

Gujarat High Court

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Orient Middle East Lines Ltd. And ... vs Brace Transport Corporation Of ... on 19 April, 1985

Equivalent citations: AIR 1986 Guj 62, (1986) 1 GLR 77

Bench: J Desai

ORDER

1. This Revision Application raises an interesting question of law as regards the jurisdiction of Courts in India to entertain an application for filing a foreign award under section 3 of the Foreign Awards (Recognition and Enforcement) Act, 1961 (hereinafter to be referred to as 'the Foreign Awards Act' for the sake of brevity). The petitioners of this Revision Application were respondents Nos. 1 and 2 in Arbitration Petition No. 1 of 1984, while respondent No. 1 in this Revision Application was the petitioner in that arbitration petition. Respondent No. 2 in this Revision Application was respondent No. 3, while respondent No. 3 in this Revision Application was respondent No. 4 in the Arbitration petition. For the sake of convenience, I shall refer to the respective parties by their respective positions in the original Arbitration Petition No. 1 of 1984.

2. The undisputed facts leading to the filing of this Revision Application may be briefly stated as follows: -

M/s. Brace Transport Corporation of Monrovia, a Corporation incorporated under the laws of Liberia, the original petitioner, by an agreement dated 24-2-1981 sold a vessel named 'Saudi Cloud' to M/s Orri Navigation Lines of Saudi Arabia, Jeddah (original respondent No. 2) through the Orient Middle East Lines Ltd., Saudi Arabia, Jeddah (original respondent No. 1). There was a provision in the agreement between the parties to refer the disputes arising under the said agreement to arbitration in England. Certain disputes arose between them and, therefore, the matter was referred to arbitrators in England. The Arbitrators gave an award on 25-8-1983 directing respondents Nos. 1 and 2 to pay U. S. \$185,518 towards balance of purchase price etc. and 1172 as costs, to the petitioner. The directions, it seems, were not carried out and, therefore, the petitioner filed Arbitration Petition No. 1 of 1984 in the Court of the Civil Judge, Senior Division at Bhavnagar against four respondents, respondents Nos. 1 and 2 being the petitioners in this Revision Application and respondents Nos. 3 and 4 in the Arbitration Petition, being respondents Nos. 2 and 3 in this Revision Application. Those two respondents were joined as parties in that petition, on the allegation, that the vessel was attempted to be sold by respondent No.1 to respondent No. 3 and respondent No. 3 had attempted to sell the said vessel to respondent No. 4. The application in question was filed under section 5 of the Foreign Awards Act. The vessel in question was brought at the port Alang in Bhavnagar District for the purpose of scrapping the same. The sale price of the vessel was to be paid by respondent No. 3 to respondents Nos.1 and 2. The petitioner prayed for pronouncement of judgment on the award against respondent No. 1 and/or respondent No. 2 for the amount awarded by the arbitrators and also prayed for certain interim reliefs. The learned trial Judge granted ad interim relief restraining the respondents from breaking the vessel and restraining respondent No. 3 from making payments to respondents Nos. 1 and 2. Notices were issued to the respondents. The ad interim relief granted by the trial Court was modified. An appeal against the said order of interim relief is filed by respondents Nos. 1 and 2, being Appeal From Order No. 155 of 1984 which is pending before this Court. I do not propose to refer to the question about the legality, propriety or otherwise of the order granting ad interim relief in this Revision Application because those questions will be decided in that Appeal from Order which is kept pending till the decision of this Revision Application.

3. A contention was raised on behalf of respondents Nos. 1 and 2 that the Court at Bhavnagar had no jurisdiction to entertain this petition, because respondents Nos. 1 and 2 were not carrying on any business whatsoever within the jurisdiction of the Court at Bhavnagar. It seems that respondent No. 3 did not appear to oppose the application. Respondent No. 4 is having its Head Office at Bhavnagar within the local jurisdiction of the Civil Court at Bhavnagar, while respondent No. 3 is having its Head Office at Bombay. The learned Civil Judge heard the learned advocates for the parties on the question of jurisdiction. Relying upon the provisions of section 20 of the Code of Civil Procedure, the learned Civil Judge held that respondent No. 4 was carrying on business within the local limits of the Civil Court at Bhavnagar, while respondent No. 3 had

not come forward to raise any objection to the jurisdiction of the Court at Bhavnagar and that way, acquiesced in the jurisdiction and, therefore, the Civil Court at Bhavnagar had jurisdiction to entertain the petition, even though respondents Nos. 1 and 2 had raised objections to the Jurisdiction. Being dissatisfied with the decision of the learned trial Judge on the question of jurisdiction, respondents Nos. 1 and 2 have filed this Civil Revision Application. If this Civil Revision Application is allowed and it is held that the Civil Court at Bhavnagar had no jurisdiction to entertain the petition in question, then naturally the Appeal from Order will not, survive as in that case, the interim orders passed by the trial Court will have to be set aside on the ground of want of jurisdiction. The question of hearing the Appeal from Order would arise only if this Revision Application is dismissed. In view of this, the hearing of the Appeal from Order has been kept back for the present with the consent of the learned advocates for all the parties appearing before this Court in this Revision Application.

4. Now, so far as the jurisdiction aspect is concerned, the petitioner in para 23 of the petition stated that the vessel which was the property of respondent No. 1 and/or respondent No. 2 was at that time within the jurisdiction of the Civil Court at Bhavnagar and the said respondents were carrying on business at Bhavnagar through their Agents M/s. Sai Shipping Co. Pvt. Ltd. and the agents for the said vessel at the material time were M/s Valii P. & Sons (Agencies) Bhavnagar and, therefore, the Civil Court at Bhavnagar had jurisdiction to entertain, try and dispose of the petition. The learned trial Judge observed in his order at para. 11 after referring to section 20 C.P.C. that defendant No. 3 did not reside at Bhavnagar nor there was anything on record to show that defendant No. 3 was carrying on business at Bhavnagar or personally working for gain at Bhavnagar, but had not appeared though duly served and that way, acquiesced in the institution of the petition in the Court at Bhavnagar and therefore, in view of clause (b) of section 20 C.P.C., the Civil Court at Bhavnagar had jurisdiction to entertain the petition, according to the learned trial Judge. The learned trial Judge did not give a definite finding as regards the contention of respondents Nos. 1 and 2 that they were not carrying on any business at Bhavnagar and, therefore, the Civil Court at Bhavnagar had no jurisdiction. The learned trial Judge observed at para 11 of his order that though very serious arguments were advanced on behalf of respondents Nos. 1 and 2 that, the Civil Court at Bhavnagar had no jurisdiction, because they were not residing or carrying on business at Bhavnagar, the Court at Bhavnagar had jurisdiction because respondent No. 3 had acquiesced and respondent No. 4 was carrying on business within the local limits of the jurisdiction of the Civil Court at Bhavnagar. The petitioner alleged in the petition, as stated earlier, that respondents Nos. 1 and 2 were carrying on business within the local limits of the Court at Bhavnagar but they did not" produce any material whatsoever in support of their contention. On the contrary, one Mr. B. S. Bhesania, Constituted Attorney of respondents Nos. 1 and 2 filed a detailed affidavit on 1-2-1984 Stating therein that respondents Nos. 1 and 2 were not carrying on any business whatsoever within the local limits of the jurisdiction of the Bhavnagar Court and that M/s Sai Shipping. Co. Ltd. were general agents carrying on business and that too, outside Bhavnagar and that they were not special agents of respondents Nos. 1 and 2. The affidavit filed by Mr. Bhesaniathus clearly, reveals that respondents Nos. 1 and 2 were not carrying on any business either themselves or through any special agent of theirs at Bhavnagar. Respondents Nos. 1 and 2 did not acquiesce in the filing of the petition in Bhavnagar Court because they at the earliest opportunity raised objection to the jurisdiction, as stated earlier. Clause (b) of section 20 C.P.C does not help the petitioner assuming that respondent No. 3 acquiesced in the filing of the petition in Bhavnagar Court. What Clause, (b) of section 20 requires is that when there are more than one defendants and one of them carries on business or resides etc. within the jurisdiction of the Court, then the said Court will have jurisdiction to entertain the proceedings, provided the defendants who do not reside or carry on business or personally work for gain within the jurisdiction of that Court acquiesce in such institution. This shows that not only one but all the defendants who might be not residing or carrying on business or personally working for gain within the jurisdiction of that Court must acquiesce so as to, confer jurisdiction on that Court. When it is clear that respondents Nos. 1 and 2 who were neither residing nor carrying on business nor personally working for gain within the jurisdiction of the Bhavnagar Court did not acquiesce in the institution of the petition, the Bhavnagar Court will not have jurisdiction to' entertain the petition simply because respondent No. 4 was carrying on business at Bhavnagar and respondent No. 3 had acquiesced in the institution of the petition in that Court. It seems that the learned trial Judge did not carefully read the provisions of clause (b) before applying them to the facts of

