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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1409 OF 2013

Seemaben @ Shamuben Shankar Patel
Adult alias inhabitant, residing at
Vedancha Village, Taluka Palanpur,
District Babaskatha, Gujarat.

...Petitioner

..Versus..

Motibhai K. Patel
Manguben @ Mangalaben M. Patel
Both Adult Indian inhabitants,
Both residing at 303, Om Shanti
Apartments, Plot No.10, Pushpa Park,
Malad (E), Mumbai – 400 097.

...Respondents

Mr.A.M. Vernekar with Mr.Samarth Pai for the Petitioner.

Mr.Vishal Sheth with Ms.Piticha Sabay i/b Bimal Raja Sekhar for the
Respondents.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 8TH JANUARY, 2015
PRONOUNCED ON : 10TH FEBRUARY, 2015.

ORAL JUDGMENT :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 (for short “the Act”), the petitioner has impugned the arbitral award dated 05.08.2013, granting various claims made by the respondents. The petitioner was the original petitioner before the learned arbitrator. The respondents herein were

the original claimants. Some of the relevant facts for the purpose of deciding the present petition are as under :

2. It is the case of the petitioner that she is an illiterate lady, who was born and brought up in a village known as Gadh, district Banaskata, State of Gujarat and had never attended any school. She was married to Shankarlal K. Patel , who was also resident of the adjoining village known as Vendancha, District Banskata, State of Gujarat. The petitioner does not know to write or read English, Gujarati, Hindi language or any other language. She also does not even know to subscribe her signature except for affixing her thumb impression. The petitioner can only converse in Gujarati language. The respondent no.1 is the younger brother of the late husband of the petitioner late Shankalal K. Patel. It is the case of the petitioner that the petitioner had accompanied her husband to Mumbai who had already settled at Malad, Mumbai. His two brothers i.e. respondent no.1 and Ramjibhai K. Patel were also settled in Mumbai.

3. Husband of the petitioner had purchased a gala bearing no.206 some time in the month of February, 1978 from the builders M/s.Goyal Brothers, admeasuring 860 sq. ft. carpet area in Jai Pragati Building at Daftary Road, Malad (East), Mumbai. Prior thereto, her husband had purchased the house property named Annette Villa, which was later renamed as "Seema Sadan" situated at

Manchubhai Road, Malad (East), Mumbai. Three children were born out of the said wedlock by the petitioner with her husband. According to the petitioner, the entire consideration for purchase of the said gala no.206 was paid by her late husband from his bank accounts with Dena Bank, Malad (E) Branch and Bank of Baroda, Malad (East) Branch and he was the sole owner of the said gala.

4. It is the case of the petitioner that few years after the purchase of the said gala no.206, by late husband of the petitioner, the respondent no.1 also purchased adjoining gala no.207 in his name, in the same building known as "Jai Pragati Building". The husband of the petitioner was carrying on diamond cutting and polishing work from his gala no.206. The respondent no.1 and younger brother Ramjibhai jointly used to carry on the same work of diamond cutting and polishing from gala no.207, which belonged to the respondent no.1. It is the case of the petitioner that during the life time of the husband of the petitioner, there was no partnership between him and the respondent no.1 or Ramjibhai K. Patel and the said gala no.206 owned by the husband of the petitioner was his own acquired assets and never became the alleged assets of the partnership firm.

5. It is the case of the petitioner that her husband had studied upto 7th standard in Gujarati and could only read, speak, write and

sign in Gujarati.

6. On 01.09.1988, husband of the petitioner died at Malad, leaving behind him the petitioner, who was then only about twenty eight years of age, two sons, who were then aged about eight to ten years and one daughter, then aged about six years.

7. It is the case of the petitioner that after the demise of the husband of the petitioner, all the properties of her husband, including the said gala no.206 and the house property Seema Sadan devolved upon the petitioner and her minor children, as per the Hindu Succession Act. The said gala no.206 was transferred in the name of the petitioner in the record of the said society and she was shown as the owner of the said gala no.206. It is the case of the petitioner that the petitioner along with her minor children however, continued to stay at her village and are residing there even today and are engaged only in farming. The petitioner has never done any business in the said gala no.206 either in the partnership with the respondents or alone.

8. It is the case of the petitioner that the respondent no.1, who was the younger brother of the husband of the petitioner, immediately after the death of her husband, represented to the petitioner that since she was staying in her village, he would look after the said gala no.206 by giving the same on leave and licence

basis / rent etc. and earn for the petitioner some income therefrom. For the said purpose, the respondent no.1 prepared some documents and obtained the thumb impression of the petitioner without explaining the contents thereof, stating that it was a power of attorney, which would be required by him to manage the said gala no.206. After few months, the respondent no.1 prepared another document stating that it was the power of attorney which was required by him on behalf of the petitioner to manage the said Seema Sadan property and on that document also, the respondent no.1 obtained the thumb impression of the petitioner, the petitioner put her thumb impression on the said document *bona-fide* believing that the respondent no.1 was looking after her properties since she was staying at her native village and the children were small. The respondent no.1 however, did not furnish any copies of the power of attorneys to the petitioner. The power of attorneys are dated 13.12.1988 and 20.07.1990, which were relied upon by the respondents in Arbitration Application No.192 of 2006 filed under section 11 of the said Act and also in the proceedings before the learned arbitrator.

9. It is the case of the petitioner that taking advantage of the illiteracy of the petitioner and also the fact that all her children were minor and were residing in the village, the respondent no.1 prepared

the deed of partnership dated 01.03.1996 in the name and style of M/s.Seemaben S.Patel showing himself, his wife respondent no.2 and the petitioner as the partners in the said firm having 1/3rd share each and bringing in the said gala no.206 to form the partnership property on the condition that the value of the said gala was Rs.7.50 lacs and that on the payment by the respondents of 2/3rd the value thereof to the petitioner, all the partners would have equal shares in the said gala.

10. It is the case of the petitioner that the respondents never made any payment as alleged in the said partnership deed. The petitioner was totally unaware of such purported power of attorney and the partnership deed but may have put her thumb impression on the said documents at the request and based on the representation made by the respondent no.1, without knowing the contents thereof. It is the case of the petitioner that she never visited any office of any advocate or notary public or put her thumb impression but the respondent no.1 appears to have obtained her thumb impression on the said purported deed of partnership by manipulation, misrepresentations and exercising deceit. It is the case of the petitioner that she had also not put any thumb impression on any application form nor visited the office of the Registrar of Firms or office of any notary public. The alleged thumb impression on the

application for registration dated 26.02.1998 is disputed by the petitioner and purported fabrication thereon.

11. It is the case of the petitioner that the respondents also fraudulently obtained the thumb impression on some documents and got Seema Sadan property transferred in their name in the year 1999, which came to the knowledge of the petitioner in 2007 from the tenants of the building. As the petitioner is poor and has no support whatsoever from any quarters, the petitioner could not take any steps against the respondent no.1 in respect of such fraud transpired.

12. It is the case of the petitioner that in the said gala no.206, no business in the name of the alleged partnership dated 01.03.1996 was ever carried out. According to the petitioner, the said gala was always been on leave and licence to the various persons in the name of the petitioner by the respondents by exercising the powers under the power of attorney dated 13.12.1988.

13. According to the petitioner, the said gala no.206 was given on leave and licence to Disha Classes and to Jethalal K. Patel. The said Disha Classes used to conduct the computer and other classes for the students in the said gala during the period 1996-1997. From 1997 till the period 31.03.2000, the said gala was given on leave and licence basis to Jethalal K. Patel for carrying on the diamond cutting and polishing business.

14. It is the case of the petitioner that the respondents have relied upon another fraudulent document i.e. the deed of dissolution dated 16.03.1999. It is the case of the petitioner that the respondent no.1 may have obtained her thumb impression on the said purported documents under misrepresentations and without disclosing the true nature of the said document. The said deed of dissolution was obtained by practicing fraud, deceit and misrepresentations upon the petitioner as was discovered by her later. Under the said alleged deed of dissolution dated 16.03.1999, the respondents had claimed that the said purported partnership firm stood dissolved with effect from 31.03.1999 and the said gala no.206 was divided into three parts, gala nos.206-A, 206-B and 206-C. The respondents were alleged to be entitled to gala nos. 206-A and 206-B portions and the petitioner was allegedly entitled to gala no.206-C portion exclusively. It is the case of the petitioner that she was not at all aware of any such purported deed of dissolution having been executed by her.

15. It is the case of the petitioner that the respondent no.1 was a committee member of the society in the year 2005 and thereafter from 2006, treasurer of the society and was having free access to the records of the said society and taking advantage of the said position, he has manipulated and tampered with the records of the society to show that the said gala no.206 was initially standing in

the name of the alleged partnership of M/s.Shankar K. Patel and thereafter transferred to M/s.Seemaben S. Patel and by virtue of the purported deed of dissolution, the respondents had become the joint owners of the said gala.

