kerala 202.

was given and the respondent refused to appoint. The learned Judge observed that the right to file a petition under section 20 was not dependent on the respondent's refusal to refer the dispute to arbitration. A demand to refer the dispute to arbitration and other party's refusal to do so are not ingredients of the cause of action for the right to apply to a court that the agreement be filed and an arbitrator be appointed. I am in respectful agreement with the above-said observations. It is also relevant to mention that the learned counsel for the petitioner has fairly conceded that the present application in any case, in view of the interpretation put by me on Article 137, is barred by limitation.

(11) In view of the fact that I have held that the petition under section 20 is barred by limitation, it is not necessary to go into the other question.

(12) For the aforesaid reasons, I dismiss the revision petition with costs. Counsel fee Rs. 200.

N.K.S.

(6) A.I.R. 1980 Delhi 25.

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