

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision: November 20th, 2015

1. **FA.O.No.1531 of 2010 (O&M)**

Rajiv Kumar Gupta

...Appellant

Versus

Susham Singla and others

...Respondents

2. **FA.O.No.1532 of 2010 (O&M)**

Raghav Gupta

...Appellant

Versus

M/s Jagtumul Murari Lal and others

...Respondents

3. **FA.O.No.1533 of 2010 (O&M)**

M/s Jagtumul Murari Lal & Another

...Appellants

Versus

Susham Singla and others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

**Present: Mr.Kanwalvir Singh Kang, Advocate,
for the appellant (in FAO No.1531 of 2010).**

**Mr.Ashish Aggarwal, Senior Advocate with
Mr.S.Kajla, Advocate &
Mr.Kartik Gupta, Advocate,
for the appellant (in FAO No.1532 of 2010).**

**Mr.M.L.Sarin, Senior Advocate with
Mr.Hemant Sarin, Advocate,
for the appellants (in FAO No.1533 of 2010).**

Mr.A.K.Chopra, Senior Advocate with
Mr.Akshit Chaudhary, Advocate,
for respondent No.1 (in FAO No.1531 & 1533 of 2013) &
for respondent No.3 (in FAO No.1532 of 2010).

Mr.Avnish Mittal, Advocate,
for respondent No.1 (in FAO No.1531 and 1533 of 2010) &
for respondent No.3 (in FAO No.1532 of 2010).

Mr.Puneet Jindal, Senior Advocate with
Mr.Siddhant Kant, Advocate,
Mr.Varun Goyal, Advocate &
Ms.Sakshi Advocate,
for respondent No.1 (in FAO No.1531 and 1533 of 2010) &
for respondent No.3 (in FAO No.1532 of 2010).

AMIT RAWAL, J.

By this order, I intend to dispose of three F.A.O.Nos.1531, 1532 and 1533 of 2010 as the common questions of law and facts involved in all the three appeals are the same. The facts are being taken from FAO No.1531 of 2010.

This is a classical case where the objects and the reasons, preceding the proclamation of Act No.26 of 1996, which provided that the arbitration procedure should be fair, efficient and the role of the Courts should be minimal in the arbitration proceedings, have been thrown to the wind and is analogous to the procedure being followed in a Civil Court, inasmuch as that the dispute between the parties to the lis has arisen out of execution of an agreement to sell dated 1.10.2002. Thus, in my view, the intention of the Legislature in its wisdom, though had proclaimed vide Act No.26 of 1996, minimising the role of the Court and as well as expeditious disposal/resolution of the disputes through arbitration, has not been achieved. In order to appreciate the controversy between the parties to the lis, it would be apt to give brief facet of the matter.

An agreement to sell dated 1.10.2002 was allegedly executed between M/s Jagtumul Murari Lal, a partnership firm consisting of Rajiv Kumar Gupta, Mrs.Sunhena Gupta and Raghav Gupta partners on one side and Susham Singla on the other side for the sale of leasehold property called “Malwa Cinema” situated on The Mall Road, Patiala for a total consideration of Rs17.25 crores. The sole question, which arises for adjudication of the dispute, is as to whether in the absence of the signatures/authorisation of other partners, the sole partner could enter into an agreement to sell the property or not. I would not be refraining myself in not reproducing the relevant clause/portion of the agreement to sell, which reads thus:-

" **AGREEMENT TO SELL**

This AGREEMENT is made at New Delhi, on this 1st day of October, 2002, BY AND BETWEEN: M/s Jagtumul Murarilal, a partnership firm, situated at Gur Mandi, Patiala, Punjabi, presently operating Malwa Theatre, Patiala, consisting of Shri Rajiv Kumar, Mrs.Sunhena Gupta and Shri Raghav Gupta, as partners, represented herein through (1) Shri Rajiv Kumar son of Late Shri Sham Lal, presently residing at 128, Gudajpur Band Road, Chandanhula, Chattarpur, New Delhi, signing for self and on behalf of Shri Raghav Gupta, son of Shri Rajiv Kumar, and (2) Mrs.Sunhena Gupta, wife of Shri Rajiv Kumar, presently residing at 128, Gudaipur Band Road, Chanduhula, Chattarpur, hereinafter referred to as the “SELLER” of the ONE PART:

AND

Mr.Susham Singla, son of Shri Jagdish Chand, resident of Dhaliwal Colony, Patiala, hereinafter referred to as the “BUYER” of the SECOND PART.

The terms the Seller and the Buyer shall unless repugnant or expressly excluded by the context hereof, shall mean and

include their respective heirs, successors, executors, survivors, legal representatives and assigns.

WHEREAS the Seller is absolute lease owner and in possession of the leasehold property called “Malwa Cinema” situated on The Mall Road Patiala and the said property has been leased out vide Indenture made on 22nd day of Vaisakh, 1996, between High Highness i.e. Government of Patiala through its Minister Incharge, Development, and the Seller. The Seller wants to sell off this leasehold property and the Buyer wants and has agreed to buy the said property for a total consideration of Rs.17.25 crores (Rupees Seventeen crores and Twenty five lacs only) on the terms and conditions hereinafter mentioned.

NOW IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. That all the partners of the Seller have assured the Buyer that Shri Rajiv Kumar and Mrs.Sunaina Gupta are authorized to enter into this Agreement to Sell with the Buyer as true legal persons to deal with the said property. All the partners have authorized Shri Rajiv Kumar to receive all further payments in the name of the firm, to issue Receipts and can sign all documents on behalf of all the partners of the firm M/s Jagtumul Murarilal, who is a original allottee of this leasehold property.”

From the perusal of the aforementioned clauses, it appears that a “Deemed/Implied” authorisation of the other co-owners regarding respective shares in the aforementioned property was given to one Rajiv Kumar Gupta for entering into the agreement to sell. In essence, there is no separate authorisation in writing. However, section 14 of the Indian Partnership Act, 1932 (for short “1932 Act”) deals with the property of the firm. The same is reproduced herein under:-

"14. The property of the firm.-Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of business

of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.”

