

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

+ **OMP No. 885/2014**

% Judgement Reserved on: **5th August, 2014.**
Judgement pronounced on: 31st October, 2014

VEENA MANGHANI & ORS.

..... Petitioners

Through: Mr.Shahid Ali, Mr.Mohd.Shariq &
Mr.Satish Kumar, Advocates

versus

SUBHASH ARORA

..... Respondent

Through : None.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide this petition, the petitioners have challenged the award dated 13th May, 2014, whereby the claim of the respondent was decreed under Order 12 Rule 6 of CPC, on several grounds.

2. The facts show that the respondent was the claimant before the Arbitrator and the case of the respondent before the Arbitrator was that the petitioners were the owners of property No.W-54, Greater Kailash-I, New Delhi, measuring 500 square yards and vide agreement to sell dated 07.02.2012 (due to inadvertent typographical error has been wrongly mentioned as 07.01.2012) had purchased the said property for a total consideration of Rs 25 crore. The respondent/claimant had paid a sum of

Rs. 7.25 crores and was ready to pay the balance sum of Rs. 17.75. The manner of payment was also shown by the respondent-claimant which has been re-produced by the learned Arbitrator in his award as under:-

“A. While entering into an agreement to sell, an advance payment of Rs. 3 crore is made in the following manner:-

- a. Rs. 50 lakh vide DD No. 256841 dated 07.02.2012
- b. Rs. 50 lakh vide DD No. 256842 dated 07.02.2012
- c. Rs. 50 lakh vide DD No. 256843 dated 07.02.2012 all drawn on Kotak Mahindra Bank, Malviya Nagar, New Delhi
- d. Rs. 1.50 crore in cash on 07.02.2012 upon execution of money receipt by the claimants.

Copy of the Drafts Drawn on Kotak Mahindra Bank, Malviya Nagar, New Delhi and Agreement to Sell acknowledging cash payment are filed on record along with the Claim Petition.

B. On 05.03.2012, payment of Rs. 12 lakhs is made in the following manner:-

- a. Vide cheque no. 002650, drawn in favour of Smt. Veena Manghani
- b. Vide cheque no. 002652, drawn in favour of Sh. Narinder Manghani
- c. Vide cheque no. 002653 drawn in favour of Sh. Hans Raj Manghani
- d. Vide cheque no.002654 drawn in favour of Sh. Deepak Manghani

Each of the aforesaid cheques were for a sum of Rs. 3 lakhs.

Copy of the cheques dated 05.03.2012 drawn on Kotak Mahindra Bank, Malviya Nagar, New Delhi and receiving on the photocopies of cheques are filed on record.

C. On 19.03.2012 and 22.03.2012 payment of Rs. 2 crores is made to the respondents, in following manner, viz.

- a. On 19.03.2012 an amount of Rs. 1.50 crores (i.e. Rs. 37.50 lakhs each) was paid to the respondents upon acknowledgement in form of 'receipt cum earnest money'.
- b. PDC dated 22.03.2012 for total of an amount of Rs. 50 lacs (i.e. Rs. 12.50 lakhs each) was paid to the respondents vide Cheque No. 002625 in favour of Smt. Veena Manghani; Cheque No. 002626 in favour of Sh. Narinder Manghani; Cheque No. 002627 in favour of Sh. Hans Raj Manghani; Cheque No. 002628 in favour of Sh. Deepak Manghani. All drawn on Kotak Mahindra Bank, New Delhi

Copy of the receipt cum earnest money, acknowledging the transaction dated 19.03.2012 and PDCs dated 22.03.2012 executed by the Respondents is placed on record.

D. On 23.03.2012, further payment of Rs. 1 crore, was made by the Claimant in following manner:

- a. Rs. 20 lakh vide DD No. 922081 drawn on Kotak Mahindra Bank, Malviya Nagar, New Delhi
- b. Rs. 20 lakh in cash paid to Smt. Veena Manghani
- c. Rs. 20 lakh in cash paid to Sh. Narinder Manghani
- d. Rs. 20 lakh in cash paid to SH. Hans Raj Manghani

e. Rs. 20 lakh in cash paid to Sh. Deepak Manghani

Copy of the receipt cum earnest money dated 23.03.2012 executed by the Respondents, acknowledging the receipt of Rs. 1 crore is placed on record.

