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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: September 11, 2015

Date of decision: October 9, 2015

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CS (OS) 2050/2014

SUNDER KUKREJA & ORS.

.... Petitioners

Through: Mr. P.V. Kapur, Senior Advocate with Mr. Navin Chawla, Ms. Soni Singh, Ms. Divya Kapur, Mr. Sidhant Kapur, Mr. Abhay Varma, Mr. V.K. Nagrath, Mr. Ricky Kundra, Mr. Aditya Singh and Ms. Swati Goswami, Advocates for Plaintiff Nos. 1 & 2.

Ms. Meenakshi Arora, Senior Advocate with Mr. Siddhesh Kotwal, Ms. Bansuri Swaraj, Mr. Anirudh Sharma, Ms. Sherya Bhatnagar, Advocates for Plaintiff No.3.

Mr. Gurbaksh Singh, Advocate for Plaintiff No.3.

Versus

MOHAN LAL KUKREJA & ANR.

..... Respondents

Through: Dr. Abhishek M. Singhvi and Mr. Rupinder Suri, Senior Advocates with Mr. Rohit Kumar Agarwal, Ms. Geetika Kapur, Mr. Abhishek Tripathi, Ms. Rekha Dwivedi, Advocates for Defendant No.1/ Objector.

Mr. Parag Tripathi, Senior Advocate with Mr. Suman Kapoor, Mr. Ashim and Mr. Arunabh, Advocates for Defendant No.2/ Objector.

CORAM: JUSTICE S. MURALIDHAR

J U D G M E N T
09.10.2015

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CS (OS) No. 2050/2014 & IA Nos. 3967/2015, 9727/2015, 9728/2015 & 9951/2015

1. The Defendants, Mohan Lal Kukreja and Madan Lal Kukreja have filed their objections under Sections 30 and 33 of the Arbitration Act, 1940 ('the 1940 Act'), being IA Nos. 9728/2015 and 3967/2015 respectively, to an Award dated 26th May 2014 [the 'Award'] of the learned sole Arbitrator deciding, *inter alia*, the rights and obligations of the Plaintiffs and Defendants herein in relation to the partnership firm, D. R. Kukreja & Co. This judgment proposes to dispose of the said objections.

Background facts

2. Plaintiffs No. 1, 2 and 3, i.e., Mr. Sunder Kukreja, Mr. Ram Chander Kukreja (since deceased) and Mr. Raj Kumar Kukreja and Defendants No. 1 and 2, i.e., Mr. Madan Lal Kukreja and Mr. Mohan Lal Kukreja, are all sons of late Mr. D.R. Kukreja.

3. The firm M/s. D.R. Kukreja & Co. was first constituted on 24th June 1969 with the following partners:

- i. Jetha Nand Kukreja
- ii. Sham Lal Kukreja
- iii. Lekh Raj Kukreja
- iv. Ram Chand Kukreja
- v. Mohan Lal Kukreja
- vi. Madan Lal Kukreja
- vii. Dropti Devi Kukreja
- viii. Sumitra Devi Kukreja

4. On 1st July 1979 Jetha Nand retired from the partnership. Subsequently, on 30th June 1983, Lekh Raj, Dropti Devi and Sumitra Devi retired from the partnership. On 30th June 1984 Shyam Lal also retired from the partnership. A deed of retirement was drawn up on 10th July 1984 in which the retirement of Shyam Lal was reduced to writing. The partnership firm was then reconstituted in the name of D. R. Kukreja & Co vide a partnership deed dated 10th July 1984 with the following partners: Mr. Sunder Kukreja, Mr. Ram Chander Kukreja (since deceased), Mr. Raj Kumar Kukreja, Mr. Madan Lal Kukreja and Mr. Mohan Lal Kukreja.

5. The business of the partnership, D.R. Kukreja & Co., was primarily the running of cinema hall, i.e., Sapna Cinema. This cinema hall was constructed on a plot of land in East of Kailash, New Delhi which was given on lease to the partnership by the Delhi Development Authority ('DDA') by a perpetual lease deed dated 1st September 1970.

6. Around the time of reconstitution of the partnership firm, a number of assets and businesses were acquired by it. These included M/s. M.M. Enterprises, M/s. Mohan Overseas Pvt. Ltd., M/s. Super Fashion and M/s. Chander Creation.