On plain and simple language of Section 14, it leaves no manner of doubt that all the partners of the firm having respective shares in the property would be and are the co-owners. Though Chapter IV of 1932 Act provides relations of partners to third parties, but there are certain acts, which, in the absence of any usage or custom of trade, do not empower the partner implied authority to deal with the following acts:-

"19. Implied authority of partner as agent of the firm.-(1)

Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his “implied authority”.

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- (a) submit a dispute relating to the business of the firm to arbitration,
- (b) open a banking account on behalf of the firm in his own name,
- (c) compromise or relinquish any claim or portion of a claim by the firm,
- (d) withdraw a suit or proceeding filed on behalf of the firm,
- (e) admit any liability in a suit or proceeding against the firm,
- (f) acquire immovable property on behalf of the firm,
- (g) transfer immovable property belonging to the firm, or
- (h) enter into partnership on behalf of the firm.”

Sub-clause (g) of sub-section (2) of Section 19 does not

empower one of the partners to transfer the immovable property belonging to the firm. The alleged agreement reveals that it is only signed by Rajiv Kumar Gupta alone and “Not” by Sunhena Gupta or Raghav Gupta. None of the clauses of the partnership deed authorised Rajiv Kumar Gupta to enter into agreement to sell for transfer of immovable property belonging to firm, therefore, it would be necessary to reproduce the relevant clauses of the partnership deed, i.e., clauses 6, 7 and 9, which read thus:-

"6. That the parties will neither be entitled to charge interest on their investments made in the concern nor they will be entitled to any remuneration for the services rendered to the concern, unless otherwise agreed to between the parties in this behalf.

7. That the parties will share profits and losses of the partnership firm as under:-

<i>i) Rajiv Kumar (HUF)</i>	<i>20%</i>
<i>ii) Sunaina Gupta</i>	<i>30%</i>
<i>iii) Raghav Gupta</i>	<i>50%</i>

9. That none of the parties hereof shall, without the consent in writing of the other partners, sell, mortgage or otherwise charge or alienate his/her share in the firm or any part thereof to any outsider.

Clauses 6, 7, 9 and 13 provide that the partners will not be entitled to charge interest on their investments made in the concern nor will be entitled to any remuneration. Their shares have been specified and none of the parties, without the consent in writing of the partners, shall mortgage or otherwise charge or alienate/sell his/her share in the firm or any part thereof to any outsider. Clause 13 deals with variation and alteration of the terms of the partnership deed by mutual consent, either expressed, i.e., in writing or implied from conduct. Clause 9 does not authorise any of the partners to sell anybody's share “except by way of consent in writing”. The

agreement to sell does not refer to any “consent in writing” authorising Rajiv Kumar Gupta to sell 50% and 30% share of Raghav Gupta and Sunhena Gupta. Clause 9 of the partnership deed is in consonance with sub-clause (g) of sub-section 2 of Section 19 of 1932 Act, though sub-section (1) of Section 19 deals with certain acts as provided under Section 22, but the fact remains that sub-section (2) does not deal with acts done/provided under Section 22. It would be apt to reproduce Sections 22, 23 and 24 of 1932 Act. The same read thus:-

*"22. **Mode of doing act to bind firm.**- In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.*

*23. **Effect of admissions by a partner.**-An admission on representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.*

*24. **Effect of notice to acting partner.**-Notice to a partner, who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.*

Since a dispute arose between the parties with regard to the performance of the agreement to sell, containing an arbitration clause, Mr.Harish Dhillon was, vide Annexure A-3 dated 23.3.2005, appointed as an Arbitrator for resolution of the dispute. Clause 18 of the agreement to sell providing resolution of dispute reads thus:-

"That any dispute arising out of the aforesaid agreement shall be referred to arbitrator, whose award shall be final and binding on the parties. The proceedings shall be held under the

provision of the Arbitration & Conciliation Act, 1996 and rules framed hereunder and as amended from time to time. The parties agree that in the event of any dispute, the court of Patiala shall have the jurisdiction to deal with the matter.”

It would be apt to reproduce the contents of letter dated 23.3.2005 (Annexure A-3):-

- "1. Mrs.Susham Singla entered into an agreement with Jagtumul Murari Lal, Gur Mandi, Patiala, through Mr.Rajiv Gupta, for the purchase of Malwa Cinema, Patiala.*
- 2. There has since then been a dispute regarding this agreement.*
- 3. Both Mr.Rajiv Kumar and Mr.Susham Singla authorize Dr.Harish Dhillon of YPS, Mohali to function as the Arbitrator for this dispute and agree to abide by his decision in the matter.*

*42 Ishwar Nagar,
New Delhi
23.3.2005.*

<i>Sd/-</i>	<i>Sd/-</i>
<i>Susham Singla</i>	<i>Rajiv Kumar</i>
<i>1. Sunil Sabharwal</i>	
<i>2. Sd/- V.K.Gupta</i>	
<i>(Witnesses)</i>	
<i>3. Sd/-Alok Swarup</i>	

Having listened to both sides and studied the agreement, Mr.Rajiv Gupta will pay Mr.Susham Singla a sum of Rs.6.75 crores as full and final settlement. Mr.Susham Singla will withdraw claim to the property.

Sd/-Harish Dhillon”.

From the perusal of the aforementioned letter, the matter was referred to the Arbitrator by Susham Singla and Rajiv Kumar Gupta. Neither

Raghav Gupta nor Sunhena Gupta are signatory of the aforementioned letter.

As per award dated 23.3.2005, it revealed that the Arbitrator had convened meetings and thereafter gave the award directing that Rajiv Kumar Gupta would pay an amount of ₹6.75 crores vis-a-vis the alleged advance of ₹2.75 crores to Susham Singla and Susham Singla would surrender his claim to the property. Thereafter, the Arbitrator noticed that the said award was not implemented and, thus, convened a number of meetings for getting the matter resolved, but for various reasons including acute health problem, Mr.Gupta was not able to attend. Accordingly, meetings on 27.1.2006, 12.3.2006, 19.3.2006 and 20.3.2006 were convened and the Arbitrator directed that the property in question, i.e., Malwa Cinema be sold to Susham Singla against a total consideration of ₹39.5 crores over and above ₹2.5 crores that had already been paid with a further direction that Rajiv Kumar Gupta would obtain a conversion of the property to free hold within three months from the date of this award and in case he fails to get the free hold within the stipulated three months, he will authorise Susham Singla to obtain it on his behalf, only then the actual cost of conversion of fee hold will be deducted from ₹39.5 crores.