E. On 05.03.2012, Claimant made further payment of Rs. 12 lakhs in the following manner:-

- a. Vide cheque no. 002650, drawn in favour of Smt. Veena Manghani for Rs. 3 lakhs
- b. Vide cheque No. 002652, drawn in favour of Sh. Narinder Manghani for Rs. 3 lacs
- c. Vie cheque no. 002653 drawn in favour Sh. Hans Raj Manghani for Rs. 3 lacs
- d. Vide cheque no. 002654 drawn in favour of Sh. Deepak Manghani for Rs. 3 lacs

F. On 04.04.2012, Claimant made further payment of Rs. 18 lakhs in the following manner:-

- a. Rs. 4.50 lakh paid in cash to Smt. Veena Manghani
- b. Rs. 4.50 lakh paid in cash to Sh. Narinder Manghani
- c. Rs. 4.50 lakh paid in cash to Sh. Hans Raj Manghani
- d. Rs. 4.50 lakh paid in cash to Sh. Deepak Manghani

Copy of Receipt cum Earnest Money of the aforesaid payment of Rs. 12 lakhs paid on 05.03.2012 and Rs. 18 lacs paid on 04.04.2012, duly signed by the respondents is placed on record.

G. On 10.04.2012, Claimant made payment of Rs. 20 lakh

- a. Vide cheque no. 002659, drawn in favour of Smt. Veena

Manghani for Rs. 5 lacs

- b. Vide cheque no. 002657, drawn in favour of Sh. Narinder Manghani for Rs. 5 lacs
- c. Vide cheque no. 002656 drawn in favour of Sh. Hans Raj Manghani for Rs. 5 lacs
- d. Vide cheque no. 002658 drawn in favour of Sh. Deepak Manghani for Rs. 5 lacs.

H. on 11.04.2012, Claimant made further payment of Rs. 50 lakhs in the following manner:-

- a. Rs. 12.50 lakh paid in cash to Smt. Veena Manghani
- b. Rs. 12.50 lakh paid in cash to Sh. Narinder Manghani
- c. Rs. 12.50 lakh paid in cash to Sh. Hans Raj Manghani
- d. Rs. 12.50 lakh paid in cash to Sh. Deepak Manghani

Copy of Receipt cum Earnest Money of the aforesaid payment of Rs. 20 lakhs paid on 10.04.2012 and Rs. 50 lacs paid on 11.04.2012, duly signed by the Respondents is placed on record.

I. On 21.04.2012, claimant made payment of Rs. 1 lakh

- a. Rs. 25,000/- paid in cash to Smt. Veena Manghani
- b. Rs. 25,000/- paid in cash to Sh. Narinder Manghani
- c. Rs. 25,000/- paid in cash to Sh. Hans Raj Manghani
- d. Rs. 25,000/- paid in cash to Sh. Deepak Manghani

J. on 22.04.2012, Claimant made further payment of Rs. 24 lakhs in the following manner:-

- a. Vide cheque no. 002704 , drawn in favour of Smt. Veena Manghani for Rs. 6 lacs
- b. Vide cheque no. 002702, drawn in favour of Sh. Narinder Manghani for Rs. 6 lacs
- c. Vide cheque no. 002701 drawn in favour of Sh. Hans Raj Manghani for Rs.6 lacs
- d. Vide cheque no. 002703 drawn in favour of Sh. Deepak Manghani for Rs. 6 lacs.

Copy of Receipt cum Earnest Money of the aforesaid payment of Rs.1 lakh paid on 21.04.2012 and Rs. 24 lacs paid on 22.04.2012, duly signed by the Respondents is placed on record.”