16. It is the case of the petitioner that the petitioner was getting occasionally some amount from the respondent no.1 till October, 2003 towards the rent / licence fees earned from the said gala no.206 and thus neither the petitioner nor her children bothered to find out how the respondent no.1 was managing the gala. Since November, 2003, the respondent no.1 however, stopped paying any amount to the petitioner, stating that there were no takers for the said gala no.206 on the leave and licence basis and that the said gala no.206 was lying vacant.

17. It is the case of the petitioner that the elder son of the petitioner viz. Kamlesh by the end of the month of November, 2005 decided to take charge of gala no.206 either to carry out some business himself or to manage the same and accordingly came to Mumbai and visited the said gala no.206 along with his some relatives. The said Kamlesh found one Babubhai K. Patel occupying the entire gala as a licensee for a lincese fees of Rs.17,000/- per month from December, 2003 under a leave and license agreement dated 10.11.2003 executed by him with the respondent no.1 for self

and as constituted attorney of the petitioner.

18. It is the case of the petitioner that in the said leave and licence agreement, it was firstly shown that gala no.206 was divided into three parts viz. gala nos.206-A as belonging to the respondent no.1, gala no.206-B as belonging to the respondent no.2 and gala no.206-C as belonging to the petitioner. The son of the petitioner made enquiries with the society and came to know that the society's maintenance charges, including the repair fund charges were not paid either by the respondent no.1 in respect of the said gala no.206. The son of the petitioner demanded the copy of all the documents pertaining to the said gala no.206 from the respondent no.1, however he was not furnished the documents and the respondent no.1 blatantly refused to hand over the same.

19. The petitioner addressed a letter on 28.12.2005 to the Secretary / Chairman of the Jai Pragati Co-operative Housing Society Limited placing on record that the fraud had been sought to be purported upon her by the respondents and requested for the certified true copies of all the documents submitted by the respondent no.1 to the society along with the copy of the share certificate and also the relevant entries in the membership register of the society. According to the petitioner, the said society however, did not furnish the copies of any such documents and was denied the certified copies at the

instance of the respondent no.1, who was the managing committee member of the said society. According to the petitioner, the said gala no.206 was never partitioned into three parts, as alleged by the respondents.

20. It is the case of the petitioner that the petitioner therefore, entered into a leave and licence agreement dated 04.01.2006 with Babubhai K. Patel in respect of gala no.206 on the monthly licence fees of Rs.10,000/-. The licence fees of Rs,10,000/- per month was fixed since at that time there was a fall in the real estate prices and there were no takers for the premises.

21. It is the case of the petitioner that the respondent no.1 after apprehensive of the fact that his fraud will now be exposed and to cover up the same, manipulated the said records of the society, exerted pressure on the managing committee of the society to transfer the said gala no.206, which was standing in the name of the petitioner to M/s.Seemaben S. Patel. The said discussion took place in the managing committee of the society held on 13.12.2005 and 04.01.2006, as per minutes of the meeting placed on record before the learned arbitrator by the respondents.

22. On 12.01.2006, the petitioner addressed a letter through her advocate to the society placing on record the fraud played by the respondents. On 18.02.2006 the respondents through advocate's

notice sought to invoke the arbitration clause contained in the purported partnership deed calling upon the petitioner to appoint her arbitrator. The petitioner replies to the said notice by her advocate's letter dated 18.03.2006 denying any such purported partnership between them or any joint ownership of the respondents with the petitioner to the said gala no.206.

23. The petitioner entered into a leave and licence agreement with said Babubhai K. Patel on 25.01.2008 for a period of 24 months i.e. upto 31.01.2010. In the month of May, 2008 the said Jai Pragati Co-operative Housing Society Ltd. demanded from the petitioner a sum of Rs.80,947/- towards the arrears of maintenance and the repair funds. On 31.07.2008, the petitioner paid a sum of Rs.40,947/- and Rs.40,000/- by two separate cheques to the society. The society issued two receipts in the name of M/s.Seemaben S. Patel. When the son of the petitioner questioned as to why the receipts were issued in the name of M/s.Seemaben S. Patel, he was informed that the record of the society had been changed at the instance of the respondent no.1 and by a resolution dated 04.01.2006, the managing committee had resolved to issue future bills and receipts only in the name of M/s.Seemaben S. Patel. The son of the petitioner protested in respect of such illegality, but the Secretary of the society expressed his helplessness to do anything in the matter.

24. On the expiry of the leave and licence agreement, the petitioner by a letter dated 01.02.2010 called upon the said Babubhai K. Patel to vacate the said premises but he did not vacate. The petitioner thereafter sent reminder and legal notice to the said Babubhai K. Patel to vacate the said gala no.206, which was neither responded to by the said Babubhai K. Patel nor he vacated the said gala no.206.

25. Since the petitioner denied that there being any valid and enforceable partnership or deed of dissolution dated 16.03.1999, the respondents filed Arbitration Application No.192 of 2006 under section 11 of the said Act inter-alia praying for the sole arbitrator and also filed separate Arbitration Petition No.225 of 2007 under section 9 of the said Act, inter-alia praying for interim measures of appointment of the court receiver in respect of the said gala no.206 and for an order restraining the petitioner from alienating, encumbering or parting with the said gala no.206. This court, however, dismissed Arbitration Petition No.225 of 2007 by an order dated 20.07.2007 save and except recording the statement on behalf of the petitioner that said Babubhai K. Patel, who was impleaded as respondent no.2 therein, was in possession of the entire gala no.206 on leave and licence basis and that he shall not execute any leave and licence agreement nor shall part with possession or create any third party

rights for a period of six weeks from the date of the said order. The respondents preferred an appeal against the said order dated 20.07.2007. By consent of the parties, the period of six weeks specified in the order dated 20.07.2007 was modified to read "period beyond the proceeding of six weeks and the appeal was disposed of".

26. Insofar as the application for appointment of the arbitrator filed by the respondents is concerned, the petitioner filed her affidavit in reply denying the existence of any partnership deed between the parties and alleged that her thumb impression was obtained by the respondent no.1 by misrepresentation and without explaining the said documents. By an order dated 16.10.2009, the said arbitration application was disposed of by consent. The parties agreed to refer the dispute between them for arbitration as per the questions / points for dispute tendered before the Hon'ble Chief Justice. By the said order dated 16.10.2009, the Hon'ble Chief Justice appointed the learned arbitrator.

27. Pursuant to the directions issued by the learned arbitrator, the respondents filed the statement of claim along with compilation of documents. The petitioner filed written statement and also counter claim. The respondents filed further pleadings to the counter claim. The respondents examined three witnesses, including the respondent

No.1. The petitioner examined herself and three other witnesses in support of her claim.

28. After six months of conclusion of hearing, the learned arbitrator conveyed that the copy of the original award be collected from his office on payment of stenographers charges of Rs.40,200/- by making payment, half share each. The petitioner accordingly collected the copy of the award dated 05.08.2013 from the office of the learned arbitrator on 24.10.2013. By the said award, the learned arbitrator has granted various reliefs in favour of the respondents and rejected the counter claims made by the petitioner with costs quantified of Rs.5,40,000/-. The said award has been impugned by the petitioner in this petition under section 34 of the said Act.

29. Mr.Vernekar, the learned counsel for the petitioner submits that the suit for account would include the suit for share in the partnership assets and would attract Article 5 to the schedule of Limitation Act, 1963. It is submitted that the alleged partnership was executed on 1st March, 1996. The alleged deed of dissolution was executed on 16th March, 1999. The arbitration clause has been invoked only on 18th February, 2006. In support of the plea that the respondents (original claimants) had claimed share in the partnership assets, my attention is invited to various paragraphs of the statement of claim filed by the respondents before the learned arbitrator.

30. The learned counsel also invited my attention to the findings rendered by the learned arbitrator on the issue of limitation recorded in paragraphs 12 to 24 of the impugned award and would submit that the finding of the learned arbitrator that the dispute arose in the month of November, 2005 when the claimants' rights in respect of said gala nos.206-A and 206-B were sought to be jeopardized by the respondent (petitioner herein), is totally erroneous and contrary to Article 5 of the schedule to Limitation Act. On one hand the learned arbitrator has held that the dissolution of the firm of M/s.Seemaben S. Patel and the sub-division of the said gala no.206 have been subsequently acted upon and that the parties having been already put in possession in respect of their respective shares of the said gala, as stated in the deed of dissolution, there had been no issue remained outstanding as to the accounts of the erstwhile firm M/s.Seemaben S. Patel and on the other hand has held that dispute arose in December, 2005. Both these findings are *ex-facie* inconsistent and patently illegal.