this case. It seems that he failed to give due importance to the clear wordings of clause (b) which lay down that all those defendants who are not within the jurisdiction of the Court must acquiesce. In view of this, the learned Counsel Mr. D. V. Patel appearing on behalf of the original petitioner before this Court was not in a position to satisfy Ahat the Bhavnagar Court will have jurisdiction to entertain the present petition. In other words, he was not in a position to support the order of the learned trial Judge on the ground on which it is based. The learned Counsel Mr. D. V. Patel, however, submitted that looking to the provisions of section 5 of the Foreign Awards Act, any Court in India having jurisdiction over the subject matter of the award can entertain this petition. He submitted that while considering the question of jurisdiction, only the subject matter of the award was to be seen and it had nothing to do with territorial aspect as section 5 only refers to subject matter of the award. So far as the petition is concerned, the averments have been made on the premises that the provisions of the Arbitration Act of 1940 as also of the Code of Civil Procedure will apply, while Mr. Patel submitted that neither the provisions of the Arbitration Act, 1940 (hereinafter to be referred to as 'the Arbitration Act') nor those of the Code of Civil procedure can be looked into because the Foreign Awards Act was a self-contained Code. I would not have allowed Mr. Patel to come forward with such a new case in this Revision Application when the pleadings do not disclose such a case so far as the jurisdictional aspect is concerned, but this being a pure question of law to be decided on interpretation of the provisions of the Foreign Awards Act and particularly, section 5 of the said Act, I have allowed him to make submissions in this regard and have fully heard the teamed Counsel appearing in this Revision Application.

5. To understand the submissions made by Mr. Patel, it will be proper to refer to some of the provisions of the Foreign Awards Act which are relevant for our purpose, Section 4(1) of the Foreign Awards Act reads as follows : -

"(1) A foreign award shall, subject to the provisions of this Act, be enforceable in India as if it were an award made on a matter referred to arbitration in India."

Section 5(l) pf the said Act reads as follows: -

(1) Any person interested in a foreign award may apply to any court having jurisdiction over the subject-matter of the award that the award be filed in Court."

6. The learned Counsel Mr. D. V. Patel urged that the Foreign Awards Act with which we are concerned is a self-contained Code and we cannot look into the provisions of the Arbitration Act, 1940 or any other law for deciding the question of jurisdiction and that we have only to look at section 5(l) of the Act for deciding the question of jurisdiction. On the other hand, the learned Advocates appearing for the petitioners in this Revision Petition submitted that section 4(1) of the Foreign award Act shows that a foreign award is to be deemed to be an award made under the Arbitration Act of 1940, so far as the enforcement is concerned, subject, of course to this that the provisions of the Foreign Awards Act will prevail if there are any other provisions contrary to the same either in the Arbitration Act, 1940 or any other law. I shall come to these questions a little later, but it will be proper at this stage to refer to the relevant provisions of the Arbitration Act, 1940 and also the law in force in India prior to the passing of the Act of 1940 as also the provisions with regard to enforcement of foreign awards prior to the passing of the Foreign Awards Act, 1961. Section 2(c) of the Arbitration Act, 1940 defines "courts" and it reads as follows: -

"court" means a civil court having jurisdiction to decide the questions forming the subject matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings under section 21, include a small cause court;"

Section 31(l) of the said Act which refers to jurisdiction as regards filing of an award reads as follows:-

"Subject to the provisions of this Act, an award may be filed in any court having jurisdiction in the matter to which the reference relates: -

7. Section 41 of the Act which pertains to procedure and powers of Court reads as follows: -

"Subject to the provisions of this Act and of rules made thereunder

(a) the provisions of the Code of Civil Procedure, 1908, shall apply to all proceeding before the Court, and to all appeals, under this Act, and

(b) the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second it has for the purpose of, and in Schedule as relation to, any proceedings before the Court :

Provided that nothing in clause (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making order with respect to any of such matters."

The second Schedule of the Arbitration Act, 1940, which is referred to in section 41 reproduced above, provides for the preservation, interim custody or sale of any goods which are the subject-matter of the reference and issuing interim injunctions.

8. Now, before this Act of 1940 was brought on the statute-book, provision was made in this regard in Second Schedule to the Code of Civil Procedure, 1908. In the Second Schedule of the Code of Civil Procedure, 1908 "Court" was not defined as is the case with the Foreign Awards Act with which we are concerned, but paragraph 20(1) of the said Schedule which provided for jurisdiction read as follows: -

"Where any matter has been referred to arbitration without the intervention of a court, and an award has been made thereon, any person interested in the award may apply to any court having jurisdiction over the subject matter of the award that the award be filed in court."

A comparison of the provisions of Paragraph 20(1) of the Second Schedule of the Code of Civil Procedure, 1908 with the provisions of section 5 of the Foreign Awards Act shows that the wordings of Paragraph 20(1) are parlmatelia with those of section 5 of the Foreign Awards Act. It may also be mentioned even at the cost of repetition that 'court' is not defined in the Foreign Awards Act and the same is the case with the Second Schedule of the Code of Civil Procedure, 1908.

9. The learned Counsel Mr. D. V. Patel submitted that the expression "the subject matter of the award" means the relief or reliefs awarded by the award. I am inclined to agree with him. In the case of Rethamalai Servai v. Ramaswami Servai, (1919) 10 Mad LW 57: (AIR 1919 Mad 22), the following observations are made at page 58 (of Mad LW): (at P. 23 of AIR) of the report: -

"Paragraph 20 of the Second Schedule of the Code of Civil Procedure directs the filing of the award in any Court having jurisdiction over the subject matter of the award. By 'subject matter of the award', I think, is meant the whole matter dealt with and decreed by the award, and not any particular portion which affects any, particular party. The jurisdiction of the Court will depend upon the reliefs awarded by the award." The above report is not available in this High Court but the above observations, are reproduced by the Madras High Court in the case of V. N. Krishna Iyer v. V. N. Subbarama, ILR 55 Mad 689: (AIR 1932 Mad 462). That decision of the Madras High Court is not of any assistance in the present case because it appears that part of the subject matter of the award which was immovable property in that case was situate outside the territorial jurisdiction of the Court. But the observations made in the case of Rethamalai Servai (supra) which are reproduced by the Madras High Court and which are reproduced by me above show that the words "subject matter of the award" mean the matter dealt with and decreed by the award. The observations read as a whole go to show the subject matter of the award means the whole matter dealt with and decreed by the award, which means the reliefs awarded by the award. This decision, therefore, supports the submission of Mr. Patel that "the subject matter of the award" means the relief or reliefs granted by the award.