3. It was further contended by the respondent-claimant that the petitioners were to transfer the said property free from all encumbrances on or within 120 days from 07.02.2012 on payment of balance consideration. The claimant-respondent, however, came to know in the second week of March, 2012 that the property was actually mortgaged with Bank of India, on the failure of the respondent to produce the title deed of documents of the property. According to respondent/claimant, the respondent, i.e., the petitioner herein made no effort to negotiate with the bank to get the property free from encumbrances of mortgage and thus the dispute arose between them.

4. The petitioner, who was the respondent before the learned Arbitrator

had also filed its reply. The case of the petitioner/respondent before the Arbitrator was that the alleged agreement to sell was a fraudulent document. It was alleged that the stamp paper of the said agreement to sell was of the year 2010 while the date of agreement was 07.01.2012, the demand drafts mentioned therein were bearing the date as 07.02.2012. It was also contended before the learned Arbitrator that the Arbitral Tribunal had no power to grant prayer of specific performance. It was also contended that agreement to sell was to be honoured within 120 days subject to full payment which period had expired on 07.05.2012. It was further contended that the claimant had not produced any documentary evidence to show that there was a continuous willingness to pay the balance amount by him. It is further alleged that the claimant, even before making the part payment, had the full knowledge that the property was under mortgage and this is clear from the fact that the claimant had made part of the payments in the account of M/s Alcome Perfumes and Cosmetics Private Limited from whose account the money was used to repay the bank liability. The respondent-petitioner had also taken the plea before the learned Arbitrator that there was some oral collaboration agreement between the parties, but their signatures were obtained by the claimant-respondent on certain blank papers. On these

contentions, the respondent-petitioner had sought the dismissal of the claim statement.

5. During the arbitral proceedings, the claimant had moved an application under Order 12 Rule 6 CPC for an award based on admissions. The learned Arbitrator heard the matter on 26.04.2013, 01.06.2013 and 29.06.2013. In the said application, the claimant had alleged the following admissions on the part of the respondent/petitioner herein:

- “a. The factum of signatures on the agreement to sell between the claimant and the respondents has been admitted by the respondents.
- b. The signatures of the respondents on the receipts of payments made by the claimant to the respondents are also admitted.
- c. The respondents have admitted that they are the owners of the property in dispute, hence are in capacity to enter into an agreement to sell.
- d. The factum of existence of the Agreement to Sell dated 07.02.2012 (wrongly written as 07.01.2012) has been admitted by the respondents in their own letter dated 25.07.2012 written to the learned Arbitrator wherein the respondents have accepted the fact that they entered into Agreement to Sell with the claimants stating that it has expired because of non-payment by the claimant.”

6. The respondent-petitioner herein also took a stand before the learned Arbitrator on the application under Order 6 Rule 12 CPC and the learned Arbitrator has crystallized the stand of petitioner in his award on page 13. It

is reproduced as under:-

- “(i) When the alleged agreement to sell was executed as the stamp paper on which the same is executed pertains to the year 2010 or on 07.01.2012?
- (ii) The circumstances and the manner of execution as the stamp paper is in the name of some Jaiyan?
- (iii) Whether the agreement to sell and receipts are not fabricated?
- (iv) Whether the money mentioned in agreement to sell and other papers was actually paid?
- (v) Whether the demand draft can be issued by the bank in advance mentioning the date of future period?
- (vi) Whether the claimant was not aware about the bank loan availed by the respondents in respect of the property in question?
- (vii) Whether the payment made by the claimant is not directly remitted in the account of bank which advance loan mortgaging the property in question? “
- (viii) Whether the claimant had not defaulted in performance of his part of contract?
- (ix) Whether the time was not essence of the contract?
- (x) Whether the claimant was ready with the money and also willing to perform his part of contract?
- (xi) Whether the agreement to sell is not a fabricated document not worthy of placing reliance?
- (xii) Whether the claimant is not liable to be punished for

cheating and forgery?

7. After elaborately dealing with each and every contentions of the parties and discussing the case laws, the learned Arbitrator had passed the award in favour of the respondent.