31. In support of this plea, the learned counsel placed reliance on the judgment of the Madras High Court in the case of *Chitturi Venkataratnam & Ors vs. Siram Subba Rao*, Vol.XLIX, the *Indian Law Reports*, 738. The relevant part of the said judgment relied upon by the learned counsel is extracted as under :-

“Under section 253 of the Contract Act all partners are joint owners of the partnership property, but the share of each partner in the partnership property is the value of his original contribution increased or diminished by his share of profit or loss, i. e., he can only claim to receive his share of the assets of the partnership after all accounts have been taken. This is clearly shown in *Sudarsanam Maistri v. Narasimhulu Maistri* (1902) I.L.R. 25 Mad. 149. In that case the plaintiff sued for a share in the partnership which admittedly was possessed of immoveable property and it was held that his suit was barred by limitation. It was argued that in respect of the immoveable property the suit would be in time, although as a suit for dissolution of partnership it was barred by limitation. It was, however, held that the only suit which he could bring would be for winding up the business of the partnership for distribution of the surplus and not a suit for partition of the partnership properties. Similarly in *Gopala Chetty v. Vijayaraghavachariar* (1922) I.L.R. 45 Mad., it was held by the Judicial Committee that a suit to recover a share in property which fell in after the dissolution of the partnership could not be maintained when the right to sue for an account was barred by limitation. These two cases are certainly authority for holding that a partner as such cannot sue for a specific share in the partnership property, but his only remedy is to sue for taking accounts and ascertainment of his share. A question similar to the present one arose in *Jaharmal v. Tejram Jagrup* (1893) I.L.R. 17 Bom. 235, where it was held by JARDINE, J., that a certain document transferring a share in the assets of a firm which was possessed of immoveable property did not require registration

..... Similarly in a partnership business a partner may be a co-owner in the property, but he has no right to ask for a share in that property but only that the partnership business should be wound up, including therein the sale of the immoveable property, and to ask for his share in the resulting assets. Before a partner releases his right in the partnership property that property belongs to the partnership and incidentally to him as a member of the partnership but

not in his individual capacity. When, therefore, he retires from the partnership by releasing his rights therein, the property still remains the property of the partnership and the action in releasing his rights does not actually extinguish his right in the immoveable property, for he receives his share of the assets on going out of the partnership, and the immoveable property still remains the property of the partnership as it was before. I would therefore hold that Exhibit III does not require registration."

32. The learned counsel also placed reliance on the judgment of the Madras High Court in the case of *Mohideen Bee vs. Syed Meer Saheb*, Vol.XXXVIII, the *Indian Law Reports*, Madras Series, 1099. The relevant part of the said judgment relied upon by the learned counsel is extracted as under :-

"The plaintiffs in this case are the heirs of one Syed Oomer Sahib who died about nineteen years ago, leaving three sons and three daughters all of whom attained their majority considerably more than three years before this suit. Syed Oomer had a brother Syed Meer who survived him and is the first defendant in the case. The plaint itself is very difficult to understand as it appears to intermingle Muhammadan and Hindu Law in a very confused manner; but paragraph 7 sets out that Syed Oomer carried on business jointly with his brother the first defendant and that the properties set out in Schedule A "were purchased out of the moneys acquired in the said joint business and the sale-deeds thereof were clandestinely secured by the first defendant in his own name." Clearly the allegation is that the two brothers carried on a partnership business which was dissolved by the death of Syed Oomer and that the properties set out in Schedule A are part of the assets. It is perfectly clear that the proper suit against the first defendant on those allegations would be a suit for an account of the partnership as from the date of the death of Oomer, and the property that would be divisible would be the assets which remained after the

realization of the partnership property and the payment of the partnership debts. Such a suit would have become barred more than fifteen years ago, under article 106 of the Limitation Act. Paragraph 8 sets out that after the death of Syed Oomer his two sons, second and third plaintiffs, one Khader Saheb and the first defendant carried on various businesses and the immoveable properties set out in Schedule B to the plaint were purchased out of the earnings of the joint business. Here again the alleged partnership was dissolved on the death of Khader Saheb who admittedly died four years ago, and a suit on account of these transactions is likewise barred. Paragraph 14 sets out that the first defendant with the assistance of the funds of the family carried on a business in partnership with one Patel Hussain. This is apparently part of one of the firms mentioned in paragraph 7 or 8. In that case this claim is also barred. It was admitted that this business was carried on in the years 1903-04 and a suit for an account is, therefore, barred. Paragraph 15 alleges that some fuel depot business was carried on under the management of Syed Khader Saheb. Any suit with regard to this should have been brought within three years from the dissolution of partnership and the claim to this item is likewise barred. Paragraph 16 alleges that the first defendant received the sale-proceeds of a house which was sold by the first plaintiff and another person (now deceased). The moneys were received by him so long ago as 1895 and any claim against him is barred under Article 62 of the Limitation Act. Paragraph 17 alleges that about 1897 the first defendant realised some moneys which had been invested on a mortgage. This claim is barred for the same reason. “

33. The learned counsel also placed reliance on the judgment of the Allahabad High Court in the case of *Niaz Ahmad vs. Abdul Hamid*, Vol.XXX, the *Indian Law Reports*, Allahabad Series, 279. The relevant part of the said judgment relied upon by the learned counsel is extracted as under :-

“The fifth question is - "is the present suit barred under article 106 of the second Schedule of the Limitation Act (XV of 1877) ?" Although the suit is not in terms a suit for a share of profits of a dissolved partnership, it is found by the Courts below that the partnership was dissolved upwards of three years before the suit was instituted in Naini Tal, and as the plaintiff would not have been entitled to the relief he asked for without an account and a finding as to his share of the profits of the partnership, we hold that his present suit is barred.”

34. Mr.Vernekar placed reliance on the judgment of the Privy Council in the case of *K.Gopal Chetty & Anr. vs. L.G. Vijayaraghavachariar*, AIR 1922, Privy Council, 115 and in particular pages 118 and 119 of the judgment which are extracted as under :-

“At any rate, in all cases where for any reason it did occur that after the dissolution and complete winding up of a partnership an asset which had not been taken into account fell in, it ought to be divided between the expartners or their representatives according to their shares in the former partnership

If on the other hand no accounts have been taken and there is no contest that the partners have squared up, then the proper remedy where such an item falls in is to have the accounts of the partnership taken; and if it is too late to have recourse to that remedy, then it is also too late to claim a share in an item as part of the partnership assets, and the plaintiff does not prove, and cannot prove that upon the due taking of the accounts he would be entitled to that share.”

35. The learned counsel placed reliance on the judgment of the Allahabad High Court in the case of *Kashi Ram vs. Kundan Lal & Ors.*, 1956 AIR, Allahabad 660 and in particular paragraph 17 on the

issue of limitation which is extracted as under :-

“17. It was contended by the learned counsel for the plaintiff-respondent that, although a suit for accounts and share of profits may be time-barred, the suit, so far as it relates to a share in the assets of the dissolved firm, is not covered by Art. 106 of the Limitation Act and is not time-barred. This contention is not well-founded. The circumstances in the present case are such that the plaintiff-respondent's share in the assets cannot be ascertained unless accounts are taken.

Banarsi Das and Munna Lal contend that the plaintiff-respondent has already appropriated during the period of his resident managership much more than his share of the assets in the partnership property. Where the circumstances are such that shares in the assets of the partnership cannot be determined without taking accounts and where the suit for accounts is time-barred, the suit for share in the assets must also fail on the ground of limitation.

This was laid down in the cases of Niaz Ahmad v. Abdul Hamid 30 All 279 (AJ and Gobardhan v. Ganeshi Lal 11 Ind Cas 288 (All) (B). The same question came up for consideration before their Lordships of the Privy Council also and they adopted the same view. In the case of Gopal Chetty v. Vijayaraghavachariar AIR 1922 PC 115 (C) their Lordships observed as follows on page 119.

"If on the other hand no accounts have been taken and there is no contest that the partners have squared up, then the proper remedy where such an item falls in is to have the accounts of the partnership taken; and if it is too late to have recourse to that remedy, then it is also too late to claim a share in an item as part of the partnership assets, and the plaintiff does not prove, and cannot prove that upon the due taking of the accounts he would be entitled to that share. It might well be the case that one of the reasons why no final balancing of accounts took place was that A owned the partnership so much money and

that it was anticipated that B would hereafter receive a particular item which would operate substantially to balance the claim."

It will therefore follow that not only a claim for accounts and share of profits but also a claim for share in the assets of the dissolved partnership is time-barred. "

36. The learned counsel placed reliance on the judgment of the Kerala High Court in the case of *K. Balakrishnan Nair & Anr. vs. K. Gopalan Nair*, AIR 2004 Kerala, 271 and in particular paragraph 11 on the issue of limitation which reads as under :-

"11. Learned counsel for the appellants further contended that the claim of the respondent is barred by limitation. He relied on two Articles of the Limitation Act, i.e. Articles 5 and 26. Article 26 of the Limitation Act states thus, "that for money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them". We are of the view that the claim made by the plaintiff will not come under this Article. Account stated imply that there must be reciprocal demands between the parties, i.e. where several cross-claims are brought into account on either side and are set off against each other and a balance is struck. In this case, the relevant Article is Article 5. Article 5 of the Limitation Act states as follows :

For an account and a share of the profits of a dissolved partnership	Three years	The date of the dissolution
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According to the appellants, the Firm was dissolved on 30-3-1999 and the suit was filed beyond three years. Learned counsel submitted that this Article only applies for the share in profits and it does not apply for a share in the capital .But according to us, the contention raised by the plaintiff cannot be accepted. It has been stated in Rustomji on the Law of Limitation

and Adverse possession. Seventh Edition at pages 562 and 563 thus :

"The expression "share of the profits" in Art. 5 looks at first sight as if the Article were restricted to a claim for a share of the profits alone. But it is clear that the Article applies equally to a claim for a share in the capital. In other words, the Article covers a suit for a partnership account and to recover plaintiffs share of the assets and property of the partnership business".