7. According to the Applicants/ Defendants 1 and 2, Mohan Lal Kukreja and Madan Lal Kukreja, there was a decision taken among the family members to split up the family business in the years 1989-90. Their case is that as a result of a family arrangement/ settlement the various properties and businesses were divided up between the sons. Sunder Kukreja and his wife were given control of Mohan Overseas Pvt. Ltd. while Ram Chander

Kukreja was given control of M.M. Enterprise. The properties in Sant Nagar, the business of Karan Exports and the foreign bank accounts were given to Raj Kumar Kukreja. Madan Lal Kukreja was given control of Super Fashions and Mohan Lal was given control of D.R. Kukreja & Co. Their case is that the family settlement which created the above 'family verticals' was acted upon by the parties and the partnership firm, M/s. D.R. Kukreja & Co., was dissolved on 16th August 1990 by a deed of retirement. They state that on 15th August 1990, the retiring partners, i.e., the Plaintiffs herein, Mr. Ram Chand Kukreja, Mr. Sunder Kukreja and Mr. Raj Kumar Kukreja and Defendant No. 2, Mr. Madan Lal Kukreja were each paid Rs. 50,000 in cash as settlement of their accounts. Defendants No. 1 and 2 state that vouchers were signed by each of them in terms of the aforementioned family settlement. The Plaintiffs, on the other hand, claim that there was no such retirement deed or dissolution of the firm. The Plaintiffs have questioned the genuineness of the said retirement deed and the payment vouchers by denying their signatures thereon.

8. The case of the Plaintiffs is that on 27th May 1992 an incident took place in the Sapna Cinema Hall where one Ashok Chopra was beaten up by one Mr. Mangal Singh and his associates. On 1st June 1992 Sunder Kukreja wrote to the Deputy Commissioner of Police ('DCP') complaining against the Station House Officer ('SHO') of Police Station Lajpat Nagar for not taking instant action on the complaint given by Mr. Sunder Kukreja by phone on the night of 27th May 1992. However, the version of the Defendants is that on the said date, Plaintiffs 1 and 3, i.e., Mr. Sunder Kukreja and Mr. Raj Kumar Kukreja went with guns to Sapna Cinema Hall

with the intention to shoot Mohan Kukreja.

9. The Plaintiffs further state that an incident took place at Sapna Cinema on 3rd June 1992. In relation to the said incident, an FIR (No. 428 of 1993) was lodged by the Plaintiffs with the police station at Lajpat Nagar on 23rd November 1993. The complaint given by Mr. Sunder Kukreja, on the basis of which the FIR was registered, stated that when he along with his brothers Mr. Ram Chander Kukreja and Mr. Raj Kumar Kukreja and certain friends entered the Sapna Cinema building on 3rd June 1992, they were shocked to see the cupboards broken, files and other important documents removed. When they were enquiring from the Manager about this damage and about the routine work and receipts/payments, Mr. Mohan Lal Kukreja and Mr. Madan Lal Kukreja became furious and stated that “you have no right to enquire these things because you have all executed deed of retirement dated 16th August 1990 in favour of Mohan Kukreja and you have signed document for which you all have been paid Rs. 50,000 each from the firm in full and final settlement of your share/account in the firm.” In the complaint, Mr. Sunder Kukreja stated that he was “astonished to hear this disclosure and flatly denied having executed any such deed of retirement.” Enclosing a copy of the allegedly forged deed of retirement, the complaint proceeded to state that “both Mohan Kukreja with the connivance of Madan Kukreja have intentionally fabricated forged document namely deed of retirement dated 16th August 1990 with the intention to deprive me and my brothers Ram Chand Kukreja and Raj Kukreja from the benefits of the income from M/s. D.R. Kukreja & co. running Sapna Cinema at East of Kailash and assets worth crores of rupees of the firm.” It was further stated that Mr. Mohan

Kukreja, by fabricating the retirement deed, has shown himself as sole proprietor of M/s. D.R. Kukreja & Co. by opening a current account in the name of the said proprietary concern with Syndicate Bank, Nehru Place. Legal action was sought against Mr. Mohan Kukreja and Mr. Madan Lal Kukreja for the act of cheating and using forged documents with the intention of depriving the Plaintiffs of their share of the income and assets of the firm, M/s. D.R. Kukreja & Co.

10. On 2nd July 1992 the Plaintiffs wrote to the Deputy Commissioner of Income Tax complaining to him that they were not being given access to the books of accounts of the partnership by the Defendants.

Proceedings in Suit CS (OS) No. 2190 of 1992

11. The Plaintiffs filed a suit under Section 20 of the 1940 Act being CS (OS) No. 2190 of 1992 for the appointment of an Arbitrator to settle the disputes between the parties in terms of the arbitration clause in the partnership deed dated 10th July 1984. The case of the Plaintiffs is that the plaint in this suit was drawn up on 2nd June 1992 and contained a narration of the incident of 27th May 1992. It was filed on 11th June 1992 in this Court.