8. The petitioner has challenged the said award on following grounds:-

“a. that since the arbitration agreement was a fraudulent, forged and fabricated document, hence the arbitral award is not valid on the following grounds:-

- i. The said alleged agreement to sell was on a stamp paper issued in the year 2010 in the name of Jaiyan who has no relation with the present case;
- ii. although the agreement is dated 07.01.2012, it mentions about some demand draft issued by banks for the first time on 07.02.2012;
- iii. the contention of the respondent that it was an inadvertent typing mistake cannot be accepted because the perusal of the agreement to sell dated 07.01.2012 would show that this date is written by hand and thus cannot be a typographical error;

- iv. the respondent at no point of time amended the pleading so as to say that it was a typographical error and the agreement dated 07.01.2012 cannot be read as an agreement dated 07.02.2012.
- v. there is nothing in the pleading which could show that the mentioning of dates dated 07.01.2012 was, in fact, a typographical error and the tenor of allegations contained in claim petition and the words used suggest that the respondent intentionally, deliberately, knowingly and with all senses and in his wisdom had chosen to depict and project he alleged agreement to sell as that of 07.01.2012.
- b. composition of the arbitral tribunal was not in accordance with law; (not explained in what manner the composition was bad in law).
- c. that the Arbitrator and the respondents are in the habit of indulging in such conduct and create unnecessary disputes in the properties and thereafter used to appoint the present Arbitrator;
- d. that arbitral award is in conflict with the public policy as there is an error on the face of the award and the Arbitrator has not considered the facts and circumstances of the case in its true spirit. The Arbitrator has also failed to give any proper reason for passing of the award and

that the Arbitrator has acted unfairly and unreasonably.

- e. that the learned Arbitrator failed to appreciate that the time was the essence of such agreement. The registration of the sale deed was to be done on or before 120 days subject to full and final payment and the respondent had not produced any document on record to show that he was ready and willing to make the entire payment and thus he himself had committed the breach of the said agreement.
- f. No averment in the petition showing that the respondent had ever admitted to pay or tendered the alleged agreed amount. That the learned Arbitrator has failed to appreciate that on 19.07.2012, the respondent had filed a complaint with the police alleging therein that the property in question was represented to be free from all kind of encumbrances, but the same was not. It is submitted that the said FIR was filed with the sole intention to put pressure on the petitioners to part with their property at throw away price. The fact that the respondent had the knowledge that the property was mortgaged to the bank is clear from the very fact that the respondent had made a payment of Rs. 1,50,0000/- in the account of M/s Alcome Perfumes and Cosmetics Pvt. Ltd., wherein some credit facilities were accorded

to the petitioner after having mortgaged the suit property. Though the respondent had paid a total sum of Rs. 2,76,00,000/- through demand drafts and cheques, he had fabricated certain receipts to show that the payment was made in cash also. It is submitted that such huge amount could not have been paid through cash when he has been paying meagre amount through cheques and no prudent ordinary man can buy the story of the respondent and, therefore, the award is liable to be set aside.

- g. It is further contended that the Arbitrator has failed to appreciate that the petitioners, who were the owners of said property bearing No. W-54, Greater Kailash-I, New Delhi had mortgaged the said property with Bank of India for availing some credit facilities for their company M/s Alcome Perfumes and Cosmetics Pvt. Ltd. and received a notice on 10.01.2012 from the Receiver Shri Sanjeev Kumar Sharma, Advocate, for taking possession of the suit property. The said company, thereafter, filed petition bearing No. SA 14/12 which was heard on 02.02.2012 by Hon'ble DRT –I, New Delhi, whereby the bank was restrained from taking over the possession of the property in question, subject to petitioners making payment of Rs.1.5

crore within 10 days from the date of order and thereafter Rs.2 crore within next 15 days and Rs.3 crore within next 25 days. It is submitted that it was the respondent, who being a builder deals with disputed properties only, through a common friend, had approached the petitioners on 04.02.2012 and showed his willingness to pay up the liabilities of the bank in exchange of some collaboration right in respect of the premises to be created in his favour and also promised to re-construct and develop the said property thereafter and handover basement, ground and first floor to the petitioner and keep the rest of the floors with himself. The petitioners did not smell the fraudulent and mala fide intentions of the respondent and had agreed to the proposal of the respondent. In furtherance to the oral agreement dated 04.02.2012, the respondent had deposited Rs. 1.5 crore with the Bank of India as was required by Hon'ble DRT-I vide order dated 02.02.2012. At that time, the respondent obtained signatures of the petitioners on certain blank papers as well as on one stamp paper representing that for re-construction of the building, he would be required to file certain applications/petitions and affidavits, etc. to various Government departments for getting sanctions and approvals