It is pertinent to mention here that at no point of time, any notice of arbitral proceedings was given to the firm or to Sunhena Gupta or Raghav Gupta. On 21.3.2006 itself, Rajiv Kumar Gupta submitted a letter to the Arbitrator that the market value of the property in dispute be taken as ₹60.00 crores and, thus, sought modification of the award by virtue of the provisions of Section 33 (7) of the Arbitration and Conciliation Act, 1996 (for short “1996 Act”). The said application was declined by the Arbitrator

and vide award dated 22.3.2006, Arbitrator had issued certain clarifications with regard to the award dated 21.3.2006 by observing that the Arbitrator shall not entertain any representations or requests for clarification individually from the two parties concerned and in case of any ambiguity and clarification, the parties should meet and work them out mutually.

Aggrieved against the aforementioned award, Susham Singla respondent, on 19.7.2006, as envisaged under Section 34 of 1996 Act, filed the objections, . The main grievance was that the agreement to sell provided a total sale consideration of the property agreed to be purchased as ₹17.25 crores, therefore, the Arbitrator exceeded the jurisdiction by fixing the price as ₹39.5 crores. In the objection petition, for the first time, firm Jagtumul Murari Lal through Rajiv Kumar Gupta, Rajiv Kumar Gupta, Raghav Gupta and Sunhena Gupta were impleaded as respondents. The memo of parties reads thus:-

"Susham Singla aged about 43 years, s/o late Shri Jagdish Chand, resident of 1, Dhaliwal Colony, Patiala.

...Objector

Versus

1. M/s Jagtumul Murari Lal, a Partnership Firm through Shri Rajiv Kumar Gupta s/o late Shri Sham Lal, one of its partners Malwa Cinema, The Mall Patiala.

2. Rajiv Kumar Gupta s/o late Shri Sham Lal,

3. Smt.Sunhena Gupta wife of Rajiv Kumar Gupta s/o late Shri Sham Lal,

4. Raghav Gupta s/o Rajiv Kumar Gupta s/o late Shri Sham Lal, partners of firm-M/s Jagtumul Murari Lal, a partnership firm through Shri Rajiv Kumar Gupta s/o late Shri Sham Lal, one of its partners Malwa Cinema, The Mall Patiala.

...Respondents.

In response to the aforementioned objections, the Objecting Court- Additional District Judge issued notice to the aforementioned persons, including the Arbitrator for 2.8.2006. On 25.9.2006, the firm and Sunhena Gupta were served with the objection petition. On 3.10.2006, Rajiv Kumar Gupta-respondent No.3 filed reply to the objection petition and also sought setting-aside of the award. On 5.10.2010, the firm and Sunhena Gupta, on receipt of the summons of the objection petition, allegedly acquired the knowledge, for the first time about the *ex-parte* award, and accordingly filed separate objections and as an abundant precaution moved an application for condonation of delay. On 6.10.2006, the Objecting Court issued notice to the respondents therein. The memo of parties of the objections filed by Sunhena Gupta reads thus:-

"1. M/s Jagtu Mal Murari Lal, a partnership firm having its office at the Mall Road, Patiala through its partner Smt.Sunaina Gupta wife of Sh.Rajiv Gupta, resident of D-12, Kalindi Colony, New Delhi.

2. Smt.Sunaina Gupta, aged 49 years, wife of Sh.Rajiv Gupta, resident of D-12, Kalindi Colony, New Delhi.

...Objectors

Versus

1. Susham Singla son of late Shri Jagdish Chand, resident of 1-Dhaliwal Colony, Patiala.

2. Rajiv Kumar Karta Rajiv Kumar HUF son of late Shri Sham Lal, resident of Sanraj Bhawan, Bhupindra Road, Patiala.

3. Raghav Gupta son of Sh.Rajiv Kumar, resident of D-12, Kalindi Colony, New Delhi.

...Respondents

4. Dr.H.S.Dhillon (Sole Arbitrator) Yadindra Public School, SAS Nagar (Mohali), Sector 51, Chandigarh.

...Performa Respondent"

The firm and Sunhena Gupta filed separate reply to the objections filed by Susham Singla, wherein it was stated that Rajiv Kumar Gupta was not a partner of the firm in his individual capacity nor was authorised by the partners to sign the agreement, much less agreement to sell dated 1.10.2002 was not signed nor any consent oral or writing was ever given. Similarly, Raghav Gupta also filed a separate reply. Susham Singla filed a rejoinder to the aforementioned replies. Since the parties were at variance, the Objecting Court vide order dated 22.3.2007, framed the following issue:-

"Whether there are sufficient grounds to set aside the arbitration award dated 21.3.2006 and reference award dated 22.3.2006 on the grounds mentioned in the application?OPP"

With the consent of the other party, vide order dated 22.3.2007, the delay in filing the objections filed on behalf of the firm and Sunhena Gupta was condoned. The Objecting Court, vide order dated 30.10.2007, dismissed the application for stay, filed under Section 9 by Susham Singla. The aforementioned order was challenged in FAO No.716 of 2008 and this Court, vide order dated 18.3.2008, restrained the parties/firm from alienating the property in dispute. Vis-a-vis the objections filed by the firm and Sunhena Gupta, framed the following two issues:-

"1. Whether agreement dated 1.10.2002 is illegal, null and void as alleged?"

2. Whether award dated 21.3.2006, 22.3.2006 and 23.3.2006 passed by the sole Arbitrator respondent no.4 are liable to be set aside on the ground alleged in the petition?"