10. Schedule 2, Para 20 of the Code of Civil Procedure, 1908 contained a provision similar to the provision contained in section 5(1) of the Foreign Awards Act that the award has to be filed in the Court which has jurisdiction over the subject matter of the award and while dealing with that provision the Allahabad High Court has also held in the case of *B. Upendra Nath Basu v. B. Het Lal* AIR 1933 All 380 that in order to decide whether the Court has jurisdiction over the subject-matter of the award, it is necessary to consider the reliefs granted by the award and determine whether the Court would have jurisdiction to try a regular suit between the parties in which the reliefs claimed, were the reliefs granted by the award. Those observations are more or less on the same lines as those made in *Rethamalai Servai v. Ramaswami Servai* (AIR 1919 Mad 22) (supra) and this decision also supports the submission of Mr. Patel that the subject matter of the award means the relief or reliefs granted by the award.

11. The learned Counsel Mr. D. V. Patel submitted that the Foreign Awards Act was enacted to give effect to the Convention on the recognition and enforcement of foreign arbitral awards at New York on the 10th day of June 1958 to which India was a party and for the purposes indicated therein also the Convention can be referred to while interpreting the provisions of this Act. He drew my attention to the decision reported in *Salomon v. Commr. of Customs and Excise*, (1966) 3 All ER 871 in support of his submission. It is not necessary to go into the discussion of this decision cited by Mr. Patel because so far as the Foreign Awards Act 1961 is concerned, the Geneva Convention is not only referred to in the preamble of the Act but the Convention is made a part of the Act as the Schedule and, therefore, there cannot be any difficulty in looking into the Convention to give effect to which the Foreign Awards Act was enacted.

12. Mr. Patel also drew my attention to a decision of the Supreme Court reported in *East and West Steamship Co. v. S. K. Ramalingam Chettiar*, AIR 1960 SC 1058, In that case, the Supreme Court was concerned with the interpretation of the Schedule to the Carriage of Goods by Sea Act, 1925. The Supreme Court observed while interpreting the provisions of the said Act that looking to the international character of the provisions, it is incumbent on courts to pay more than usual attention to the normal grammatical sense of the words and to guard against being influenced by similar words used in other Indian Acts. The Supreme Court, while interpreting what is meant by 'loss' used in clause 3, paragraph 6 of Article III in the Schedule of the said Act referred to the recommendation of the International Conference of Maritime law at Brussels in October, 1922 because the Act in question was enacted to give effect to the same. As stated by me a little earlier, I am inclined to look into the Convention which is a part of the Foreign Awards Act as a Schedule and, therefore, it is not necessary to go into a detailed discussion on this decision of the Supreme Court relied upon by Mr. Patel.

13. The learned Counsel Mr. Patel then drew my attention to another decision of the Supreme Court reported in *New India Sugar Mills Ltd. v. Commr. of Sales-tax*, AIR 1963 SC 1207 wherein the Supreme Court has observed at Para 8 as follows : -

"It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with, the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its powers invalid. If the narrow and technical concept of sale is discarded and it be assumed that the Legislature sought to use the expression sale in a wider sense as including transactions in which property was transferred for consideration from one person to another without any previous contract of sale, it would be attributing to the Legislature an intention to enact legislation beyond its competence. In interpreting a statute the Court cannot ignore its aim and object."

The above observations made by the Supreme Court have certainly to be borne in mind while interpreting the words "subject matter of the award" used in section 5 of the Foreign Awards Act, 1961 and also while considering as to whether any Court in India would have jurisdiction over the subject matter of the award and

if so, which Court. But at the same time, the observations made by the Supreme Court in a latter decision AIR 1971 SC 1 which I shall discuss a little later also shall have to be borne in mind.

14. In the case of Renusagar Power Co. Ltd. v. General Electric Company, (1984) 4 SCC 679 : (AIR 1985 SC 1156), the question that Arose before the Supreme Court was whether the provisions of the Arbitration Act, 1940 can be looked into while considering the question of stay of proceedings when there is an arbitration clause between the parties. We are not concerned with that question in the present case, but I am referring to this decision of the Supreme Court because the Supreme Court has considered at page 723 (of 1984-4 SCC) : (at P. 1181 of AIR) of the report at para 50 as to what was the object of the Statute. The Supreme Court observed at para 50 as follows: -

"The Statement of Objects and Reasons shows that the Act seeks to achieve speedy settlement of disputes arising from international trade through arbitration. The Act is a successor to the Arbitration (Protocol and Convention) Act, 1937. The earlier Act was intended to effectuate the purposes of Geneva Convention of 1927; it was, however, felt that the Geneva Convention hampered the speedy settlement of disputes through arbitration and hence no longer met the requirements of the international trade due to certain defects and, therefore, in order to remedy, inter alia, those defects, a draft Convention was prepared by the International Chamber of Commerce which was considered by the United Nations Economic and Social Council in consultation with the Governments of the various countries and non-governmental organisations and finally a new International Convention on the Recognition and Enforcement of Arbitral Awards was adopted at New York on June 10, 1958. The Convention was duly ratified by the Government of India and was deposited with the Secretary General of the United Nations on July 13, 1960. The present Act was enacted, as its long title indicates, to give effect to the said New York International Convention on the Recognition and Enforcement of Foreign Arbitral Awards to which India is a party. Article II of the Convention provides for recognition by Contracting States of agreements, including arbitral clauses in writing, by which the parties to the agreement undertake to submit to arbitration all or any differences which have arisen, or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration and Section 2 of the Act defines the expression "foreign award" accordingly i.e. closely following the language of Article II of the Convention. It is obvious that since the Act is calculated and designed to subserve the cause of facilitating international trade and promotion thereof by providing for speedy, settlement of disputes arising in such trade through arbitration, any expression or phrase occurring therein should receive, consistent with its literal and grammatical sense, a liberal construction."

The above observations of the Supreme Court show that any expression or phrase occurring in this Act should receive, consistent with its literal and grammatical sense, a liberal construction. In this connection, I would like to refer to another decision of the Supreme Court reported in Taratoroexport, Moscow v. Tarapore and Co., AIR 1971 SC 1, where in the Supreme Court was called upon to consider the meaning of the expression "submission" in section 3 of the Foreign Awards Act, 1961. The provisions of section 3 have since been amended after this decision of the Supreme Court so as to provide for stay of legal proceedings even when there is no actual submission but only agreement to refer to arbitration because the Supreme Court in that case held that the word "submission" used in section 3 means actual submission or completed reference and does not mean an agreement to refer or an arbitral clause. We are not concerned with any such question in the present case but I am referring to this decision of the Supreme Court because it was submitted before the Supreme Court that looking to the purpose and object behind enacting the Foreign Awards Act, 1961, viz to give effect to the Convention, section 3 must be construed as contemplating even a case where there was only an arbitration agreement, in force between the parties but where there was no actual reference to arbitration and that contention was negated by the Supreme Court. The Supreme Court made pertinent observations in this regard at para, 17 which are, reproduced below: -

"We may look at another well-recognised principle. In, this country, as is the case in England, the Treaty or International Protocol or convention does not become effective or operative of its own force as in some of the continental countries unless domestic legislation has been introduced to attain a specified result. Once, the

Parliament has legislated, the Court must first look at the legislation and construe the language employed in it. If the terms of the legislative enactment do not suffer from any ambiguity or lack of clarity they must be given effect to even if they do not carry out the treaty obligations. But the treaty or the protocol or the convention becomes important if the meaning of the expressions used by the parliament is not clear and can be construed in more than one way. The reason is that if one of the meanings which can be properly ascribed is in consonance with the treaty obligations and the other meaning is not so, consonant, the meaning which is consonant, to be preferred. Even where an Act had been passed to give effect to the convention which was scheduled to it the words employed in the Act had to be interpreted in the well established sense which they had in municipal law (See *Barras v. Aberdeen Steam Trawling and Fishing Co. Ltd.*, 1933 AC 402.)"