and since it would be difficult and impossible for him to rush every time for the signature of the petitioner, the petitioner bona fide trusting the respondent and since he had acted as a saviour by depositing the said amount of Rs.1.5 crore with the bank, signed the blank papers. It is submitted that subsequently on 22.03.2012, the Bank of India had issued a compromise settlement letter and settled all its dues for a total consideration of Rs.22.40 crores payable till 31.03.2012. The petitioner had handed over the said letter to the respondent and the respondent had undertaken to pay the entire amount to the Bank of India and also promised to pay Rs 2 crore to Federal Bank as the disputes with Federal Bank was likely to be settled at Rs 2 crore. It is submitted that under the said oral agreement, the respondent had to clear the liability of the bankers and after getting the mortgage removed had to spend the money on reconstruction of the premises and thereafter to handover the basement, ground and first floor to the petitioner.

- h. That the learned Arbitrator had failed to consider the legal position that the respondent had failed to show that he had performed or was ready and willing to perform his part of the contract and has relied on

the case titled as **B.B. Sabharwal & Anr. Vs. M/s Sonia Associates,**
CS(OS) No. 998 of 1998 and **Premraj vs. DLF Housing Construction**
Pvt. Ltd. AIR 1968(SC) 1355.

- i. The Arbitrator has also failed to appreciate the fact that the Agreement to Sell was a fabricated document.

Learned counsel for the petitioner has also relied upon **ADO Overseas**
vs. Snehlata Sharma, 196 (2013) DLT 38 (CN), Ganesh Prasad vs. Dev.
Nandan AIR 1985 Patna 94 and **Rajiv Mehra vs. Sudhir Kumar 2009 (109**
DRJ 84.

- j. It is further argued that the learned Arbitrator has wrongly interpreted the provisions of Section 91 and 92 of the Evidence Act.

9. On these contentions, the petitioner has prayed that the award is bad in law and is liable to be set aside.

I have heard the arguments and perused the record.

10. At the outset, I would like to bring on record that the petitioner has relied on a number of case laws in his petition while contending that the award is illegal. The same case laws have been relied upon by the petitioner before the learned Arbitrator and the learned Arbitrator has duly considered all the submission and the supportive case laws of the petitioner in its award

and, thereafter, only reached to its conclusion and passed the award against the petitioner.

11. The present petition has been filed under Section 34 of the Act. It is a statutory provision and the jurisdiction of this Court to interfere with the award, therefore, is also statutory and the Court cannot travel beyond the scope of Section 34(2) of the Act, while dealing with a challenge to the award. The award can be interfered with only when the petitioner succeeds in showing the existence of any of the grounds enumerated in Section 34 (2) of the Act. The award cannot be interfered with on any other ground. The expression “an arbitral award may be set aside by the Court only if” is imperative and takes away the jurisdiction of the Court to set aside an award on any other ground than those specified therein.

12. The Supreme Court in the case titled as **Delhi Development Authority Vs. R.S. Sharma and Company, New Delhi** reported in (2008) 13 SCC 80 after considering several cases including (2006) 4 SCC 445, *Hindustan Zinc Ltd. V. Friends Coal Carbonisation*, (2006) 1 SCC 86, *State of Rajasthan V. Nav Bharat Construction Co.*, (2003) 5 SCC 705, *ONGC Ltd. V. Saw Pipes Ltd.*, (2002) 4 SCC 45, *Northern Railway V. Sarvesh Chopra*, (2001) 4 SCC 86, *Bharat Cooking Coal Ltd V. L.K. Ahuja & Co.*, (2000) 9 SCC 552, *Grid*