In FAO No.716 of 2008, vide order dated 3.2.2009, a direction was issued to the Objecting Court to decide the objections within a period of four months, however, the matter could not be decided within the

aforementioned time frame and this Court again vide order dated 24.8.2009 in FAO No.716 of 2008 directed the trial Court to conclude the trial of the objections within four weeks from the receipt of the order. The Objecting Court, vide impugned order dated 30.10.2009, dismissed both the objections and accordingly FAO No.716 of 2008, vide order dated 2.12.2009, was rendered infructuous.

Mr.M.L.Sarin, learned Senior Advocate assisted by Mr.Hemant Sarin appearing on behalf of the appellant in FAO No.1533 of 2010, Mr.Ashish Aggarwal, Senior Advocate assisted by Mr.S.Kajla appearing for the appellant in FAO No.1532 of 2010 and Mr.K.V.S.Kang, learned counsel appearing on behalf of the appellant in FAO No.1531 of 2010 have raised manifold arguments. The same are summarised herein below.

- a) The terms and conditions of the partnership deed 17.12.2000 do not envisage the sale of the share of any of the partners except by written consent. There is no written consent and, thus, in view of the provisions of sub-clause (g) of sub-section (2) of Section 19 of 1932 Act, Rajiv Kumar Gupta could not have transferred the shares of Raghav Gupta and Sunhena Gupta;
- b) The agreement to sell is not signed by Sunhena Gupta and Raghav Gupta but is signed only by Rajiv Kumar Gupta;
- c) No usage or custom of the trade as envisaged under sub-section 2 of Section 19 has been produced on record, much less, there is any alteration to the dissolution deed, to show that Rajiv Kumar Gupta had complete authority to do an act on behalf of other two partners, thus, any act done by Rajiv Kumar

Gupta could not be binding upon the other two partners sought to be projected by respondents as per provisions of Section 22 of 1932 Act;

d) The alleged agreement to sell dated 1.10.2002 is illegal, null and void, as it does not reflect any concluded agreement but only shows that it is a draft agreement as there is no separate receipt of a sum of ₹2.75 crores paid at the time of the execution of the agreement. The Arbitrator did not give any notice of his appointment or of the arbitration proceedings to Raghav Gupta and Sunhena Gupta;

e) The Arbitrator did not send copy of the award to individual partners. Before the Arbitrator, neither Sunhena Gupta nor Raghav Gupta were arrayed as parties, in the alleged claim by Susham Singla.

f) The subject matter of the dispute was not capable of settlement by arbitration as the Arbitrator could not grant the specific performance of the agreement to sell.

g) Even mere participation, in one of the proceedings, by Raghav Gupta, would be meaningless, in the absence of written consent. In essence, the participation of Raghav Gupta could not dispense with the written consent, thus, express and implied consent would not prevail, vis-a-vis the appointment of the Arbitrator as well as authorisation of Rajiv Kumar Gupta to appear before the Arbitrator. In support of his submissions, cited the following case law under different propositions:-

i) **Agreement not signed by the other partners**

One of the partners cannot sell the share of other partners by entering into an agreement to sell. **Atul Singh and others Versus Sunil Kumar Singh and others, (2008)**

2 SCC 602 (paragraph 17);

ii) Order dated 5.4.2007 rendered by the High Court of Bombay in **Appeal No.611 of 1998 in Arbitration Petition No.66 of 1997 (Manoj Kumar Goswami Versus P.V.Sanghavi & others (paragraph 11);**

iii) **Rajnikant Hasmukhlal Golwala and others Versus Natraj Theatre, Navsari and others, AIR 2000 Gujarat 80 (paragraphs 23 and 24);**

iv) Judgment rendered by this Court in **F.A.O. No.5066 of 2003 (Harish Kumar Versus The Punjab Agro Industries Corporation Limited,** decided on 28.1.2013, where, while dealing with the role of the principal and the agent, this Court found that non-service of notice to the partner, whose personal assets are sought to be made responsible, would vitiate the award.

h) **Award cannot be separated**

The award is not separable. It has to be set-aside as a whole and cannot be set-aside in piecemeal vis-a-vis few partners. **Om Parkash Versus Ram Parkash, 2001(3) R.C.R.(Civil) 363 (P&H) (paragraph 10);**

i) **Limitation**

The period of limitation would be reckoned from the date of the receipt of the award or its knowledge. **State of**

Maharashtra and others Versus ARK Builders Private Limited, (2011) 4 Supreme Court Cases 616; Benarsi Krishna Committee & Ors. Versus Karmyogi Shelters Pvt.Ltd., 2012 (7) Supreme To-day 140; F.A.O.No.2885 of 2008 (M/s Puneet Construction Company Versus Union of India), decided on 12.11.2009, F.A.O.No.2928 of 2008 (M/s Lajpat Agro Private Limited, Karyam, District Nawanshahr Versus Punjab State Civil Supply Corporation and another, decided on 20.4.2010 and F.A.O.No.5009 of 2009 (Kewal Krishan Versus Punjab State Civil Supply Corporation Limited and others) decided on 21.4.2010.

j) Since firm Jagtumul Murari Lal through Sunhena Gupta, acquired the knowledge of the award, on receipt of the objections filed by Susham Singla, the objections have been filed within limitation as it received the copy of objection petition along with copy of the award on 25.9.2006 and filed the objections on 5.10.2010. Though as a precaution, an application for condonation of delay was filed and the said application, with the consent of the other side, i.e., without there being any objection, was allowed and the delay was condoned and, thus, objection that there can be no estoppel against the Statute, would be rendered otiose therefore, the objections filed on behalf of the firm and Sunhena Gupta were within the

period of limitation. The award did not envisage compliance of Sections 31(5) and 3 of 1996 Act.