Anyhow, the question of limitation was not raised before the Court below. Hence, we are not entering into a finding on this. We direct that the question shall be considered and decided by the trial Court. "

37. Reliance is placed by the learned counsel on the judgment of the Madras High Court in the case of *M.M. Vallimmai Achi & Ors. vs. KN. PL. V. Ramanathan Chettiar & Ors*, AIR 1969, Madras 257 and in particular paragraphs 7 and 8 on the issue of limitation which reads as under :-

"7. Learned Counsel for the appellants submits that the distinction which the learned District Judge has made that different considerations arise as regards the claim for partition of immovable properties of a dissolved firm is wholly untenable and opposed to law. Learned Counsel points out that the question, as it stands to say, is beyond the pale of forensic controversy. If a suit for accounts is barred, equally a suit for a share in the properties of a dissolved firm - be they immoveable or other properties, is barred. It is urged that the partnership law makes no distinction in the matter of taking of accounts on dissolution between immoveable properties and other properties.

8. It is now settled law that a partner's or his representative's lien with reference to partnership assets is on the surplus of the assets of the firm and

not on any particular item of property belonging to the partnership. On the dissolution of a firm, all the properties belonging to the partnership have to be sold and the sale proceeds after discharging all the partnership debts liabilities, have to be divided among the partners according to their respective shares, and this is the general rule. The lien of a partner is not one on any specific assets of the partnership existing on the death of a partner such as would fetter its conversion into money. The right of a representative of a partner is really a claim against the surplus assets on realisation - whether the surplus assets consist entirely of the proceeds of realisation or whether they include some specific items of property which existed on the death of the partner. The proper remedy of a partner in the circumstances is to have accounts taken to ascertain his share and if the right to sue for accounts is barred by limitation, the partner cannot sue any partner in possession of the assets for a share therein. If after taking accounts and discharging the mutual rights and obligations of the partners or their representatives an asset which has been forgotten or treated as valueless afterwards falls in, that asset no doubt will be divided between the partners or their representatives in proportion to their shares in the partnership. ”

38. Relying upon the aforesaid judgment, it is submitted that since the arbitration agreement was invoked much after three years of the cause of action having arisen which would commence from the date of dissolution of the suit firm, the impugned award allowing the time barred claims of the respondents would be in conflict with the public policy.

39. It is submitted by the learned counsel that the claims made by the respondents for the alleged share in the partnership assets

were not arbitrable on the ground that even according to the respondents all the accounts of the suit firm had been already drawn and settled, all the partnership assets were already distributed under the deed of dissolution and no issue remained outstanding under the partnership deed. In support of this plea, the learned counsel invited my attention to the findings rendered by the learned arbitrator and more particularly in paragraphs 23 and 24 of the impugned award holding that the dissolution of the partnership firm and the sub-division of the assets mentioned therein had been already acted upon and no issue remained outstanding. It is submitted by the learned counsel that on one hand the learned arbitrator has held that no issues under the partnership deed remained outstanding as all the assets were already distributed under the deed of dissolution itself, however on the issue of arbitrability, the learned arbitrator contrary to such finding has held that the issue relating to the sub-division of the assets was arbitrable. It is submitted that the award shows patent illegality and contradictions on the face of it and thus the award deserves to be set-aside on this ground. It is submitted that once the learned arbitrator had come to the conclusion that under the deed of dissolution the parties had already distributed the properties, the learned arbitrator could not have come to the conclusion that the claim was arbitrable.

40. It is submitted by the learned counsel that even if according to the respondents the firm already stood dissolved and all the accounts were already drawn up and the assets of the suit firm were already distributed and the deed of dissolution was acted upon and no issues remained outstanding under the partnership deed, the arbitration clause in the partnership deed which could be invoked only in respect of the issue arising out of the partnership deed could not have been invoked for adjudication of the claim of possession of such partnership assets, which were already distributed long back. It is submitted that for adjudication of such claims, the only remedy of the respondents was to file a civil suit and the arbitration agreement could not have been invoked in respect of such claims which had nothing to do with any dispute under the partnership deed and / dissolution deed alleged to have been entered into between the parties. It is submitted that the learned arbitrator has thus acted beyond his jurisdiction and the award is in conflict with the public policy.

41. The next submission of the learned counsel is that though several third party agreements were relied upon by the respondents which were disputed by the petitioner, the learned arbitrator marked those disputed documents as exhibits without the same being proved by the respondents in accordance with law and in particular in

compliance with the principle of natural justice which applies to the arbitration proceedings. However, the documents relied upon by the petitioner were not marked as exhibits on the ground that the same were not proved. It is submitted that the learned arbitrator has thus applied different yard-sticks for marking all the documents of the petitioner and the respondents. The learned arbitrator had not treated both the parties equally.

42. It is submitted that though various points for consideration were framed by the Hon'ble Chief Justice by consent of the parties extracted by the learned arbitrator in the impugned award, the learned arbitrator has not rendered the findings on various issues and more particularly on issue nos. (iv) and (v) and rendered very vague finding on issue nos.(vi) and (ix). The learned arbitrator has thus not decided in accordance with law and what was submitted to him for adjudication by the parties. The award is liable to be set-aside on this ground also.

43. It is submitted by the learned counsel that in paragraphs 28 to 34 of the impugned award, the learned arbitrator has rendered an illegal finding that the said gala no.206 originally belonged to M/s.Shankar K. Patel and was subsequently treated as an assets of M/s.Seemaben S. Patel. It is erroneously held by the learned arbitrator that the said gala no.206 was purchased by the partnership

firm of M/s.Shankar K. Patel and that the consideration amount for purchase thereof was paid by M/s.Shankar K. Patel to the builder. Though the respondent in the oral evidence led before the learned arbitrator did not produce any books of accounts, bank statements or other related documents of accounts in respect of the allegations that the said gala no.206 was purchased by M/s.Shankar K. Patel and the consideration was paid by the said firm and thereafter was treated as an assets of the suit firm falsely alleging that all such documents, including the books of accounts were destroyed by the respondents, the entire story of the respondent is accepted without any evidence on record proving title of the firm of that gala.

44. The learned arbitrator ought to have drawn adverse inference against the respondents from withholding the best evidence which if produced, would have gone against the respondents and would have proved that the said gala no.206 was purchased by the husband of the petitioner and not by the alleged firm of M/s.Shankar K. Patel for M/s.Seemaben S. Patel. Respondent No.1 claimed to be a partner of the said firm M/s.Shankar K. Patel and subsequently of M/s.Seemaben S. Patel and was thus the best person who could produce the relevant documents. Though the learned arbitrator accepted the allegation of respondent no.1 that initial payment of Rs.25,000/- was paid by the husband of the petitioner for purchase of

the said gala no.206, the learned arbitrator erroneously held that the said gala was purchased by M/s.Shankar K. Patel and was subsequently treated as an assets of the firm M/s.Seemaben S. Patel.

45. It is submitted by the learned counsel that neither in the alleged partnership deed of M/s.Shankar K. Patel nor in any other document produced by the respondents, it could be proved that the said gala no.206 was an assets of M/s.Shankar K. Patel and was thereafter treated as an assets of M/s.Seemaben S. Patel. The entire award is based on no evidence and is the basis of presumption and surmises.

46. The learned counsel invited my attention to paragraphs 5, 10, 11, and 12 of the statement of claim filed by the respondents before the learned arbitrator and would submit that the case of the respondent was contrary to even the partnership deed of M/s.Seemaben S. Patel. The learned arbitrator had relied upon the oral evidence led by the respondents, which was beyond and contrary to the contents of alleged documents entered into between the parties. The oral evidence could not have been permitted beyond the pleading filed by both the parties. The entire award is contrary to and in violation of the principles of natural justice.

47. It is submitted that though the petitioner had made series

of allegations and have demonstrated that the respondents had committed fraud upon the petitioner, who was an illiterate lady and her thumb impression on various documents had been taken without explaining the contents thereof, the learned arbitrator did not take that issue seriously and rendered a vague finding that the petitioner had not proved such allegations. The petitioner had led oral as well as documentary evidence to prove and demonstrate that the respondents had committed the fraud upon the petitioner and had relied upon various fabricated documents.

48. The learned counsel placed reliance on section 4 of the Partnership Act, 1932 and would submit that the partnership deed can be entered into only with an intent to carry on business. The learned counsel invited my attention to several parts of the cross-examination of the witness examined by the respondents in which respondent no.1 who entered the witness box was called upon to produce the books of accounts, statement of bank accounts and any other proof to show that any business was carried on in the name of M/s.Shankar K. Patel or M/s.Seemaben S. Patel, the witness bluntly deposed that each of such documents have been destroyed. It is submitted that even the purchase agreement of gala no.206 was not produced by the respondents, in support of the plea that the said gala no.206 was purchased by M/s.Shankar K.Patel and subsequently

became the assets of M/s.Seemaben S. Patel.