Corpn. Of Orissa Ltd V. Balasore Technical School, (2000) 8 SCC 1, *Union of India V. Popular Builders*, (1999) 9 SCC 610, *Ch. Ramalinga Reddy V. Superintending Engineer*, (1999) 8 SCC 122, *Steel Authority of India Ltd. V. J.C. Budharaja*, (1999) 4 SCC 491, *Food Corporation of India V. Sreekanth Transport*, (1997) 11 SCC 75, *New India Civil Erectors (P) Ltd. V. ONGC*, 1994 Supp (1) SCC 644, *Renusagar Power Co. Ltd V. General Electric Co.*, (1991) 4 SCC 93, *Associated Engg. Co. V. Govt. Of A.P.*, (1991) 1 SCC 498, *Prabartak Commercial Corpn. Ltd. V. Chief Administrator, Dandakaranya Project*, (1988) 3 SCC 82, *Continental Construction Co. Ltd. V. State of M.P.*, (1975) 1 SCC 289, *N. Chellappan V. Kerala SEB*, AIR 1960 SC 588, *Alopi Parshad and Sons Ltd. V. Union of India* has enumerated the grounds on which an arbitral award can be challenged. The relevant paragraph is reproduced as under:-

“21. From the above decisions following principles emerge:-

- (a) *An award, which is*
 - (i) *contrary to substantive provisions of law; or*
 - (ii) *the provisions of the Arbitration and Conciliation Act, 1996; or*
 - (iii) *against the terms of the respective contract; or*
 - (iv) *patently illegal; or*
 - (v) *Prejudicial to the rights of the parties;**is open to interference by the Court under Section 34(2) of the Act.*
- (b) *The award could be set aside if it is contrary to:*

- (a) Fundamental policy of Indian law: or*
- (b) the interest of India; or*
- (c) justice or morality.*

(c) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.

(d) It is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.

13. While in the above case, Supreme Court has laid the grounds on which the award can be challenged, in the case titled as **“Maharashtra State Electricity Board Vs. Sterlite Industries (India) and Another, (2001) 8 SCC 482**, the Supreme Court has laid down the guideline to be followed by the court while dealing with an award. It has held as under:-

“...the arbitrator’s award both on facts and law is final; that there is no appeal from this verdict; that the court cannot review his award and correct any mistake in his adjudication, unless the objection to the legality of the award is apparent on the face of it.”

14. The scheme of the Arbitration and Conciliation Act clearly shows that as soon as the award is passed, it attains finality and becomes a decree in view of Section 35 of the Arbitration and Conciliation Act, and the expression used in Section 34 clearly envisages that the courts are required to honour the award and not to interfere with it, except on the grounds enumerated above.

15. It is thus clear that unless the petitioner succeeds in showing to the Court that there is an error apparent on the face of the award or that there is any procedural error occurred during the arbitral proceeding or where the award is in conflict of any term of the agreement or the Arbitrator has travelled beyond the terms of agreement or where the award is in conflict with the public policy, the Courts are refrained from interfering with the award. Negatively speaking, certain restrictions are placed on the Court while exercising jurisdiction under Section 34 of the Act. Such restrictions are:-

(i) it is not open to the Court to re-appreciate evidences and to see whether the conclusion of the Arbitrator is right or wrong. The Courts do not sit in appeal and do not exercise the jurisdiction of the Appellate Court under Section 34(2) of the Act. Reliance is placed on **McDermott International Inc. v Burn Standard Co. Ltd. & Ors.**, (2006) 11 SCC 181=2006 SCACTC283 (SC)=2006(2) Arb. LR 498 (SC); **Numaligarh Refinery Ltd. v Daelim Industrial Co. Ltd.**, (2007) 8 SCC 466; **P. R. Shah, Shares and Stock Brokers Pvt. Ltd. v B. H. H. Securities Private Ltd. & Ors.**, (2012) 1 SCC 594.