The above observations of the Supreme Court show that if the terms of the legislative enactment do not suffer from any ambiguity or lack of clarity they must be given effect to even if they do not carry out the treaty obligations. I may, however, at the same time observe here that even the Articles of the Convention, which form part of the Act as a Schedule, do not support the submission made by Mr. Patel as I shall discuss a little later, but on the contrary, support the view which I am inclined to take in this matter.

15. The learned Advocate Mr. D. V. Patel submitted that the phrase "subject matter of the award" used in section 5 clearly rules out consideration of other aspects of jurisdiction of the Court, such as territorial and that the only question that has to be considered while considering the question of jurisdiction is the subject matter of the award. Now, let us consider as to what is the meaning of the word "jurisdiction". "Jurisdiction" means the extent of the authority of a court to administer justice not only with reference to the subject matter of the suit but also to the local and pecuniary limits of its jurisdiction. By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the Court is constituted and may be extended or restricted by the like means. A limitation may be (1) as to the subject matter; (2) as to person, (3) as to the pecuniary value of the suit; or (4) as to place or it may partake of two or more of these characteristics. The subject matter depends upon the nature of the cause of action and the relief prayed for. "Jurisdiction" means the legal authority to administer justice according to the means which the law has provided and subject to the limitation imposed by that law upon the judicial authority. Limitations imposed by law upon judicial authority of a Judge may be territorial or pecuniary or may refer to the subject-matter of the litigation or the nature of the litigation or the class or, rank to which the tribunal belongs. Section 9 of the Code of Civil Procedure says that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. When, therefore, we consider the question of jurisdiction, we have to consider whether there are any limitations: (1) as to the subject matter; (2) as to person; (3) as to the pecuniary value of the suit; and (4) as to place. The learned Counsel Mr. Patel submitted that the use of the words "jurisdiction over the subject matter of the award" used in section 5 indicates that while considering the question of jurisdiction under section 5 of the Foreign Awards Act, we have only to, consider the subject matter aspect and no other aspects. He submitted that the subject-matter of the award is money and any Court in India which can give relief in respect of a monetary transaction will have jurisdiction over the subject matter of the award. He submitted that it is in this sense that the words "jurisdiction over the subject matter of the award" are used in section 5(1) of the Foreign Awards Act. He submitted that the concept of pecuniary or territorial jurisdiction, therefore, cannot arise while considering the question of jurisdiction under section 5(1) of the Foreign Awards Act. It is difficult to agree with this submission of Mr. Patel. Section 2 of the Foreign Awards Act clearly lays down that "foreign award" means an award on differences between persons arising out of legal relationships, whether contractual or not", considered as commercial under the law in force in India. The award, therefore, in such cases will always be in respect of monies. The subject matter of the award would thus be money and nothing else. Any Civil Court would, therefore, have jurisdiction to deal with this matter. In view of this, I am not inclined to agree with Mr. Patel that the words "subject matter of the award" are used in section 5 of the Act so as to exclude other aspects of jurisdiction. But by its very nature, the foreign award will always be in respect of money because the word "commercial" itself suggests that it pertains to commerce and, therefore, ultimately money. Even the dictionary meaning of the word "commerce" supports the view that I am inclined to take.

According to the Oxford English Dictionary, Vol. 11, page 677/678, the word "commerce" means merchandise, exchange between men of the products of nature or art; trading; mercantile dealings. According to the said Dictionary, "Chamber of commerce" means a board organized to protect the interests of commerce in a town or district; company of merchants; commercial body (see pages 256 and 677). According to Webster's New Twentieth Century Dictionary, Second Edition, page 364, the word "commerce" means an interchange of goods, wares, productions, or property of any kind, between nations or individuals. This clearly indicates that the phrase "subject matter of the award" is not used in section 5 with a view to keep out of consideration other aspects of jurisdiction of the Court.

16. The learned Counsel Mr. Patel also submitted that the Foreign Awards Act, 1961 is a self-contained Code so much so that we cannot look into any other Act while considering the question of jurisdiction or any other questions arising under the said Act. Prima facie, one may be inclined to agree with him because the Act says what is a foreign award. It makes provisions for stay of proceedings in respect of matters to be referred to arbitration. It provides for Jurisdiction of the Court for filing the award and also lays down the conditions for enforcement of foreign awards. It lays down on what grounds enforcement of the foreign award may be refused. It also provides for an appeal if the decree is in excess of the award, or is not in accordance with the award. It also provides as to which documents are to be supplied while applying for enforcement of a foreign award. It also empowers the High Court to make rules consistent with the Act as to the filing of foreign awards, and all proceedings consequent thereon or incidental thereto; the evidence which must be furnished by a party seeking to enforce a foreign award and generally, all proceedings in court under this Act. But on a close scrutiny, it is not possible to agree with the submission of Mr. Patel that this Act is a self-contained Code to such an extent that we cannot have a look at any other law while considering any questions arising under the Act. The Foreign Awards Act, 1961, while having made provisions as stated above, is silent on many aspects. Section 5(1) says that an application is to be made to the Court having jurisdiction over the subject matter of the award, but it does not say As to which Court will have jurisdiction over the subject matter of the award. The Act is completely silent because it has nowhere defined "court" as is the case with the Arbitration Act, 1940. Section 5(2) provides that the application shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants. The registration of civil proceedings has to be made as per the provisions of the Code of Civil Procedure and unless we look into the same, it is difficult to register such an application as a suit. The application is to be treated as a suit and has to be registered as a suit and, therefore, one has to look into the provisions of the Code of Civil procedure while registering the matter as a suit. Section 5(3) provides for issuance of notices to the parties requiring them to show cause. The Act does not prescribe any forms of such notices. We may not attach much importance to this aspect because form is not material, but it is pertinent to note that section 5(3) does not provide how the notices are to be served. There is no provision in the Act as to how the notices are to be served. Unless we have recourse to the Code of Civil procedure, it cannot be said that the notices have to be served in a particular manner. The Code of Civil, Procedure lays down as to how a summons or a notice is to be served. If a notice is sent to a party who refuses to accept the same, certain procedure is prescribed in the Code of Civil Procedure for serving the same in such circumstances. If the person to whom the notice is to be served is not found, then the notice can be served upon any adult member of the family as provided by the Code of Civil Procedure. There is also a provision for substituted service in the Code of Civil Procedure. The Act being silent on all these points, one has naturally to look into the Code of Civil Procedure for ascertaining as to how the notices are to be served. Section 6(2) provides that upon the judgment so pronounced a decree shall follow. No form of decree is prescribed by the Act and, therefore, one has to look to the Code of Civil Procedure for drawing up the decree. Section 6(2) then provides that no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award. It thus provides for an appeal but does not prescribe the forum in which the appeal is to be filed. If we do not look into the provisions of the Code of Civil Procedure, then the question will arise as to before which Court an appeal is to be filed. The Foreign Awards Act is completely silent on this point. Section 96 of the Code of Civil Procedure lays down that an appeal shall lie from decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court. So far as the State of Gujarat is concerned, we have to look to the provisions of the Bombay Civil Courts Act , 1969 as applicable to the State of Gujarat for

finding out to which Court appeal will lie. The question would also arise as to how the appeal is to be presented and heard. It is only the Code of Civil Procedure which lays down how the appeal is to be presented, before whom and what procedure is to be followed therefor. The Act is silent as to what procedure should be followed if a party to the proceedings under the Act dies. It is only the Code of Civil Procedure which will provide answer to this question. Section 107 of the Code of Civil Procedure lays down as to what are the powers of the Appellate Court. The Foreign Awards Act is completely silent so far as this aspect is concerned. Order 3 of the Code of Civil Procedure provides for appearance through recognized agents and pleaders. The Foreign Awards Act is totally silent so far as this aspect is concerned. The Act is also silent as regards passing of interim orders by the Court in which the 'foreign award' is filed. Provision in this regard is made only in the Code of Civil Procedure. The Act is also totally silent as to what amount of court-fees will have to be affixed on the application for filing the award and what processes shall have to be paid.