12. On 7th September 1992 Mohan Kukreja filed his written statement in CS (OS) No. 2190 of 1992. In the said statement, it was stated in para 2 that the partnership as created by the deed dated 10th July 1984 was superseded and came to an end with the retirement of the Plaintiffs from the said partnership. This was brought about by a deed of retirement dated 16th August 1990 whereunder the Plaintiffs retired from the said business with effect from 15th August 1990 after a full settlement of accounts. The written

statement also assailed the maintainability of the suit. A copy of the deed of retirement was annexed as Annexure R-1. Significantly, the written statement made no mention of any family settlement entered into between the parties as was subsequently sought to be urged by the Defendants. The Defendants, at that stage, did not produce the original of the said retirement deed.

13. The Plaintiffs then filed an application being IA No. 11688 of 1992 in which it was contended that they had not signed any retirement deed or vouchers. The Plaintiffs prayed for a direction to the Defendants to file the original of the purported retirement deed dated 16th August 1990. The Defendants produced the retirement deed in original on 18th November 1993. Stating that this was the first time that they saw the original of the purported retirement deed, the Plaintiffs, on 23rd November 1993, had FIR No. 428 of 1993 registered with the police station at Lajpat Nagar alleging cheating and forgery by the Defendants.

14. On 4th February 1994, Mohan Kukreja filed an application being IA No. 1386 of 1994 seeking permission to amend his written statement and withdraw the averment therein that the Plaintiffs had filed a civil suit before the learned Sub-Judge, Muzaffarpur. In this application, there was no averment made that there was a family settlement pursuant to which the partnership was dissolved.

15. On 1st May 1996, this Court passed an order directing that the disputed documents be sent to the Central Forensic Science Laboratory ('CFSL') for examination. Subsequently, on 19th July 1996, the Court directed the

Plaintiffs to submit their specimen signatures and certain other documents to the CFSL for comparison.

16. On 21st November 1996, the CFSL submitted its report signed by Mr. S.L. Mukhi, Senior Scientific Officer, Grade-I (Document)-cum-Assistant Chemical Examiner to the Government of India. He was later examined in the arbitration proceeding as a witness. *Inter alia*, the said report set out the results of the comparison of the disputed signatures on the retirement deed and vouchers with the specimen (standard) signatures of the three Plaintiffs. As regards the signatures of Mr. Sunder Kukreja and Mr. Ram Chander Kukreja, the report stated that the examiner was “unable to connect” the questioned signatures marked Q-1 to Q-3 with the standard signatures. As regards the signature of Raj Kumar Kukreja, the officer stated that he could not “express any opinion regarding the authorship of the questioned signatures marked Q-10 to Q-12 in comparison to the only two standard signatures marked A-48 & A-50.”

Defendants' amendment application

17. A second amendment application being IA No. 900 of 1997 was filed by the Defendants under Order VI Rule 17 CPC by which Defendant No. 1 sought to add another preliminary objection to his reply to the petition under Section 20 of the 1940 Act by adding paras 5 to 14. *Inter alia*, Defendant No. 1 sought to aver the following: that since the firm was a family venture, no outsiders were involved in the partnership; that the firm stood dissolved on 15th August 1990; several properties/assets and businesses had been acquired by the family partners; that the business of Sapna Cinema came

entirely to the share of Defendant No. 1; that after adjusting the total debit balance of Rs. 12,65,399 then standing in the names of the four retiring partners as on 15th August 1990, they were each paid Rs. 50,000 as per the above valuation and settlement.

18. This was the first time that Defendant No. 1 sought to formally bring on record his stand that there was a family settlement pursuant to which the purported retirement deed was executed. The Defendants state that prior to this, a mention of the family settlement was made by Mr. Mohan Lal Kukreja before the Income Tax Officer ('ITO') on 20th March 1995 in proceedings relating to assessment of income tax of the firm for the Assessment Year ('AY') 1991-92. Mr. Mohan Lal Kukreja is stated to have averred before the ITO that his retirement from the firm was on account of a family settlement. It was stated that Mr. Madan Lal Kukreja also made a statement to the same effect on 21st March 1995 before the ITO. It was further stated that on 22nd July 1995, Mr. Mohan Lal filed an affidavit in CS (OS) No. 2190 of 1992 giving a detailed account of the verticals created in 1989-90. However, this affidavit did not expressly refer to a family settlement.