Mr.Ashish Aggarwal, learned Senior Advocate, by adopting the arguments raised by Mr.Sarin, has further raised the following submissions:-

a) The written statement filed by Raghav Gupta can be treated as objections. In support of aforementioned contention, relied upon the following case law:-

i) **Ram Alam Lal and others Versus Dukhan and others**, AIR (37) 1950 Allahabad 427 (paragraphs 3 and 4);

ii) **Madan Lal (dead) by his legal representative Versus Sunder Lal and another**, AIR 1967 Supreme Court 1233 (paragraphs 8 and 9);

iii) **Garikapati Veeraya Versus N.Subbiah Choudhry and other**, AIR 1957 (SC) 540 to contend that right of appeal is not a mere matter of procedure, but is a vested right, which accrues to any party from commencement of action in the Court at first instance and such right could not be taken except by express provision or by necessary implication. He submits that the written statement can be taken as objections and against the dismissal of the same, appeal under Section 37 of 1996 Act is competent/ maintainable and on the same lines, referred to the judgment of the Hon'ble

Supreme Court in **Transmission Corporation of**

A.P. Versus Ch.Prabhakar and others, (2004) 5

Supreme Court Cases 551 (paragraph 18);

b) The provision of Limitation Act, applies to the arbitration and conciliation proceedings, particularly where the party has availed remedy in a different court, i.e., under the provisions of Section 14(2) of the Limitation Act. In this regard, relied upon the judgment rendered by the Hon'ble Supreme Court in **M/s Consolidated Engg. Enterprises Versus Principal Secy Irrigation Deptt. And others, 2008(7) SCC 169.**

Mr.K.V.S.Kang, learned counsel appearing on behalf of appellant Rajiv Kumar Gupta also adopts the arguments submitted by Mr.Sarin and Mr.Ashish Aggarwal. Over and above the aforementioned submissions, further raised the following submissions:-

a) That heavy reliance has been laid by the other side, with regard to the agreement to sell dated 13.2.2005, alleged to have been executed by partnership firm M/s Jagtunal Murari Lal through Rajiv Kumar Gupta, Sunhena Gupta and Raghav Gupta as it had been signed by all the partners, but is not in the same manner and mode as has been done in the instant case. In essence, each and every page of the agreement dated 13.2.2005 (not in dispute) has been signed by all the partners. It is not the case that Raghav Gupta and Sunhena Gupta were dummy partners, but, actually were active partners. There is no proof of receipt of ₹2.75 crores, except there is a reference in the

agreement to sell, rather it was a “Draft Agreement” and, thus, prays that the appeals be allowed and the award be set-aside as there is no compliance of provisions of natural justice vis-a-vis Sunhena Gupta and Raghav Gupta. Even otherwise, the Arbitrator has exceeded in jurisdiction in not assigning any reasons, much less complied with the provisions of Section 31 (5) and 3 of 1996 Act.

On the other hand, Mr.A.K.Chopra, learned Senior Advocate assisted by Mr.Akshit Chaudhary, Mr.Puneet Jindal, learned Senior Advocate assisted by Mr.Siddhant Kant and Mr.Avnish Mittal, Advocate appearing on behalf of the respondents have also raised the multifold submissions, which are enumerated herein below:-

- a) There is no estoppel against the Statute. In case the objections are not filed within 90+30 days, the provisions of Section 5 of the Limitation Act shall apply and, thus, the objections filed on behalf of the firm and Sunenha Gupta were, *ex-facie*, time barred;
- b) Written statement filed on behalf of Rajiv Kumar Gupta and Raghav Gupta cannot be treated as objections under Section 34 of the Act;
- c) There are umpteen number of documentary evidence on record, particularly Ex.AX9 to show that Rajiv Kumar Gupta was a Karta of the coparcenary property and, therefore, he had independent authority/IMPLIED consent to act or any act on behalf of other partners and in lieu thereof, he entered into an

agreement to sell with the implied and express consent of Sunhena Gupta and Raghav Gupta. Thus, in view of such situation, the appellants cannot be permitted to take the aid of provisions of sub-clause (g) of sub-section (2) of Section 19 of 1932 Act and rather provisions of Sections 22, 23 and 24 would apply. Raghav Gupta and Sunhena Gupta, are none else but son and wife of Rajiv Kumar Gupta, and are living under the same , i.e., in same house having common mess, thus, filing of the objections on behalf of the firm and Sunhena Gupta is nothing but an act of greed. Rajiv Kumar Gupta, on many occasions, participated in the arbitration proceedings and, therefore, his appeal in the absence of any objections is not maintainable;

d) At no point of time, Rajiv Kumar Gupta disputed the receipt of earnest money of ₹2.75 crores. As per the provisions of Section 34, written statement cannot be treated as objections, for, under the provisions of Section 82 of 1996 Act, the High Court has framed the rules and as per Rules 2(b), 3 and 5, the expression used is “application” and not “written statement”. In essence, the written statement cannot be treated as objections. The objections under Section 34 of 1996 Act would deem to be an application and Rule 6, provides payment of the court fees of ₹300/-. However, no such court fee has been affixed and, therefore, the written statement cannot

be treated, as objections;

e) The term “arbitration agreement” has been defined in Section 2(h), to mean an agreement referred to in Section 7, thus, the arbitration agreement, means an agreement by the parties to submit them to arbitration regarding all or certain disputes. M/s Jagtunal Murari Lal firm and the respondent, Susham Singla are parties to the agreement and none else. Thus, the objections to challenge the award could be filed only by a party to the agreement and not by Rajiv Kumar Gupta, Raghav Gupta or Sunhena Gupta in their individual capacity;

f) The judgment rendered by the learned Single Judge in **Harish Kumar's case (supra)** would not be applicable to the facts and circumstances of the present case for the reason that in the cited judgment, the factual position was different inasmuch as the Power of Attorney had been granted to a partner for specific purpose, whereas in the instant case, documents Ex.AX2 to Ex.AX23, particularly Ex.AX9 provide that it is the Rajiv Kumar Gupta, who was the Karta of the coparcenary property. Sunhena Gupta, his wife is mere a house wife as except, for signing the objections, she had never, at any point of time, signed or taken part in respect of activities or business of the firm. Not a single document has been produced on record to show her involvement in the business of the firm. The learned Single Judge in