49. It is submitted that in the affidavit in lieu of evidence, the respondents had changed the entire story of the respondents which was contrary to and inconsistent with the stand taken in the statement of claim. The learned counsel submits that the respondents would have examined the managing committee member and would have produced the society's records in respect of gala no.206 to prove their case that the said gala no.206 was purchased by M/s.Shankar K. Patel and was subsequently treated as an assets of M/s.Seemaben S. Patel and the said gala continued to be in the name of the firm M/s.Seemaben S. Patel. The respondents did not even examine the builder from whom the said gala was purchased. The share certificate in respect of said gala was alleged to have been misplaced. The respondents did not bother to make any application for issuance of duplicate share certificate.

50. It is submitted that though no document of title or proof of purchase of the said gala was produced by the respondents to demonstrate that the said gala was acquired by M/s.Shankar K. Patel and was subsequently treated as an assets of M/s.Seemaben S. Patel, the learned arbitrator without any basis and without any evidence rendered a finding that the said gala no.206 was purchased by M/s.Shankar K. Patel and was subsequently treated as an assets

of M/s.Seemaben S. Patel under section 14 of the Partnership Act, 1932.

51. The learned counsel invited my attention to various parts of the cross-examination of the witness examined by the respondents who deposed that the books of account, balance-sheet and various registers of the suit firm were already destroyed. The learned arbitrator ought to have drawn an adverse inference against the respondents for not producing the relevant documents.

52. Insofar as the power of attorney relied upon by respondent no.1 alleged to have been executed by the petitioner is concerned, it is submitted by the learned counsel that admittedly in the said power of attorney, the title of the petitioner was accepted in respect of gala no.206. Respondent No.1 had acted upon the said power of attorney and executed the leave and licence agreement even after execution of the alleged deed of dissolution much prior to the execution of such leave and licence agreement. The story of respondent no.1 that though he had acted upon the said power of attorney number of times, but had not read the contents of such power of attorney, could not have been believed by the learned arbitrator. It is submitted that the entire story of the respondents was concocted and though ex-facie was false, the learned arbitrator unfortunately believed such false and fabricated case of the respondents.

53. It is submitted that the petitioner examined Jethabhai Patel, who had occupied the said gala and had produced large number of documents to show that he was carrying on business in the said gala and the same was not divided in three parts. Respondent no.1 had not produced any documents showing division of the said gala in three parts or he could not produce permission from the Bombay Municipal Corporation for division of such gala in three parts. The learned arbitrator however, without any evidence on record, rendered the finding that the said gala no.206 was divided into three parts and was already distributed among the parties in accordance with the provisions of the deed of dissolution.

54. It is submitted by the learned counsel that though there was no monetary claim referred to the learned arbitrator, he has awarded monetary claim and has exceeded his jurisdiction by allowing such claim not referred to him. That part of the award is also liable to be set-aside on this ground.

55. It is submitted by the learned counsel that the entire award is totally one sided and overlooking the pleadings and the evidence led by the petitioner before the learned arbitrator and thus the award deserved to be set-aside on this ground also.

56. The learned counsel submits that the learned arbitrator was totally biased against the petitioner all through out in the

arbitration proceedings and the award is vitiated on this ground also. It is submitted that the learned arbitrator was not treating both the parties equally.

57. The learned counsel placed reliance on the judgment of the Supreme Court in the case of *Oil & Natural Gas Corporation Limited vs. Western Geco International Limited*, (2014) 9 SCC 263 = 2014 SCC OnLine SC 674 and submits that since the learned arbitrator has decided in violation of the principles of natural justice and has considered unproved documents and has ignored the material and crucial documents produced by the petitioner and since the award shows patent illegality on the face of award, this court has ample power to set-aside such award under section 34 of the said Act. Reliance is placed on paragraphs 24 to 30 of the said judgment which read thus :-

“32. We may at this stage deal with the contention urged on behalf of the respondent that the jurisdiction of the Court to set aside an arbitral award being limited to grounds set out in Section 34 of the Arbitration and Conciliation Act, 1996, this Court ought not to interfere with the same. It was contended that none of the grounds on which a court is authorised to interfere with an arbitral award are present in the case at hand. Alternatively, it was contended that even if a contrary view is possible on the facts proved before the Arbitral Tribunal, the Court cannot, in the absence of any compelling reason, interfere with the view taken by the arbitrators as if it was sitting in appeal over the award made by the Tribunal.

.33. Section 34 of the Arbitration and Conciliation Act,

1996 reads:

“34. *Application for setting aside arbitral award.*—

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation.—Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81.”

34. It is true that none of the grounds enumerated under Section 34(2)(a) were set up before the High Court to assail the arbitral award. What was all the same urged before the High Court and so also before us was that the award made by the arbitrators was in conflict with the “public policy of India”, a ground recognised under Section 34(2)(b)(ii) (supra). The expression “public policy of India” fell for interpretation before this Court in *ONGC Ltd. v. Saw Pipes Ltd.* and was, after a comprehensive review of the case law on the subject, explained in para 31 of the decision in the following words: (SCC pp. 727-28)

“31. Therefore, in our view, the phrase ‘public policy of India’ used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term ‘public policy’ in *Renusagar case* it is required to be held that the award could be set aside if it is

patently illegal. The result would be—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, or
- (d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.”

35. What then would constitute the “fundamental policy of Indian law” is the question. The decision in *ONGC* does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression “fundamental policy of Indian law”, we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The *first and foremost* is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a “*judicial approach*” in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them

shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

36. In *Ridge v. Baldwin*, the House of Lords was considering the question whether a Watch Committee in exercising its authority under Section 191 of the Municipal Corporations Act, 1882 was required to act judicially. The majority decision was that it had to act judicially and since the order of dismissal was passed without furnishing to the appellant a specific charge, it was a nullity. Dealing with the appellant's contention that the Watch Committee had to act judicially, Lord Reid relied upon the following observations made by Atkin, L.J. in *R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd.*: (KB p. 205)

"... Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

37. The view taken by Lord Reid was relied upon by a Constitution Bench of this Court in *Associated Cement Companies Ltd. v. P.N. Sharma* wherein Gajendragadkar, C.J. speaking for the Court observed: (AIR p. 1601, para 14)

"14. ... In other words, according to Lord Reid's judgment, the necessity to follow judicial procedure and observe the principles of natural justice, flows from the nature of the decision which the Watch Committee had been authorised to reach under Section 191(4). It would thus be seen that the area where the principles of natural justice have to be

followed and judicial approach has to be adopted, has become wider and consequently, the horizon of writ jurisdiction has been extended in a corresponding measure. In dealing with questions as to whether any impugned orders could be revised under Article 226 of our Constitution, the test prescribed by Lord Reid in this judgment may afford considerable assistance."

38. Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated *audi alteram partem* rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of *Wednesbury principle* of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a

definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest."

58. Mr.Sheth, learned counsel for the respondents on the other hand submits that both the parties had claimed ownership in gala no.206 and not the respondents alone. Since there was an issue of ownership raised by parties, the learned arbitrator in the impugned award, has dealt with the said issue and has rightly held that the said gala was initially owned by M/s.Shankar K. Patel and thereafter was taken over by the firm M/s.Seemaben S. Patel. The learned arbitrator has also rendered a finding that all the assets of the partnership were distributed under the deed of dissolution and the deed of dissolution has been acted upon by all the parties. This court cannot interfere with such findings of fact rendered by the learned arbitrator under the limited scope provided under section 34 of the said Act. It is submitted that the respondents had produced the receipts issued by the builders in respect of the said gala in favour of M/s.Shankar K. Patel. The respondents also produced the copies of the cheques issued by M/s.Shankar K.Patel towards the part consideration of the

said gala in favour of the builders. It is submitted that merely because respondent no.1 was the treasurer and was the managing committee member for a short time, no inference can be drawn against respondent no.1 on the allegations of fabrication made by the petitioner against respondent no.1.

59. It is submitted that though there was no reference to gala no.206 in the partnership deed entered into between the parties, the fact remains that there was no other gala existence in the name of M/s.Shankar K. Patel when the partnership deed was entered into between the petitioner and the respondents herein. The learned counsel submits that since the consideration amount of the said gala was paid by the said M/s.Shankar K. Patel and the said asset was subsequently taken over by M/s.Seemaben S. Patel, the petitioner as well as the respondents were entitled to share in the said gala as recorded in the deed of dissolution. It is submitted that in any event since the said document was 30 years old, the same was not required to be proved under section 90 of the Evidence Act. The business of the old firm M/s.Shankar K. Patel was continued by the new firm M/s.Seemaben S. Patel.

60. Insofar as the allegation of forgery made by the petitioner is concerned, it is submitted by the learned counsel that the petitioner did not prove such allegations of forgery against the respondents.

The firm was incorporated and registered. It is submitted that in terms of the partnership deed and dissolution deed, the respondents had already made payment to the petitioner in respect of the house property described therein and thus even such house property became the asset of the suit firm.