17. The above aspects which are illustrative and not exhaustive go to show that unless we have a look at the provisions of the Code of Civil Procedure and/or other relevant statutes of this country so far as the procedural aspect is concerned, it may be difficult, wellnigh impossible, to proceed further with the application presented under this Act for filing the award. It is, therefore, difficult to agree with the submission of Mr. Patel that the Act is such a self-contained Code that we cannot have recourse to the Code of Civil Procedure or any other statute while considering the procedure to be adopted for enforcing a foreign award under this Act. In this connection, I may mention here that section 4(l) of the Foreign Awards Act reads as under:-

"A foreign award shall, subject to the provisions of this Act, be enforceable in India as if it were an award made on a matter referred to arbitration in India."

This prima facie shows that a foreign award is to be deemed to be an award made under the Arbitration Act, 1940 and the procedure laid down in the Arbitration Act, 1940 is to be followed while enforcing such. an award provided, of course, that if there is any special procedure laid down in the Foreign Awards Act, 1961, that procedure has to be followed. It also follows that while enforcing a foreign award under the provisions of this Act, one has to ordinarily look at the provisions of the Act of 1961 and if there is any specific provision in the Act, that provision has to be followed, but if the Act is silent on any particular procedural aspect, then one has to look into the Code of Civil Procedure and other relevant statutes. Even Article III of the Schedule of this Act says:

"Each Contracting State shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, the conditions laid down in the Articles."

The same being a part of the Foreign Awards Act as, a Schedule has to be looked into while interpreting Sec. 4(l) of the said Act as it appears to have been based on this Article. In my opinion, the provisions of sec. 4(l) of the Act are clear and there is no ambiguity. Section 4(l) read even without the aid of Art. III of the Convention, in my opinion, means that the procedure for enforcing a foreign award has to be the same as followed for enforcing domestic award, subject, of course, to this that the provisions of the Foreign Awards Act 1961 shall prevail if there, is any inconsistency between the provisions of the Act and other Acts which apply to domestic awards. I am supported in this view of mine by a decision of the Supreme Court in South India Corporation (P) Ltd. v. Secretary, Board of Revenue, Trivandrum, AIR 1964 SC 207, wherein it is held that the expression "subject to other provisions of the Constitution" used in Art. 372 of the Constitution of India means that if there is conflict between pre-existing law and provision of the Constitution, latter will prevail. The ambiguity, if any, is cleared by Art. III of the New York Convention and there cannot be difficulty in looking at the same as it forms part of the Foreign Awards Act as a Schedule.

18. In this connection, I may mention here that a question arose before the Bombay High Court in the case reported in Francesco Corsi v. Gorakhram Gokalchand, AIR 1960 Bom 91, whether the provisions of the Limitations Act will apply when an award is sought to be enforced under the provisions of the Arbitration (Protocol and Convention) Act, 1937. The provisions of section 4(l) of the Act of 1937 are parimateria with

the provisions of section 4(l) of the Act of 1961. It was sought to be argued before the Bombay High Court that a foreign award is to be deemed to be an award made under the Arbitration Act, 1940 because section 4(l.) provides that a foreign award is enforceable in India as if it were an award made on a matter referred to arbitration in India. It was sought to be urged that Article 178 of the Limitation Act would apply to an application for filing a foreign award in a Court in India. This contention was negatived by the Bombay High Court. An unreported decision of the Madras High Court rendered by Bashir Ahmed in C.R.A. No. 446 of 1954 and No. 2369 of 1953 delivered on 13-3-1956 was cited before the learned judge of the Bombay High Court. The learned Judge of the Madras High Court took the view that by analogy the provisions contained in section 4 of the Arbitration (Protocol and Convention) Act, 1937 that a foreign award shall, subject to the provisions of the said Act, be enforceable in the province as if it were an award made on a matter referred to arbitration in the province would mean that the foreign award, when it is sought to be enforced, shall conform to all the procedure provided for in the Indian Arbitration Act and laws of the country before it would become a decree of a Civil Court. Taking this view, the learned Judge of the Madras High Court held that the provisions of the Limitation Act would apply and the application has to be made within the period prescribed by the Limitation Act of India for making an application for filing an award. The learned Judge of the Bombay High Court (late Mr. Justice K. T. Desai, J. as he then was) disagreed with the decision of the Madras High Court. He held that a foreign award is not placed exactly on the same footing as an Indian award, so far as its enforcement is concerned. He referred to section 7 of the said Act which laid down numerous conditions which have to be satisfied before a foreign award is considered enforceable. Several conditions are also laid down by section 7 of the Act of 1961 before which an award can be considered enforceable. Section 7 lays down the conditions under which the Court can refuse to enforce the award. It has nothing to do with the procedural aspect. The learned Judge of the Bombay High Court took the view that Article 178 of the Limitation Act did not apply and if that article did not apply, the petition was not barred by limitation. I am not called upon to consider the question - of limitation in this matter and, therefore, this decision, though as delivered prior to 1-5-60 binding to me, cannot come in the way of my considering the question whether the provisions of the Code of Civil Procedure can be looked into while deciding the question of jurisdiction. But it is pertinent to note that though the learned Judge of the Bombay High Court disagreed with the judgment of the Madras High Court, he did not consider the question as to what was the purpose in enacting section 4(l) in the Act of 1937 if the Indian statutes were not at all to be considered while enforcing the award. If this decision of the Bombay High Court lays down the correct law, then it would mean that a foreign award can be enforced at any time in India without any limitation as to time. It is difficult to agree with respect to the learned Judge that the Legislature intended that a foreign award can be enforced at any time, though a domestic award can be enforced only within a particular time. The learned single Judge of the Bombay High Court while taking the view that Article 178 of the Limitation Act does not apply referred to a decision of the Division Bench of the Bombay High Court reported in *Madhavprasad v. S. G. Chandavarkar*, AIR 1949 Bom

104. The question which arose before the Division Bench of the Bombay High Court was as to which article of the Limitation Act will apply and while considering that question, the Division Bench observed that it is an elementary principle of construction that the scope of the Limitation Act cannot be extended by implication, and a party's right to come to Court cannot be taken away unless 'the Limitation Act expressly provides that his right is so barred. These observations were made by the Division Bench while considering as to which article of the Limitation Act will apply and ultimately the Division Bench held that article 11A did not apply but either article 120 or article 144 would apply and, therefore, the suit was not barred by limitation. If there was some provision regarding limitation in the Act of 1961, then certainly one can say that we cannot look to the Limitation Act of India while considering that question. If there were different provisions in the Limitation Act and if there was some doubt as to which provision should apply, then certainly the doubt has to be resolved saying that the article which prescribes larger period of limitation will apply and that is what the Division Bench appears to have done in the, above case. With utmost respect to the learned single judge of the Bombay High Court who decided the case which I have discussed earlier, it would mean that an application under section 5(l) of the Act of 1961 can be filed at any time without any restriction as to period for doing so, if that decision lays down the correct law. If the question of limitation had arisen before me, then I would certainly have considered the question of referring the question to a larger Bench but that question of