Harish Kumar's case has referred the provisions of Section 19 (2), which have no relevance to the present case as Sunhena Gupta and also Raghav Gupta, expressly, consented to sell the property in dispute to third person vide agreement to sell dated 13.2.2005, placed on record before the sole Arbitrator;

g) The appellants cannot rely upon the finding, that the Arbitrator cannot dispense with the notice to other partners unless it is brought before him that one partner had an authority to accept service on behalf of other partners. As per Clause 16 of the agreement to sell, it is being provided that any notice to be given to M/s Jagtumul Murari Lal is to be addressed to Rajiv Kumar and in this context, referred to Clause 16, which reads thus:-

"That any notice required to be served on either party or by any Government Authority under this Agreement shall be deemed to be served if given by hand or send by prepaid registered post at the following address:-

*SELLER: Mr.Rajiv Kumar
128, Gudaipur, Band Road,
Chandigarh, Chattarpur,
New Delhi-30*

*PURCHASER: Mr.Susham Singla,
1, Dhaliwal Colony,
Patiala."*

h) Since Malwa Cinema is a joint hindu coparcenary property and as Ex.AX9, no personal property of

Sunhena Gupta and Raghav Gupta was involved as per Ex.AX/9 nor it has come on record that either of these two had, at any point of time, contributed even a single penny to become partners along with Rajiv Kumar Gupta. Thus, notice issued by the Arbitrator to Rajiv Kumar Gupta is a notice to all the partners of the firm and even Raghav Gupta had, as noticed above, appeared on many occasions, thus, the notice to one partner is deemed to all the partners as per the provisions of Section 24 of 1932 Act. Had Rajiv Kumar Gupta not received the earnest money, the same would have rendered the agreement to sell as null and void, but on hearing the news of income tax raid on the premises of Susham Singla, for the first time, Rajiv Kumar Gupta, under the fear of Income Tax Department, in the written statement filed on 3.10.2006, before the Objecting Court, denied the receipt of earnest money. In support of his contentions, relied upon the following judgments:-

LIMITATION:

- 1) **Union of India Versus M/s Popular Construction Co., AIR 2001 Supreme Court 4010;**
- 2) **M/s Daler Singh Versus District Food and Supplies Controller, Kuruksheta, Vol.CLVI(2009-4) The Punjab Law Reporter 446;**
- 3) **Darbari Industries Versus President of India and Anr., 2009(2) Arb.LR 371 (Calcutta);**
- 4) **Abhay Singh Versus Indusind Bank Ltd. and another, Vol.CLIX (2010-3) 99;**

- 5) Fiza Developers & Inter-Trade P.Ltd. Versus AMCI(I) Pvt.Ltd. & Anr., JT 2009 (12) SC 519;
- 6) M/s. Shiv Shakti Rice Mills Versus Punjab State Warehousing Corporation and others, 2005(3) R.C.R. (Civil) 290;
- 7) Senior Executive Engineer, MHC (O&M), Division, PSEB, Talwara, District Hoshiarpur Versus M/s. Minhas Builders, 2011(1) PLR 592;
- 8) Union of India Versus M/s Mittal Steels, 2008 (3) ArbiLR 551;
- 9) Rafik alias Rafique Versus Magna Leasing Limited, 2010 (2) ArbiLR 218;
- 10) Union of India Versus B.C.Biyani, 2010(3) R.A.J. 654;
- 11) State of Goa Versus M/s. Western Builders, 2006 (6) SCC 239.

WHEN NO OBJECTIONS ARE FILED, APPEAL IS NOT MAINTAINABLE:

- a) Union of India and others Versus Aadhana Trading Co. and others, AIR 2002 Supreme Court 1626;
- b) Nilkantha Sidramappa Ningashetti Versus Kashinath Somanna Ningashetti and others, AIR 1962 Supreme Court 666; and
- c) Ram Behari Mehrotra and another Versus M/s. Smarts Pvt.Ltd. and others, AIR 1973 DELHI 133.

OBJECTIONS UNDER SECTION 16 OF ARBITRATION ACT

- i) National Agricultural Coop. Marketing Federation India Ltd. Versus Gains Trading Ltd., (2007) 5 Supreme Court Cases 692;
- ii) Gas Authority of India Ltd. and another Versus Ketu Construction (I) Ltd. And others, (2007) 5

Supreme Court Cases 38;

iii) S.N.Malhotra and Sons Versus Airport Authority of India and Ors., 2008(2) ArbiLR 76; and

iv) M/s Sain Dass Rice Mill, Mathana Versus Distt.Food and Supplies Controller, Kurukshetra, 2010(1) R.C.R. (Civil) 824.

NOTICE TO PARTNERS

a) Ashutosh Versus State of Rajasthan and others, (2005) 7 Supreme Court Cases 308;

b) Manjit Singh Versus Municipal Corporation, Patiala, 2003(2) P.L.R. 573; and

c) Anita Garg Versus M/s. Glencore Grain otterdam B.V., 2012(6) R.C.R. (Civil) 1322.

Mr.Avnish Mittal, learned counsel appearing on behalf of the respondents, while adopting the arguments made by Mr.Chopra and Mr.Jindal, has further raised the following submissions and relied upon the following case law:-

a) As per the repealed provisions of Arbitration Act of 1940, in case one of the partners of the firm enters into a contract and the other partners have not raised any objections, the contract can be treated as valid. Relied upon Sanganer Dal and Flour Mill Versus F.C.I. and others, AIR 1992 (SC) 481, J.K.Jute Mills Co.Ltd. Versus Firm Birdhichand Sumermal, AIR 1958 (Allahabad) 176 and Asa Nand Dhingra Versus Smt.Rajni Gupa, 2008(2) R.C.R. (Civil) 757 to contend that party cannot be allowed to take the plea that the property was coparcenary in a suit for specific performance of agreement to sell as the Court is not to

decide the title of the property in question and, thus, prays for dismissal of the aforementioned appeals.

I have heard the learned counsel for the parties, appraised the paper book, records of the Courts below and as well as the case law cited at bar.