(ii) Courts are also estopped from setting aside an award on the ground

that a different interpretation other than the one given by the Arbitral Tribunal is possible. Reliance is placed on **Numaligarh Refinery Ltd. v Daelim Industrial Co. Ltd.**, (2007) 8 SCC 466; **Rashtriya Ispat Nigam Ltd. v Dewan Chand Ram Saran**, (2012) 5 SCC 306.

(iii) The scheme of Arbitration and Conciliation Act, 1996 envisages minimum intervention of the Courts. Under the amended Act, the award of an Arbitrator is a decree and becomes enforceable, if not challenged under Section 34(2) of the Act. The grounds of challenge of an award are also codified in Section 34(2) of the Act. Even where the Arbitral Tribunal chooses a particular formula for determining the quantum of damages, the Courts are not expected to interfere simply because the damages could be calculated choosing another formula as long as the contract does not provide for any formula and the formula adopted by the Arbitrator is an acceptable and reasonable one. Reliance is placed on **McDermott International Inc.** (*supra*).

(iv) Unless it is shown that the award is so unfair or unreasonable that it shocks the conscience of the Court, the award was not to be set aside. Reliance is placed on **J.G. Engineers Private Limited v Union of India & Anr.**, (2011) 5 SCC 758.

(v) The Courts are also not required to interfere with the award on the ground of being opposed to the public policy, unless it is shown that the illegality is patent and goes to the very root of the matter. Award cannot be set aside on a frivolous or trivial illegality. Reliance is placed on **McDermott International Inc.** (*supra*) and **J.G. Engineers Private Limited** (*supra*).

16. From the petition, it is apparent that the petitioner has not raised any contention that the arbitral award is in conflict with any public policy of India nor it contains any ground to show that the award violates any public policy of India. It is also not shown if the award is violative of any law of land or settled law or principles of law. From the perusal of the award, it is apparent that the award has been based on the admissions made by the parties. All the contentions and the objections raised by the petitioner before the Arbitrator were duly considered and discussed by the Arbitrator in the award. The award has been re-agitated before this Court on the same plea which had been taken by the petitioner before the learned Arbitrator as a respondent. Learned Arbitrator, after giving due hearing to the petitioner, has dealt with all the contentions raised not only by the petitioner herein, but also by the respondent/claimant before the Arbitrator. The contentions discussed above clearly show that the petitioner wants this Court to sit in

appeal and re-assess and re-appreciate all the contentions which were raised before the Arbitrator and then decide whether the conclusion arrived at by the Arbitrator was right or wrong.

17. In the case of **Sudarshan Trading Co. Vs. Govt. of Kerala**, (1989) 2 **SCC 38**, the Supreme Court has clearly held that the Courts are not required to examine the award in order to find out whether the arbitrator had acted correctly or incorrectly. Also in the case of **Ispat Engg. & Foundry Works v. SAIL**, (2001) 6 **SCC 347**, the Supreme Court has held that there exists a long catena of cases through which the law seems to be rather well settled that the reappraisal of evidence by the court is not permissible.

18. The learned Arbitrator on the basis of evidence on record and the admissions had reached to the conclusion that there existed the agreement to sell between the parties under which the payments by way of demand drafts and by way of cash against receipts had been made to the petitioners herein. The contentions of the petitioner herein that the payments were made against an oral collaboration agreement between the parties had been rejected by the learned Arbitrator for the reasons discussed elaborately in the award. As discussed above, it is not open for this Court to re-assess and re-appreciate the evidences. On the face of it, the learned Arbitrator has correctly acted

while accepting the written agreement to sell between the parties against the alleged collaboration agreement.

19. The petitioner has failed to make out the existence any ground as enumerated under Section 34(2) of the Act which requires intervention of this Court. On the face of it, the award is well-reasoned. Every reasoning of the learned Arbitrator is supported by the case law of High Court as well as Supreme Court and each and every contention of the parties has been elaborately dealt with and discussed and the findings have been given on the basis of law of the land. The petitioner has failed to show that the award suffers any illegality or is liable to be set aside on any of the grounds enumerated in Section 34(2) of the Act.

In view of the above, the petition is dismissed *in limine*.

**DEEPA SHARMA
(JUDGE)**

OCTOBER 31st 2014
BG