limitation does not arise in the present case and, therefore, that decision must be taken to be a decision only so far as the question of limitation is concerned. I may mention here even at the cost of repetition that we do not find any answer to the question as to for what purpose section 4(l) of the Act of 1937 which is Para materia with section 4(l) of the Act of 1961 was enacted unless it was intended to lay down that except when the procedure laid down in the Indian statute is inconsistent with the provisions of the, Act, the said procedure has to be followed. I may also mention here that just as the Act of 1961 is based on New York Convention, the Act of 1937 with which the learned single Judge of the Bombay High Court was concerned was based on Geneva Convention and the said Convention is also a part of the said Act as Second Schedule. Article 1 of the said Convention also provided that the rules of the procedure of the territory where the award is relied upon had to be followed. Provisions as regards limitation which barred the filing of a proceeding after a certain period are procedural and, therefore, they form part of procedural law. The provisions of the Limitation Act ordinarily bar the remedy and do not extinguish the right and that way they are procedural. There is only one provision in the Limitation Act, 1963 and that is Section 27 which extinguishes the right if 'a suit is not filed for possession of any property within the period prescribed by the Act for filing such suit. According to Dicey and Morris in the Conflict of Laws, 1973 Edition, page 11, the expression "Lex fori" means the local or domestic law of the country to who a court, wherein an action is brought or other legal proceeding is taken belongs. According to the same authors, all matters of procedure are governed by the domestic law of the country legal to which the Court wherein a proceeding are taken belongs (Lex fori) and the term "procedure" includes the statute of limitation amongst other things. Even according to Cheshire's Private International Law, Ninth Edition, page 687, statutes of limitation, if they merely specify a certain time after which right cannot be enforced by action, affects procedure and not substance. From these provisions of International Law as can be culled out from the above two standard books, it can be said that the provisions of the Indian Limitation Act could have been invoked, even apart from the provisions of section 4(l) of the Act of 1937 in that case which I have discussed earlier. But it appears to me that section 4(1) of the said Act of 1937 and section 4(l) of the Act of 1961 read with the corresponding Articles of the Convention which I have already referred, to earlier clearly go to show that the procedural laws of the country in which the award is relied upon would govern the procedural aspect of the filing of the foreign award and that would include the question of limitation also being a procedural one. I am supported in this view of mine by the following observations made in Minister of Public Works of the Government of the State of Kuwait v. Sir Frederick Snow and Partners, (1983) 1 WLR 818 at page 823:-

"Article III of the New York Convention provides

"Each contracting State shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon"

And it is settled law that all issues as to limitation are procedural in their nature."

But anyway, the decision of the Bombay High Court does not come in my way in considering the question of jurisdiction even assuming that Limitation Act may not apply though, with due respect of the learned Judge of the Bombay, High Court, I am not inclined to agree with him.

19. Before proceeding further, I would like to mention that in the case of Renusagar Power Co. Ltd. (AIR 1985 SC 1156) (supra), Justice Tulzapurkar, J. who delivered the judgment has also made observations at p4ra 50 as follows: -

"Moreover, an examination of the relevant provisions of this Act and the Arbitration Act, 1940 will show that the schemes of the two Acts are not identical and as will be pointed out at the appropriate stage there are various differences which have a material bearing on the question under consideration and as such decisions on similar or analogous provisions contained in the Arbitration Act may not help in deciding the issue arising under the Foreign Awards Act because just as the Arbitration Act, 1940 is a consolidating enactment governing all domestic awards the Foreign Awards Act constitutes a complete Code by itself providing for all

possible contingencies in relation to foreign awards made pursuant to agreements to which Article II of the Convention applies,"

These observations, at the first blush, go to support the submission made by Mr. Patel. The Act can be said to be a complete Code as observed by Justice Tulzapurka, in the sense that so far as specific provisions are made in the said Act, we cannot look at any other Act. It is also pertinent to note that the Supreme Court in that case was called upon to consider the question, whether the provisions of the Arbitration Act, 1940 can be looked into while considering the question of stay of proceedings under section 3 of the Foreign Awards Act, 1961. Specific provision is made in section 3 of the Foreign Awards Act as regards stay of proceedings in respect of matters referred to arbitration. When there is a specific provision made in the said Act, we cannot look to the provisions of the Arbitration Act, 1940 because even section 4(l) of the Act says that a foreign award shall be enforceable in India subject to the provisions of the said Act. It was in view of this specific provision made in section 3 of the Foreign Awards Act read with section 4(l) of the said Act that the Supreme Court held in the above case that the provisions of the Arbitration Act, 1940 (Indian statute) cannot be looked into while considering the question of stay. The observations made in the above case by the Supreme Court at para 50 are that the Foreign Awards Act constitutes a complete Code by itself providing for all possible contingencies in relation to foreign awards made pursuant to agreements to which Article II of the Convention applies. The Act can be said to be a complete Code so far as provisions are made with regard to different contingencies, but it cannot be said so with respect to different procedural aspects highlighted by me earlier that the Act is a complete Code even with regard to those procedural aspects. The observations made by the Supreme Court are entitled to due weight and binding to this Court but they have to be read in the context in which they are made. It was never the contention before the Supreme Court that the Code of Civil Procedure does not apply to these proceedings. I would like to mention here even at the cost of repetition that the Supreme Court made the above observations while considering the scope of section 3 of the Foreign Awards Act and while comparing the provisions of the said section with those of section 34 of the Arbitration Act, 1940. The Foreign Awards Act is based on New York Convention and the same forms part of the said Act as a Schedule. The Schedule is to be read while interpreting the provisions of the said Act. That way it can also be said that the Act is a self-contained Code which read as a whole including the Schedule shows that procedural laws of this country which includes the Code of Civil Procedure can certainly be looked into while considering the question of jurisdiction.

20. As discussed above, the provisions of Article III of the New York Convention which form part of the Foreign Awards Act as a Schedule show that foreign awards are to be enforced in accordance with the rules of procedure of India when the award is relied upon in India, of course, under the conditions laid down in the Articles.

21. It may not be necessary to go to any other book or authority for reaching the conclusion that the Code of Civil Procedure is applicable even to the proceedings of filing a foreign award under the provisions of the Foreign Awards Act, 1961 as discussed above, particularly when Article III of the New York Convention leaves no doubt. Even considering this question in the light of Private International law, it appears that there cannot be any doubt that the Code of Civil Procedure and other procedural statutes of this country have to be looked into while enforcing, a foreign award under the Foreign Awards Act, 1961. Cheshire's Private International Law, Ninth Edition, Part VII deals with substance and procedure. It is observed at page 683 in Chapter XX of the said Part that one of the eternal varieties of every system of private international law is that a distinction must be made between substance and procedure, between right and remedy. The substantive rights of the parties to an action may be governed by a foreign law, but all matters appertaining to procedure are governed exclusively by the *lex fori*. At first sight the principle seems almost self-evident. It is observed in the same book on the same page that a person who resorts to an English Court for the purpose of enforcing a foreign claim cannot expect to occupy a different procedural position from that of a domestic litigant. The department of procedure constitutes perhaps the most technical part of any legal system and it comprises many rules that would be unintelligible to a foreign judge and certainly unworkable by a machinery designed on different lines. A suitor in England must take the law of, procedure as he finds it. He cannot by virtue of

some rule in his own country enjoy greater advantages than other suitors in England neither must he be deprived, of any advantages that English law may confer upon a litigant in the particular form of action. The above observations which are made in the above standard book equally apply to a person who comes forward to enforce a foreign award in India.