61. Insofar as the submission of the petitioner that in the power of attorney which was relied by the respondents, the petitioner was described as an owner of the said gala no.206 is concerned, it is submitted that respondent no.1 did not read the said power of attorney when the same was executed by the petitioner in favour of respondent no.1. In any event the petitioner alone could not have claimed exclusive ownership in respect of the said gala even if the same belonged to her husband since the mother of Mr.Shankar Patel was alive on the death of Mr.Shankar Patel and thus had equal share with the petitioner in the said gala.

62. Insofar as the submission of the petitioner about there being no sub-division of gala no.206 is concerned, it is submitted by the learned counsel that respondent no.1 had telephone bills at the address of the said sub-divided gala allotted to respondent no.1 and had produced the telephone bills in support of such submission. There was no cross-examination of respondent no.1 in respect of such telephone bills showing the address of the sub-divided gala

alleged to respondent no.1 under the deed of dissolution. The learned counsel submits that the dissolution deed was acted upon by and between the parties. Even the leave and licence agreement entered into by the petitioner herself on 4th January, 2006 would indicate that the said agreement was for gala no.206-B and not for the entire gala bearing no.206. It is submitted that under the deed of dissolution, sub-divided gala nos.206-A and 206-B came to the share of respondent Nos.1 and 2 respectively, gala no.206-C was given to the petitioner as her share. The respondents had filed a suit for eviction of Babubhai K. Patel in the Small Causes Court in respect of gala no.206-A. The petitioner was collecting compensation from said Babubhai K. Patel in respect of the entire gala even after an injunction order came to be passed by the learned arbitrator under section 17 of the said Act. It is submitted that the learned arbitrator was thus justified and has rightly awarded the monetary claim in favour of the respondents and against the petitioner.

63. It is submitted that there is no substance in the submission of the petitioner that the learned arbitrator considered the third party documents which were not proved by the respondents and did not consider third party documents relied upon by the petitioner. It is submitted that even the said Jethalal K. Patel produced large number of third party documents, who was examined as one of the witnesses

of the petitioner and such third party documents have been considered by the learned arbitrator. The learned arbitrator has thus treated both the parties equally.

64. It is submitted by the learned counsel that by consent the points for consideration were framed by the parties themselves while referring the matter to the learned arbitrator under section 11 of the said Act. The learned arbitrator has decided all issues / points in different groups. The learned arbitrator has rendered the finding of each and every issue / point for determination.

65. Insofar as the issue of jurisdiction and limitation raised by the petitioner is concerned, it is submitted by the learned counsel that no such issue of jurisdiction and/or limitation was raised by the petitioner in the application filed by the respondents for appointment of the arbitrator under section 11 of the said Act filed in this court. The parties, by consent, had referred the disputes enumerated in the order to the learned arbitrator for adjudication without reserving any liberty to challenge the jurisdiction of the learned arbitrator or keeping the issue of limitation open. The petitioner thus cannot be allowed to raise such issue for the first time in these proceedings.

66. Insofar the judgments relied upon by the petitioner on the issue of limitation are concerned, it is submitted by the learned counsel for the respondents that none of the judgments relied upon

by the petitioner are applicable to the facts of this case. In none of the cases relied upon by the petitioner, the accounts were settled between the partners. All the judgments are thus distinguishable.

67. Insofar the allegations of bias made by the petitioner in the arbitration petition are concerned, it is submitted by the learned counsel that since no application under sections 12 and 13 of the said Act was made by the petitioner before the learned arbitrator and no such allegations were ever made in the pleadings before the learned arbitrator, such allegations cannot be allowed to be made for the first time in this petition under section 34 of the said Act.

68. Insofar as the minutes of the meeting of the society relied upon by the petitioner regarding the change of maintenance bill in the name of the firm is concerned, it is submitted that respondent no.1 was a managing committee member. The decision was taken by the society on the basis of the documents and records of the society. No fabrication or undue influence thus can be attributed against respondent no.1 on that ground. Respondent no.1 was appointed as the treasurer of the society on 4th January, 2006.

69. The learned counsel placed reliance on the judgment of the Supreme Court in the case of **Associate Builders vs. Delhi Development Authority 2014 (13) SCALE 226** and submits that in the said judgment, the Supreme Court has considered its earlier

judgment in the case of ***Oil & Natural Gas Corporation Limited vs. Western Geco International Limited***, relied upon by Mr.Vernekar and several other judgments of the Supreme Court and has held that the findings of fact rendered by the learned arbitrator cannot be interfered with by a court under section 34 of the said Act.

70. In re-joinder, Mr.Vernekar the learned counsel submits that the respondents though claimed the ownership in gala no.206 as partners of M/s.Seemaben Patel, no document of title in respect of the said gala had been produced by the respondents before the learned arbitrator in support of such plea. The finding of the learned arbitrator that for the purpose of an asset to be an asset of the partnership firm, no document is required, is patently illegal and contrary to law. It is submitted that since admittedly gala no.206 was not shown as an asset of the firm, if the respondents had pleaded that said gala became the asset of the suit firm, the onus was on the respondents to prove that the said gala was an asset of the firm. The respondents deliberately did not produce any documents in support of their such plea, including the books of accounts, the accounts and the documents of the firm. The respondents also failed to show any other documents to show that the said gala became the asset of the suit form. The learned counsel reiterated his submissions made in the opening argument in rejoinder to the other submissions made by

the learned counsel for the respondents.

REASONS AND CONCLUSION :-

71. The petitioner had pleaded limitation in respect of the claims made by the respondents before the learned arbitrator and had placed reliance on Article 5 of the Schedule to the Limitation Act, 1963. It was the case of the petitioner that since the respondents had claimed share in the alleged assets of a dissolved partnership which was alleged to have been dissolved effective from 31st March 1999 and since the arbitration notice was admittedly invoked much after 3 years of the dissolution of the partnership, the claim for share in the property of the dissolved firm was barred by limitation. The learned arbitrator, however has rejected this plea of limitation simplicitor on the ground that the firm already stood dissolved effective from 31st March 1999. The partners having already settled the accounts of the partnership in the name of M/s. Seemaben S.Patel and gala no.206 having been divided pursuant thereto and divided portions thereof having been allotted to the parties in satisfaction of the claims of the parties in the business carried in the said partnership, there was no issue remained outstanding under the said partnership deed and thus Article 5 of the Schedule to the Limitation Act, 1963 was not attracted.

72. A perusal of the award indicates that on one hand, the learned arbitrator has held that all the issues arising out of the partnership deed already stood dissolved and assets of the suit firm already stood divided/allotted and handed over to the partners pursuant to the Deed of Dissolution and there was no issue under the said Deed remained outstanding and on the other hand, has exercised the jurisdiction under the arbitration clause of such deed of partnership for the purpose of deciding the claims made by the respondents which arbitration agreement stood exhausted in view of the findings of the learned arbitrator that there was no issue remained outstanding under the said partnership deed and/or dissolution deed. In my view, the award shows inconsistency and patent illegality on the face of the award on this issue. Though the learned arbitrator in paragraph 14 of the impugned award has referred to the issue of arbitrability on the ground that the dispute pertaining to the alleged dispossession of the respondents of 2/3rd share from gala no.206 was not arbitrable dispute under the dissolution deed, a perusal of the entire award indicates that the said issue of arbitrability of the dispute arising out of the alleged dispossession of the respondents of 2/3rd share in the gala has not been decided by the learned arbitrator in the impugned award. Once the petitioner had raised the issue of limitation and/or the

arbitrability of the claim, the learned arbitrator ought to have decided that issue.

73. In so far as various judgments relied upon by Mr.Vernekar, learned counsel for the petitioner in support of the submission that the claim for share in the assets of the partnership firm would be in the nature of claims for accounts of the partnership firm are concerned, in my view, since the respondents had made claims in the assets of the partnership firm by invoking arbitration agreement recorded in the deed of partnership, the judgments relied upon by Mr.Vernekar, learned counsel for the petitioner are applicable to the facts of this case. I am in agreement with the views expressed by various Courts in those judgments referred to aforesaid which were relied upon by the learned counsel for the petitioner. In my view, the claim in the assets of the suit firm will be in the nature of a claim for accounts and share in the partnership and thus the cause of action would have commenced from the date of Deed of Dissolution i.e. 16th March 1999 effective from 31st March 1999. The respondents having invoked arbitration agreement on 18th February 2006 was thus barred by law of limitation. In my view, the learned arbitrator has allowed the time barred claims in favour of the respondents and thus the award is on the face of it in conflict with the public policy.

74. Be that as it may, in my view, even if the finding of the learned arbitrator that the accounts of the suit firm had been already settled, assets of the partnership firm had already been divided and handed over to the parties pursuant to the deed of dissolution and no issue was remained outstanding under the said partnership deed is correct, in that event, admittedly the arbitration agreement recorded in the partnership deed which was invoked by the respondents could not have been invoked at all for the purpose of deciding the claim for possession based on the alleged dispossession of the respondents by the petitioner of such assets which became personal assets of the parties upon such dissolution and distribution of the assets. The arbitration agreement in the partnership deed could be invoked only for the purpose of a dispute arising out of the partnership and not of any personal dispute between the parties outside the purview of the partnership deed and/or deed of dissolution. If according to the learned arbitrator, there was no issue which remained outstanding under the partnership deed and/or dissolution deed, the arbitration agreement in partnership deed could not have been invoked for the purpose of resolution of a dispute outside the partnership deed. The learned arbitrator in that event, in my view, has exceeded his jurisdiction by entertaining such claim which was not within the purview of the partnership deed

and/or dissolution deed.