Admittedly, in Clause 9 of the partnership deed, it is being provided that none of the partners shall, without the consent in writing of other partners, sell, mortgage or otherwise charge or alienate his/her share in the firm or any part thereof to any outsider, whereas, the terms and conditions of the agreement to sell do not contain any “authorisation” in favour of Rajiv Kumar Gupta, which would empower or enable him to sign/enter into agreement to sell on behalf of other partners. I am taking the clue from the argument raised by Mr.Chopra, Mr.Puneet Jindal and Mr.Avnish Mittal that the partners, during the currency of the dispute, had entered into another agreement to sell dated 13.2.2005. The said agreement to sell, on bare perusal, reveals that each and every page of the agreement to sell was signed by all the partners. In essence, there was no variation of the terms of the partnership deed. Clause 13 of the partnership deed prescribes for variation and alteration either, expressly or written or implied from the conduct. Rather, all the partners stuck to the provisions of Clause 9 of the partnership deed. It is settled law that a person, who is not the owner of the entire property, cannot enter into an agreement to sell, vis-a-vis their shares and it is the duty of the buyer to verify the title of the property as it is an old phrase “Buyer beware”.

The ratio decidendi culled out by the learned Single Judge in

Harish Kumar's case (supra) is squarely applicable to the facts and

circumstances of the present case, inasmuch as that Clause (g) of sub-section 2 of Section 19 does not empower the partner without any authority to transfer the immovable property belonging to the firm. There is no evidence, which has come on record to show any “Usage or Custom of Trade” to the contrary. Much emphasis has been laid to Ex.AX9 to prove the usage and custom that it was Rajiv Kumar Gupta, who had been acting on behalf of the firm, in essence corresponding with the concerned departments on behalf of the firm. Ex.AX9 is letter dated 22.1.2001 written by Rajiv Kumar Gupta as a partner of Jagtumul Murari Lal addressed to General Manager, District Industries Centre, Patiala on the subject of Out right sale of lease hold land of Malwa Picture Palace, Patiala. The letter reveals that the manner and mode of dissolution of the property of firm Jagtumul Murari Lal, i.e., after his other brother, namely, Sanjiv Kumar and his family members withdrew their share in the firm in terms of the dissolution deed dated 1.4.1996. It further specifically prescribes that Rajiv Kumar Gupta along with his wife Sunhena Gupta and Raghav Gupta are the partners of the firm. The said letter would not come to the aid of the respondents, for the reason, that it is a mere intimation to the authority concerned and does not deal with the sale of immovable property, which, the provisions of clause (g) of sub-section (2) of Section 19 of 1932 Act debar any partner, much less, do not envisage any implied authority. Even other letters, heavily relied upon by the other side, only prescribes that the same has been signed by the authorised signatory and it is only a communication addressed to different authorities on behalf of the firm.

On perusal of the aforementioned facts as well as the file of the arbitration, it reveals that Sunhena Gupta and Raghav Gupta were not

arrayed as a party in the claim before the arbitrator. The Arbitrator did not comply with the provisions of 1996 Act, much less did not adhere to the provisions of Sections 12 and 13 of the Act inasmuch as did not send the notice of the arbitration proceedings as the agreement to sell clearly envisage that it is not only Rajiv Kumar Gupta, who is the only owner of the property but other owners are Sunhena Gupta and Raghav Gupta. The language of the draft agreement to sell is clear and unambiguous. The Arbitrator, being the learned person, was enjoined upon an obligation to call for the written authorisation of Sunhena Gupta and Raghav Gupta in favour of Rajiv Kumar Gupta and in case Rajiv Kumar Gupta had produced the same, the award could not have been said to be without jurisdiction, but having not followed such procedure, in my view, the award is vitiated in law.

Even otherwise, on perusal of the award, it is evident that the provisions of Sections 3 and 31(5) of 1996 Act have not been complied with. There is no reference that the copy of the award was sent to the individual partners. The plea that the firm was being represented and, therefore, there was no need to sent individual notice to the partners, falls flat, for the reason that in the objection petition filed on behalf of respondent Susham Singla, the firm and as well as individual partners were arrayed as respondents, in their individual capacity. Had it been so, there was no occasion for Susham Singla to array all the partners as it is settled law that award can be implemented against the individual partners, and not against the firm alone. Similar analogy applies to the proceedings initiated, under the erstwhile, East Punjab Urban Rent Restriction Act, 1949, where the eviction petitions in the absence of arraying of the individual partners

have been dismissed for want of non-joinder and mis-joinder of parties, in essence, the eviction petition against firm only has been held not maintainable. The Arbitrator had the occasion to browse through the terms and conditions of the partnership deed (Clause 9) thereof clearly provided a consent to be in writing for selling his/her share in the firm. In my view, the Arbitrator, much less, the Objecting Court did not ponder upon the aforementioned clause, thus, the judgments cited by Mr.Chopra vis-a-vis applicability of provisions of Sections 22, 23 and 24 are not applicable.

Vis-a-vis the plea of limitation, the argument of Mr.Chopra, in the first instance, looked attractive, that there is no estoppel against the Statute, but in my view, the same has no substance, for the reason, that it is a matter of record, that copy of the award was never sent to the individual partners of the firm. It is only on 25.9.2006, the firm and Sunhena Gupta received the summons of objection petition filed by Susham Singla. The objections on behalf of the firm were filed on 5.10.2010, i.e., within ten days and, thus, in my view, the objection petition was within the time of limitation. In support of the aforementioned observation, I would rely upon the ratio decidendi culled out by the Hon'ble Supreme Court in **ARK Builders Private Limited's case** (supra). The other judgments cited by Mr.Chopra vis-a-vis limitation, the facts of the case would reveal that the person had the knowledge of the arbitration proceedings and did not file the objections within prescribed time as envisaged under Section 34(3) of 1996 Act and, thus, the ratio decidendi would not apply to the facts and circumstances of the present case. Though as a precautionary measure, an application under Section 5 of the Limitation Act was moved, which was allowed without any demur. It is settled law that the limitation for filing

objections would start from the date of the receipt of the award or acquisition of the knowledge of the award.