22. Now, the relief granted by the award which is the subject matter of the award is, no doubt, payment of money while considering this aspect, we cannot however keep out of consideration at least the person by whom the payment of money is to be made. The relief granted by the award in the present case is thus a debt payable by original respondents Nos. 1 and 2 to the original petitioner. It is not an abstract relief of payment of money. In the Conflict of Laws by Dicey & Morris, Ninth Edn. Rule 20 which appears in Chapter 10 having the title "jurisdiction in Actions in personam" reads as follows: -

"The court has jurisdiction to entertain an action in personal if, and subject to Rules 21 to 23 only if, the defendant is in England and served there with the writ in the manner prescribed by statute or statutory order."

Rule 23(3) appearing in the said Chapter reads as follows : -

"The court has jurisdiction to entertain an action in personam against a defendant who is not in England at the time for the service of the writ when even it assumes jurisdiction in any of the cases mentioned in this Rule.

Rule 23 (3) appearing in the said chapter reads as follows: -

" The court has jurisdiction to entertain an action in personal against a defendant who is not is England at the time for the service of the writ whenever it assumes jurisdiction in any of the cases mentioned in this Rule.

.....

(3) The Court may assume jurisdiction if in the action begun by the writ relief is sought against a person domiciled or ordinarily resident in England."

Rule 23(6) reads as follows:-

"The Court may assume jurisdiction if the action begun by the writ is brought against a defendant not domiciled or ordinarily resident in Scotland to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which

(i) was made in England; or

(ii) was made by or through an agent trading or residing in England on behalf of a principal trading or residing out of England; or

(iii) is by its terms or by implication governed by English law."

Rule 23(16) contained in the said Chapter reads as follows : -

"The court may assume jurisdiction over a claim for damage, loss of life or personal injury arising out of a collision or like navigational incident involving two or more ships, or over a limitation action, if, but only if -

(a) the defendant has his habitual residence or a place of business within England; or

(b) the cause of action arose within inland waters of England or within the limits of an English port; or

(c) an action arising out of the same incident is proceeding in the court or has been heard and determined by the court; or

(d) the defendant has submitted or agreed to submit to the jurisdiction of the court."

23. If we examine the question of jurisdiction in the light of the above provisions of Private International Law, it is clear that the award can be enforced in India provided the person against whom the relief is claimed is residing in India or carries on business in India or if the cause of action or a part thereof has arisen in India. The result will be the same even on examining the question in the light of the provision of the Code of Civil Procedure. Part 8 contained in the above book of Dicey and Morris pertains to procedure and Chapter 36 deals with the distinction between matters of substance and matters of procedure, with particular reference to remedies and process, damages, statutes of limitations, evidence, parties, priorities, set-off and counterclaims, and security for costs. Rule 204 contained in that Chapter 36 says that all matters of procedure are governed by the domestic law of the country to which the court where in any legal proceedings are taken belongs (Lex fori). It appears that Article III in New York Convention is based on this Rule 204..Dicey observed at page 1112 that in determining who are the proper parties to an action, the first question is whether the plaintiff or defendant is the sort of person or body that can be made a party to litigation and this is a question for the lex fori. It is further observed therein that an action could not be commenced in England in the name of a dead man, even though this was possible by the lex cause. The same is the position in India because it is settled law that no action could be commenced against a dead person even in India.

24. In the case of R. L. Arora v. State of Uttar Pradesh, AIR 1964 SC 1230, the Supreme Court observed that a literal interpretation of a statute is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute. It is permissible to control the wide language used in a statute if that is possible by the setting in which the words are used and the intention of the law making body which may be apparent from the circumstances in which the particular provision came to be made.

25. If we interpret section 4(1) of the Foreign Awards Act read with article III of New York Convention in the light of the observations made in the above case by the Supreme Court, it is crystal clear that the Parliament intended that so far as the procedure applicable for enforcing foreign awards is concerned, the procedure adopted in India for enforcement of domestic awards has to be followed subject, of course, to this that if there is any conflict between the two, the procedure laid down in the Foreign Awards Act must prevail.

26. In the case of Ludwig Wunsche and Co. v. Raunaq International Ltd., AIR 1983 Delhi 247, the question that came up for consideration was as to what procedure should be followed for enforcement of foreign awards in India. The question of jurisdiction, of course, did not arise before the said Court. The question whether the Code of Civil Procedure will apply or not also did not arise for consideration before the Delhi High Court in that case. It appears from the facts stated in the above case decided by the Delhi High Court that Ludwig Wunsche and Co. applied to the Delhi High Court to enforce a foreign award and prayed that the said award may be filed in the Court and a decree be made in terms thereof. This application was obviously under section 5 of the Foreign Awards Act. The original award and a duly authenticated copy of the award were also enclosed with the application as annexures as required by the provisions of the Foreign Awards Act. The application was ordered to be registered as a suit and the Registrar of the Delhi High Court further passed the order that the arbitrator be directed to file the original award, award proceedings and documents on or before the returnable date of the notice. The petitioner Company before the said date filed the application under section 151 read with section 153 of the Code of Civil Procedure praying that the order made by the Registrar be clarified and/or modified /amended by withdrawing the direction to the Arbitrators to file the original award, award proceeding and documents as the award had already been filed along with the petition and the award proceedings and documents were not "statutorily required". Notice of the said application was issued to

the opponent-Indian Company on whose behalf the request was opposed. The Registrar after hearing the parties made a reference to the Court for appropriate orders. The Indian Company in the meanwhile also applied to the Court for setting aside the award for the reasons stated in the application. The learned single Judge of the Delhi High Court referred to the corresponding provisions of the Arbitration Act, 1940 (Indian statute) and those of the Foreign Awards Act, 1961 and also those of the Arbitration (Protocol and Convention) Act, 1937 which was the Act in force for enforcement of foreign awards prior to the coming into force of the Foreign Awards Act, 1961 because the application by judging Wunsche was filed alternatively under the corresponding provisions of the above said two Acts i.e. the Act of 1961 and the Act of 1937 and then observed that the Act of 1937 as well as the Act of 1961 were special statutes dealing with certain categories of arbitral awards, while the Act of 1940 was a general provision with regard to the arbitration and it is well-known that the special statute prevails over the general. He also referred to section 47 of the Arbitration Act, 1940 which provides that subject to the provisions of section 46 of the said Act and save in so far as is otherwise provided by any law for the time being in force, the provisions of the Act of 1940 shall apply to all, arbitrations and to all proceedings thereunder and observed that it was a possible view to take of the exclusion under section 47 of the Act of 1940 that the provisions of the Acts of 1937 and 1961 would prevail to the extent of inconsistency with the provisions of the Act of 1940 and that matters, for which there was no provision in the Acts of 1937 and of 1961, would be regulated by the general provisions contained in the Act of 1940. The learned single Judge observed that this could be inferred from the use of the words "save in so far as is otherwise provided" in Section 47. The learned single Judge also referred to the decision of the Bombay High Court in *Francesco Corsi v. Gorakhram Gokalchand* (AIR 1960 Bom 91) (supra) and observed that the said decision of the Bombay High Court appears to provide a complete answer to the question raised on behalf of the Indian Company. I have discussed this judgment of the Bombay High Court earlier and hence it is not necessary to enter into any detailed discussion so far as that judgment of the Bombay High Court is concerned. But it is, pertinent to note that even though the learned single Judge of the Delhi High Court observed at para 9 of his judgment that the decision of the Bombay High Court appears to provide a complete answer to the question raised High Court is concerned. But it is pertinent to note that even though the learned single Judge of the Delhi High Court observed at para 9 of his judgment that the decision of the Bombay High Court appears to provide a complete answer to the question raised on behalf of the Indian Company, he also observed at para 7 of the judgment that where there was no provision in the Acts of 1937 and of 1961, the matters will be regulated by the general provisions contained in the Act of 1940. The learned single Judge then summed up his observations at para 12 of the judgment as follows :-

"While some doubt may still be possible, and expression to it has already been given by the highest Court, if the provisions of Secs. 34 and 35 of the Act of 1940 would be applicable to foreign arbitration, there could be, little doubt that the Act of 1940 would have no application to regulate proceedings in India for the enforcement of a foreign award to the extent there are specific provisions made in the Act of 1937 or of 1961, which are inconsistent with the corresponding provisions of the Act of 1940. That is the position that obtains in relation to an application to file the foreign award and to seek its enforcement." The ratio of this decision of the Delhi High Court thus in short is that when the Act of 1961 is silent, the procedure laid down for enforcement of domestic awards in this country has to be followed.