75. The learned arbitrator admitted the partnership deed, Deed of Dissolution and form 'E' in evidence. It was the case of the petitioner that though the thumb impression of the petitioner was taken on the said documents by respondent no.1 without explaining her the contents of the said documents and by misrepresentation and the petitioner being an illiterate lady had put her thumb impressions on the said documents without understanding the contents thereof, the learned arbitrator in the entire award rejected the said plea and the evidence of the petitioner merely on the ground that the petitioner has admitted her thumb impression on those documents and thus the contents of the said documents were proved. The learned arbitrator in the entire award has not dealt with the crucial issue that admittedly the petitioner was an illiterate lady and was not able to read and understand English, Hindi or any other language. None of the aforesaid documents relied upon by the respondents which were in English were admittedly translated/interpreted to the petitioner.

76. No endorsement of interpretation was made on any of the documents by the advocate alleged to have identified her thumb impression though the same were alleged to have been notarized. In my view, the learned arbitrator failed to appreciate that when an

illiterate lady who puts her thumb impression on a document, specifically alleged that she did not understand the English, was not explained the contents of the said documents and such thumb impression was taken by misrepresentation by the respondents, the onus was on the respondents to prove that there was no misrepresentation of any nature whatsoever to the petitioner and that the petitioner had put her thumb impression after fully knowing and understanding the contents of those documents before affixing her thumb impression thereon. The learned arbitrator, however, disbelieved the oral evidence of an illiterate lady by adopting a very casual approach in the matter.

77. Insofar as the issue whether the firm M/s.Shankar K. Patel allegedly to be a partnership firm of Mr.Shankarbhai K.Patel, respondent no.1 and Mr. Ramjibhai K. Patel was constituted or not is concerned, the learned arbitrator has disbelieved the case of the petitioner merely on the ground that the petitioner was not a partner of M/s.Shankar K. Patel on the date of alleged partnership deed dated 18th February 1978 and thus her evidence could not be believed. At the same time, the learned arbitrator failed to appreciate that if there was any such business in the name of M/s.Shankar K. Patel carried on in the partnership by Mr.Shankarbhai K.Patel, respondent no.1 and Mr.Ramjibhai K. Patel, the respondents

could have proved such existence of the partnership deed in the name of M/s.Shankar K. Patel by producing books of accounts and other related documents to show constitution of such firm and that the business was carried on in the said firm till the death of Mr.Shankarbhai K. Patel. The learned arbitrator also overlooked the crucial and important fact that the said gala no.206 never became an asset of the partnership firm of M/s.Shankar K.Patel. There was no reference to the said gala in the alleged partnership deed dated 18th February 1978. Though the petitioner could prove at least part of the consideration amount paid by her husband which was not disputed by the respondents, the learned arbitrator rendered an erroneous finding and contrary to the evidence on record that the said gala was purchased by M/s.Shankar K. Patel and not by the husband of the petitioner. The respondents had failed to prove that the consideration in respect of such gala was paid by the said firm M/s.Shankar K. Patel. Instead of drawing an adverse inference against the respondents for not producing the books of accounts, title deed and the documents of the society, the learned arbitrator has drawn an adverse inference against the petitioner which, in my view, shows patent illegality on the face of the award.

78. In my view, whether the asset which was claimed to be an assets of M/s. Shankar K. Patel, became an asset of the

partnership firm M/s.Seemaben S. Patel or not, the onus was on the respondents to prove that the said assets had become an asset of the partnership firm and ceased to be the assets of M/s.Shankar K. Patel. The learned arbitrator, in my view, has failed to draw an adverse inference against the respondents though the respondents were repeatedly called upon to produce title deeds and any other documents in support of their allegations that the said gala no.206 was an asset of M/s.Shankar K.Patel, thereafter became an asset of M/s.Seemaben S.Patel, the respondents in their depositions had suppressed and withheld those documents before the learned arbitrator by stating that all such books of accounts and related documents had already been destroyed. In my view, the respondents had failed to produce best evidence in support of their plea that the said gala no.206 was an asset of the said M/s.Shankar K. Patel and thereafter it became an asset of M/s.Seemaben S.Patel and thus the learned arbitrator was required to draw adverse inference against the respondents. On the contrary, the learned arbitrator has erroneously drawn adverse inference against the petitioner for not producing original title deed in respect of the said gala no.206 alleged to have been purchased by the husband of the petitioner.

79. The learned arbitrator ought to have drawn adverse

inference against the respondents also on the ground that the respondents did not examine the society or the builder who, if would have been examined, would have proved whether the said gala no.206 was purchased by Mr.Shankarbhai K. Patel or purchased by M/s.Shankar K. Patel. The society could have also been examined for the purpose of proving the allegations of the respondents that after the firm M/s.Seemaben S.Patel was constituted, the said gala was transferred in the records of the society in the name of M/s.Seemaben S. Patel and the said gala continued to be an asset of the said firm M/s. Seemaben S. Patel. The respondent no.1 being a member of the managing committee of the said society could have examined the society or could have directed the society to produce original records of the society. The learned arbitrator, in my view, failed to appreciate that even in the records of the society indisputably, the said gala was transferred in the name of the petitioner after demise of her husband Mr.Shankarbhai K.Patel. Only after number of years, the respondent no.1 who was a managing committee member and treasurer of the society issued a legal notice to the society and pressurized the society to transfer the maintenance receipts from the name of the petitioner to M/s. Seemaben S.Patel without any notice or intimation to the petitioner. The respondents had not demonstrated any proof

before the learned arbitrator that the maintenance charges in respect of the said gala were paid by the said M/s.Seemaben S.Patel. The entire award is based on no evidence produced by the respondents in support of their claim that the said gala no.206 was an asset of the firm M/s.Shankar K.Patel and thereafter continued to be an asset of M/s.Seemaben S.Patel. The award is liable to be set aside in this ground also.

80. A perusal of the record indicates that though the petitioner had disputed third party documents such as receipts alleged to have been issued by the builder, receipts alleged to have been issued by the society in the name of M/s.Seemaben S.Patel which were sought to be relied upon by the respondents in support of the plea that the said gala no.206 was transferred in the name of M/s.Seemaben S.Patel, though such third party documents were not proved by the respondents by leading appropriate evidence of the authors of such documents though the authors were available, the learned arbitrator has considered those third party unproved documents while rendering a finding in the impugned award that gala no.206 was purchased by M/s.Shankar K.Patel and thereafter continued to be an asset of the firm M/s.Seemaben S.Patel. At the same time, the learned arbitrator rejected some of the third party documents relied upon by the petitioner on the ground that the

same were not proved by the petitioner. In my view, the learned arbitrator has relied upon unproved documents and thus the impugned award is in gross violation of the principles of natural justice which applies to the arbitration proceedings. In my view, the learned counsel for the petitioner is right in his submission that the learned arbitrator has applied different yardstick for marking of the documents of the petitioner and the respondents.

81. A perusal of the record indicates that though the parties had agreed in the proceedings filed under Section 11 of the said Arbitration Act as to what would be the points for determination of the learned arbitrator, it is clear that the learned arbitrator has not rendered findings and/or dealt with all points for determination in the impugned award. The learned arbitrator has not dealt with the issue as to whether the petitioner was explained and/or interpreted the terms of documents on which she had alleged to have been affixed the thumb impression.

82. A perusal of the award also indicates that though the respondents had improved their story in the oral evidence which was inconsistent with the pleadings filed by the respondents, the learned arbitrator has permitted the respondents to lead evidence beyond the pleadings filed by the respondents which is not permissible in law. The award is vitiated on this ground also.

83. The learned arbitrator has rejected the contention of the petitioner that there was a fraud committed upon her by respondent no.1 and there was misrepresentation by respondent no.1 while taking thumb impressions on various documents without considering the evidence led by the petitioner. The learned arbitrator could have drawn adverse inference that the respondent no.1 who was in a dominating position and who was a beneficiary of such fraud had committed a fraud and misrepresentation upon the petitioner while taking her thumb impressions on various documents. The award, in my view, is overlooking the evidence on record led by the petitioner and is erroneously drawing adverse inference against the petitioner which ought to have been drawn against the respondents.

84. In my view, the award is in violation of Section 4 of the Partnership Act, 1932. Under Section 4 of the Partnership Act, 1932, the partnership deed can be entered into only with an intent to carry on business. The respondents who alleged that the said M/s.Shankar K. Patel and M/s. Seemaben S.Patel were carrying on businesses though were asked to produce any proof in support of such plea and to produce documents of the partnership firm such as books of accounts and other related documents, in their evidence have deliberately refused to produce any such documents and deposed that all such documents, including the books of

accounts were destroyed. Even the recent documents prior to the date of dissolution were not produced by the respondents to show whether any partnership business was actually carried on by the parties or not.