I am not in agreement with the plea of Mr.Chopra, Mr.Puneet Jindal and Mr.Avnish Mittal that Sunhena Gupta and Raghav Gupta had given the implied and express consent to Rajiv Kumar Gupta to appear and conduct the proceedings or to do any other act on behalf of the partnership before the Arbitrator and, therefore, they are estopped to raise the objections vis-a-vis the jurisdiction of the Arbitrator as per Section 16 of the Act, for the reason that there is no written consent given by Sunhena Gupta and Raghav Gupta. Mere appearance of Raghav Gupta would be meaningless for the reason that Sunhena Gupta had never put in appearance before the Arbitrator nor was aware of the arbitration proceedings and the award in this regard is totally silent. In my view, the award also suffers for want of reasons, which is also a statutory/mandatory requirement of law under Sections 31(3) and 28 of 1996 Act, thus, the judgments cited in this respect of various Hon'ble Courts are not applicable.

Mere appearance of Rajiv Kumar Gupta cannot be treated as notice to all the partners, in view of Clause 9 of the partnership deed, and as well as the terms and conditions of the draft agreement to sell. The terms and conditions of the draft agreement to sell though provide that all the partners have authorised Rajiv Kumar Gupta to receive further payments on behalf of the firm and sign all the documents, whereas there is “No Authorisation” strictly in consonance with Clause 9 of the partnership deed, thus, the provisions of Section 24 of the Act and the judgments cited in this regard are not applicable. In my view, Clause 9 of the partnership deed is in consonance with the embargo contained in clause (g) of sub-section (2) of

Section 19 of 1932 Act.

Though as per 1940 Act, the written statement could be taken as objections, but the fact remains that the new Act prescribes the word “application” and a separate court fees. Neither Raghav Gupta nor Rajiv Kumar Gupta filed individual objections, but have sought to challenge the award for the reasons stated in the written statement. The entire controversy would not have arisen had Susham Singla accepted the award, in essence, had not filed the objections. It is only by filing of the objections, the firm and Sunhena Gupta had filed the objections.

It is a matter of record that during the pendency of the objections, an application seeking amendment of the objections at the behest of Susham Singla was filed, which was allowed vide order dated 5.6.2009 and in the amended objections, prayer sought was for modification of the award in terms of the agreement to sell dated 1.10.2002 seeking directions to the respondents in Arbitration Case No.IT/7 to perform their part in terms of the agreement to sell and transfer the suit property in the name of the objector for the price of ₹17.25 crores only, i.e., as settled and mentioned in the agreement to sell.

In my view, the Objecting Court has not taken into consideration the aforementioned facts while dismissing the objections, particularly in M/s Jagtumul Murari Lal and others Versus Susham Singla. The award of the Arbitrator is wanting reasons, much less it has exceeded in its jurisdiction by fixing the price regarding the value of the property.

As regards the plea of Mr.Chopra that the appeal at the instance of Raghav Gupta and Rajiv Kumar Gupta is not maintainable, for the reason that the trial Court had only consolidated the objections titled as Susham

Singla Versus Jagtunal Murari Lal & others and M/s Jagtunal Murari Lal Versus Susham Singla and others, in essence, for the reason that there were no objections on behalf of the aforementioned two persons, has force. The objections have to be filed within specified period of limitation, particularly when Rajiv Kumar Gupta was aware of the aforementioned proceedings, did not choose to file independent objection. The rules framed under Section 82 of 1996 Act do not provide that the written statement be treated as objections. It is an independent application, which is to be filed under Section 34 of 1996 Act within the prescribed limitation accompanied by court fees.

However, it is now settled law that where there are several persons interested in the matter, reference on behalf of one of the partner will not be competent. It will be no reference in the eyes of law, if the person had no authority to make reference on behalf of other partners as per the observations of this Court in **Om Parkash's case (supra)**. Since the arbitration proceedings do not reveal that any individual notice was sent to Sunhena Gupta and Raghav Gupta, there was no valid consent on behalf of Sunhena Gupta and Raghav Gupta. As per the record, Only Rajiv Kumar Gupta had put in appearance and there was no written authorisation on behalf of Sunhena Gupta and Raghav Gupta. In essence, Rajiv Kumar Gupta did not have any power of attorney or authorisation vis-a-vis Raghav Gupta and Sunhena Gupta. The award of the Arbitrator also shows that it did not give any notice to the aforementioned partners, whereas the very basis of the agreement was with regard to the sale of property of firm, partners of which were/are Sunhena Gupta, Rajiv Kumar Gupta and Raghav Gupta. In my view, the award cannot be “Separable” for the reason that the agreement

to sell by one of the partners, in the absence of authority of other partners as per Section 19(2)(g) of 1932 Act, is not a legal agreement and rather it was a draft agreement and, therefore, cannot be enforced in law. The Arbitrator ought to have noticed the aforementioned facts before passing the award of specific performance. Once there was an inherent defect in the agreement to sell, the same is incapable of performance. I am of the view that the appeals filed at the instance of Raghav Gupta and Rajiv Kumar Gupta, in the absence of filing of the objections, as I have already held in the preceding paragraphs that the written statement cannot be treated as objections, are not maintainable.

Since it was a draft agreement for the reason that it did not bear the signatures of other partners, namely, Raghav Gupta and Sunhena Gupta, who had the share in the property of the firm. Moreover, there was no independent receipt of alleged payment of ₹2.75 crores. The respondents have not been able to prove that the payment of ₹2.75 crores was made through bank draft or cheque and rather, during the course of arguments, it was argued that the amount was paid in cash. In my view, no sane person would pay such an enormous amount without any receipt, that too in cash, thus, it is irresistible to conclude that it was a draft agreement where the parties have tentatively agreed to sell the property in dispute, which was an assurance and the actual agreement to sell, its execution and payment of earnest money was yet to commence. Respondents neither before the Arbitrator or before the Objecting Court led any evidence regarding the payment/advancement of ₹2.75 crores in cash. Accordingly, the impugned order and the award are hereby set-aside.

In view of what has been observed above, FAO No.1533 of

F.A.O.No.1531 of 2010 (O&M)

{ 34 }

2010 is allowed, whereas the remaining to appeals, i.e., FAO Nos.1531 and 1532 of 2010 are hereby dismissed, being not maintainable.

November 20th, 2015
ramesh

(AMIT RAWAL)
JUDGE