27. The discussion made above will go to show that while enforcing a foreign award in this country under the provisions of the Foreign Awards Act, 1961, one has to look at the provisions of the Foreign Awards Act and follow the procedure laid down therein, but if the said Act is silent with regard to any procedural aspect or aspects which are illustrated by me earlier at pages 23 and 24, then the rules of procedure of this country where the award is relied upon have to be followed. The question as to which Court will have jurisdiction to entertain the application for filing an award under section 5(1) of the Foreign Awards Act will have, therefore, to be decided with reference to the provisions of the Code of Civil Procedure which governed the procedure in this country because section 5(1) of the Foreign Awards Act simply says that the award may be filed in the Court having jurisdiction over the subject matter of the awards, but it is silent as regards the Court which will have jurisdiction over the subject matter of the award. The jurisdictional aspect is a procedural, one and, therefore the provisions of the Code of Civil Procedure will be applicable unless there is a conflict between

the provisions of the Foreign Awards Act and the procedure laid down in the Code of Civil Procedure. There cannot be a question of conflict so far as this aspect is concerned because the Foreign Awards Act, 1961, as stated by me earlier, is silent as regards the Court which will have the jurisdiction over the subject matter of the award and other procedural aspects. The learned trial Judge, as stated by me in the beginning, held, for the reasons recorded by him, that the Court at Bhavnagar had jurisdiction to entertain the application filed under section 5(1) of the Foreign Awards Act. He, of course, reached this finding taking into consideration the provisions of the Code of Civil Procedure. The original petitioner approached the Bhavnagar Court on the premises that the Bhavnagar Court had jurisdiction and for that purpose the petitioner relied upon the provisions of the Code of Civil Procedure and no question was raised as regards non-applicability of the Code of Civil Procedure before the learned trial Judge. The learned advocate Mr. D. V. Patel, as discussed by me a little earlier, was also unable to satisfy me that the Bhavnagar Court will have jurisdiction to entertain the present petition on the grounds on which the order was passed by the trial Court. I have shown while discussing this aspect in the beginning at pages 5 to 7 how the learned trial Judge committed an error in holding that he had jurisdiction to entertain this petition. Even Mr. D. V. Patel for the petitioner, as observed by me at page 7, was not able to support the order of the learned trial Judge for the reasons given by him.

28. The learned advocate Mr. D. V. Patel drew my attention to the full Bench decision of the Travancore Cochin High Court reported in *Mariamamma Mathew v. Ittoop Poulo*, AIR 1952 Trav. Co. 159 in support of his submission that because the Bhavnagar Court could attach the debt payable by the original respondent No. 3 Metal Scrap Trade Corporation Ltd. to original respondents Nos. 1 and 2 the Orient Middle East Lines Ltd. and M/s Orri Navigation Lines of Saudi Arabia, which debt was payable at Calcutta, the Civil Court at Bhavnagar had jurisdiction to entertain this petition. Even applying the provisions of the Code of Civil Procedure, I fail to understand how this decision of the Travancore - Cochin High Court can at all support the submission made by Mr. Patel. Section 136 of the Code of Civil Procedure provides for attachment before judgment of the property beyond the Court's jurisdiction, A Court can, therefore, pass an order for attachment before judgment of properties situate beyond its jurisdiction. This Full Bench decision itself says that section 136 prescribes the procedure and it does not touch the jurisdiction. I do not think that this decision, of the Travancore-Cochin High Court at all supports the submission made by Mr. Patel based on section 136 of the Code of Civil Procedure.

29. Now, the subject matter of the award in question is a debt payable by original respondent No. 3 to original respondents Nos. 1 and 2. The award is in favour of the original petitioner M/s. Brace Transport Corporation of Monrovia And as per the said award, the amount is payable to the original petitioner by original respondents Nos. 1 and 2. Neither of these respondents Nos. 1 and 2 have any office at Bhavnagar nor do they carry on business in this country within the jurisdiction of the Bhavnagar Court. No cause of action or part thereof has arisen within the jurisdiction of the said Court. The sale, agreement, reference and passing of the award all took place not only beyond the jurisdiction of Bhavnagar Court but also beyond the jurisdiction of the Courts of India. In view of this, it is difficult to say that the Bhavnagar Court will have jurisdiction simply because the amount payable by original respondent No. 3 to original respondents Nos. 1 and 2, which is payable at Calcutta through a Bank, can be attached before judgment under Section 136 of the Code of Civil Procedure.

30. It was, of course, contended on behalf of the original respondents Nos. 1 and 2 as also on behalf of original respondent No.3 that even the Calcutta Court will not have any jurisdiction because neither respondents Nos. 1 and 2 carry on business within the jurisdiction of the said Court nor has any cause of action or even a part thereof arisen within the jurisdiction of that Court. I do not propose to discuss this aspect because I am only concerned in this matter with the question whether the Court at Bhavnagar has jurisdiction to deal with this matter.

31. The result of the aforesaid discussion is that the Court at Bhavnagar had no jurisdiction to entertain this application filed under section 5(1) of the Foreign Awards Act, 1961 for enforcing the foreign award. The Revision Application is, therefore, required to be allowed and the order passed by the trial Court holding that

the trial Court had jurisdiction to entertain this application is required to be set aside and the petition is required to be directed to be returned to the original petitioner for presentation to the proper Court.

32. The petitioner filed this petition before the trial Court relying upon the provisions of the Code of Civil Procedure which, on the face of it, show that the Bhavnagar Court had no jurisdiction. Merely because the ship was brought to port Alang in, Bhavnagar District, for scrapping, the Bhavnagar Court would not have any jurisdiction because the ship was not the subject matter of the award and the ship was again not the property of the original respondents Nos. 1 and 2 at the time the petition was filed. It was already sold by original respondents Nos. 1 and 2 to original respondent No. 3 and original respondent No. 3 had also already sold the same to original respondent No. 4. The jurisdiction of the Bhavnagar Court was tried to be supported on quite a different ground before me. Respondents Nos. 3 and 4 were not at all necessary or even proper parties to the petition filed in the Bhavnagar Court. They were required to be joined as respondents in revision application before this Court because they were made parties to the original petition. In view of this, I see no reason why the original petitioner-respondent No. 1 in this revision petition should not be directed to pay the costs of this Revision petition as well as the costs of the original petition to the original respondents in the petition before the Bhavnagar Court. Hence I propose to direct them to pay the costs accordingly to the original respondents.

33. The Revision Petition is, therefore, allowed, the order passed by the Trial Court holding that it had jurisdiction to entertain the petition filed before it is hereby set aside and the trial Court having no jurisdiction to entertain that petition, the trial Court is directed to return the petition to the original petitioner for presentation to the proper Court.

34. Respondent No. 1 of this Revision Petition to pay the costs of this Revision Petition to the petitioners in this Revision Petition in one set and to respondents Nos. 2 and 3 of this Revision Petition in different sets.

35. Respondent No. 1 (original petitioner) to pay the costs of the original petition of the trial Court to all the respondents of that original petition in different sets.

36. Rule made absolute accordingly.

37. Revision allowed.