85. The learned arbitrator totally overlooked the contents of the power attorney on which respondent no.1 had taken thumb impression of the petitioner and admittedly had acted upon the same as a constituted attorney even after the alleged deed of dissolution of the said firm. In the said power of attorney which was relied upon by the respondents, it was admittedly recited that the petitioner was the owner of the said gala no.206. I am not inclined to accept the submission of the learned counsel for the respondents that though respondent no.1 acted upon the said power of attorney all throughout even after dissolution of the suit firm, he had never read the power of attorney and he was not aware of the contents of the said power of attorney. The said power of attorney was prepared by respondent no.1 himself immediately after demise of the husband of the petitioner and had taken her thumb impression by misrepresentation.

86. A perusal of the award indicates that the learned arbitrator has rendered totally erroneous findings contrary to the recital of the power of attorney and held that the contents of the said power of attorney were incorrect. The power of attorney could

not have been disputed at least by the respondent no.1 who had not only relied upon the said document but had acted upon the same all throughout on behalf of the petitioner. On one hand, the learned arbitrator has accepted the submission of the respondents that upon demise of the husband of the petitioner, she was not an absolute owner of the said gala no.206 and on the other hand, he overlooked the fact that the respondent no.1 himself had taken steps to get such power of attorney drafted and had acted upon the same by representing the petitioner as owner in various leave and license agreements entered into on her behalf by him in favour of various licensees. The finding of the learned arbitrator that the said gala no.206 was not owned by the husband of the petitioner and after his demise, the same was not owned by the petitioner but was all throughout owned by M/s.Shankar K. Patel and thereafter continued to be an asset of the firm M/s.Seemaben S. Patel is contrary to the proved documents on record i.e. power of attorney which was acted upon and relied upon by the respondents in the arbitration proceedings. Instead of taking into consideration the contents of the admitted documents on record, the learned arbitrator has rendered a finding that the said gala was owned by M/s.Shankar K. Patel and thereafter by M/s.Seemaben S. Patel contrary to the material documents on record and is in gross violation of the

principles of natural justice.

87. Insofar as the finding of the learned arbitrator that the house property mentioned in Clause 5 of the deed of dissolution was the property of the suit firm and the respondents had already made their contributions in respect of the said property is concerned, in my view, the said finding is contrary to the proved evidence on record. The respondents had improved their false and inconsistent stand in the evidence which was not part of the pleadings filed before the learned arbitrator. A perusal of the entire award shocks the conscience of the Court and on this ground also, the award deserves to be set aside.

88. Learned arbitrator has rendered a finding on one hand that the said gala no.206 could not be claimed entirely by the petitioner after demise of her husband since mother-in-law of the petitioner was alive at the time of demise of the husband of the petitioner and on the other hand, contrary to the said finding he has accepted the contention of the respondents that the petitioner became entitled to and became owner of the 1/3rd share of the said property by virtue of she being taken as a partner in M/s.Seemaben S. Patel which 1/3rd share belonged to her husband in the firm M/s.Shankar K. Patel. The award, in my view, shows total contradictions and inconsistencies on various aspects. Each and

every submissions of the respondents has been accepted and each and every submissions made by the petitioner were, however, rejected though deserved acceptance.

89. In my view, the finding of the learned arbitrator that the said gala no.206 was sub-divided in three parts and then the partners were allotted respective sub-divided portions of the said gala no.206 upon dissolution of the firm is also contrary to the evidence on record. The respondents could not produce any evidence on record to show sub-division of such gala in three parts or any permission obtained from the Municipal Corporation or from the society. The society did not issue any receipt in three names in respect of three alleged sub-divided galas. The mere production of one and two telephone bills by the respondents in respect of gala no.206B which was for a limited period could not have been the basis for rendering a finding that the said gala was divided in three parts. Though the petitioner had examined the witness who was a licensee of the entire gala no.206 and had produced large number of documents in support of the plea of the petitioner that the said gala was never sub-divided in three parts as alleged by the respondents, the learned arbitrator totally overlooked the evidence produced by the petitioner and rendered findings contrary to the evidence on record which findings, in my view, are perverse

and thus can be interfered with under Section 34 of the said Arbitration Act.

90. Insofar as the submission of the learned counsel for the respondents that the learned arbitrator has rendered finding of fact that the said gala was an asset of M/s. Shankar K. Patel and thereafter was taken over by M/s. Seemaben S. Patel and continued to be an asset of the said firm till the same was distributed is concerned, in my view, since the said finding rendered by the learned arbitrator is totally overlooking the evidence on record and is perverse, I am not inclined to accept the submission of the learned counsel for the respondents that this Court cannot interfere with such findings which are on the face of it perverse and shocks the conscience of the Court.

91. Insofar as the submission of the learned counsel that though the originals of such documents were not produced by the respondents, the learned arbitrator has rightly taken into consideration such documents being 30 years old is concerned, in my view, there is no substance in this submission of the learned counsel also. The respondents could have produced the originals of such documents by examining the society and the builder who was available and thus no reliance on the provisions of Section 90 of the Evidence Act, 1872 could be placed by the respondents.

92. Insofar as the submission of the learned counsel that the learned arbitrator has not applied different yardstick in respect of the marking of the disputed documents is concerned, in my view, there is no merit in the submission of the learned counsel. The learned arbitrator has not placed any reliance on any unproved documents Insofar as the petitioner is concerned. On the contrary, he has rejected the evidence produced by the petitioner in toto and has relied upon all the third party documents which were not proved by the respondents in the entire impugned award.

93. Insofar as the submission of the learned counsel that the issue of limitation was not open in view of the order passed under Section 11 of the said Arbitration Act is concerned, a perusal of the award indicates that both the parties agreed before the learned arbitrator that issue of limitation shall be decided by the learned arbitrator. There is thus no substance in this submission of the learned counsel.

94. Insofar as the submission of the learned counsel for the respondents that the petitioner cannot be allowed to raise issue of bias against the learned arbitrator at this stage is concerned, in my view, the learned counsel for the respondents is correct in his submission that the petitioner not having raised such issue under Sections 12 and 13 of the said Arbitration Act before the learned

arbitrator, the petitioner cannot be allowed to raise this issue for the first time in this petition under Section 34 of the said Arbitration Act.

95. Insofar as the submission of the learned counsel that though respondent no.1 was a member of the managing committee of the society, no allegations of fabrication or undue influence can be attributed against the respondents is concerned, a perusal of the record indicates that the said gala no.206 was transferred in the name of the petitioner by the said society upon demise of her husband and the society issued receipts in respect of the said gala in the name of the petitioner. However, in view of the legal notice issued by respondent no.1 to the society for transferring the receipts in the name of M/s.Seemaben S. Patel, without any notice to the petitioner, the society considered the said legal notice of respondent no.1 who was admittedly a member of the managing committee of the society and transferred the receipts in favour of M/s.Seemaben S. Patel from the name of the petitioner. The learned arbitrator, in my view, ought to have considered this conduct of respondent no.1 while rendering the finding that the said gala no.206 stood transferred in favour of M/s.Seemaben S.Patel.

96. A perusal of the record indicates that though the learned arbitrator was not referred the issue of any monetary claim on the part of the respondents against the petitioner, the respondents had

made such claim before the learned arbitrator and though the petitioner objected to such claim being entertained, the learned arbitrator has allowed the monetary claim against the petitioner and in favour of the respondents. In my view, the learned arbitrator has travelled beyond the scope of reference insofar as this claim is concerned and thus that part of the award deserves to be set aside on this ground also.

97. A perusal of the award also indicates that the learned arbitrator has rejected the counter claim made by the petitioner without rendering any reason. The said part of the award is liable to be set aside on this ground also.

98. Insofar as the judgment of the Supreme Court in the case of *Associate Builders Vs. Delhi Development Authority (supra)* relied upon by the learned counsel for the respondents is concerned, even in the said judgment, the Supreme Court reiterated the statement of law that if a finding is based on no evidence or an arbitral tribunal takes into account something irrelevant to the decision which it arrives at or ignores vital evidence in arriving at its decision, such decision would necessarily be perverse and can be set aside under Section 34 of the said Arbitration Act. The Supreme Court in the said judgment has not decided contrary to its earlier judgment in the case of *Oil and Natural Gas Corporation Ltd. Vs.*

Western Geco International Ltd. (supra) relied upon by the learned counsel for the petitioner. There is no dispute about proposition of law laid down by the Supreme Court in the case of *Oil and Natural Gas Corporation Ltd. Vs. Western Geco International Ltd. (supra)* and in the case of *Associate Builders Vs. Delhi Development Authority (supra)*.

99. In my view, the entire award shows patent illegality on the face of the award and is in conflict with the public policy and deserves to be set aside. I accordingly pass the following order :-

- a) Arbitration Petition No.1409 of 2013 is allowed in terms of prayer clause (a).
- b) The impugned award dated 5th August 2013 rendered by the learned arbitrator being Exhibit-A to the petition is set aside.
- c) There shall be no order as to costs.

(R.D. DHANUKA, J.)