19. The said application, IA No. 900 of 1997, filed by Mohan Lal Kukreja was dismissed with costs by the learned Single Judge of this Court on 31st January 2006. Among other reasons, the learned Single Judge held that

“[T]he present amendment, which has been filed after more than 5 years and is the second application for amendment filed by the Respondent No. 1 is intending to take a totally different stand now, i.e., that larger partition of the family had taken place in which everything else including the accounts of the partnership were fully

settled. This is a complete new version and a distinct case, which is sought to be pleaded by the Respondent No. 1 in the present application. The application for amendment is not *bona fide*. No reason whatsoever has been stated in the application as to why these facts were not stated in the original reply or in the first application filed for amendment under Order VI Rule 17 CPC. These facts were apparently and admitted within the knowledge of the Respondent No. 1. Much less the Respondent has any plausible reason for not stating these facts earlier.”

20. The learned Single Judge further noted that the petition for the appointment of an Arbitrator had been pending for the last 14 years and that the proposed amendments would completely change the stand of Mohan Lal. The application was dismissed with costs.

21. As far as main suit, i.e., CS (OS) 2190 of 1992 was concerned, the learned Single Judge was of the view that the plea of the Defendants, namely, that by reason of the retirement deed and vouchers there was no arbitrable dispute, could be examined by the Arbitrator. The learned Single Judge found that, in view of the report of the forensic expert, it could not be said that disputes between the parties did not subsist. As there was no dispute as to the existence and validity of the arbitration agreement, it was proper that the Arbitrator should examine all disputes including the genuineness and validity of the retirement deed. The learned Single Judge appointed a retired Chief Justice of the Punjab and Haryana High Court as the sole Arbitrator.

The order of the DB

22. The above order of the learned Single Judge dated 31st January 2006 was

challenged by Mohan Lal Kukreja by way of FAO (OS) No. 469 of 2006. By its judgment dated 30th November 2007, the Division Bench (DB) held that the question of novation or supersession of the original agreement was not one that could have been referred to arbitration by the learned Single Judge. According to the DB, “that was a matter which had to be decided by the Court itself.” The DB set aside the order dated 31st to the extent that it allowed CS (OS) 2190 of 1992 and referred the disputes between the parties to the learned Arbitrator. CS (OS) 2190 of 1992 was remanded to the learned Single Judge for a fresh disposal on the above point. The DB made it clear that if the learned Single Judge came to the conclusion that the retirement deed was never executed by the parties, the Court would be free to pass an order making a reference to the Arbitrator. However, a contrary conclusion that the partnership had been superseded by the deed of retirement would mean that there would be no room for making any reference. The order of learned Single Judge dated 31st January 2006 in IA No. 900 of 1997 rejecting the prayer of the Defendants to amend the written statement bringing on record the averments concerning the larger family settlement was confirmed by the DB.

The order of the Supreme Court

23. Against the aforementioned order of the DB dated 30th November 2007 the Plaintiffs filed Special Leave Petition (Civil) No. 1342 of 2008 which was later registered as Civil Appeal No. 1910 of 2009 in the Supreme Court. The said appeal was allowed by the Supreme Court by a judgment dated 26th March 2009. The Supreme Court concluded that the DB was not correct in holding that the dispute should not have been referred to the Arbitrator in

view of the purported retirement deed dated 16th August 1990. Since the very genuineness of the said retirement deed was challenged and the forensic expert had given a report that it was not genuine, the Single Judge had recorded a *prima facie* satisfaction that the dispute had not become dead. The Supreme Court concluded that in view of the decision of the Court in ***M/s. Shree Ram Mills Limited v. M/s. Utility Premises (P) Limited JT 2007 (4) SC 501*** “it would have been appropriate to have left the question regarding the genuineness of the alleged retirement deed to be decided by the Arbitrator.”

24. The Supreme Court set aside the order of the DB and appointed a former Judge of the Supreme Court as the sole Arbitrator “to decide the dispute between the parties, including the dispute whether the alleged retirement deed was genuine or not.”

25. As a result of the order of the Supreme Court, the order dated 31st January 2006 of the learned Single Judge, including the dismissal of IA No. 900 of 1997, stood revived in its entirety. In other words, there was no challenge to that part of the order of the DB which affirmed the dismissal of IA No. 900 of 1997 by the learned Single Judge.

26. Therefore, what was placed before the learned Arbitrator was the dispute as emanated from the pleadings in CS (OS) No. 2190 of 1992 including the question of whether the retirement deed and vouchers were genuine.

Proceedings before the Sole Arbitrator

27. Before the learned Arbitrator, a statement of claim was filed on behalf of

Plaintiffs No. 1 and 2, i.e., Mr. Sunder Kukreja and Mr. Ram Chand Kukreja on 1st June 2009. In para 14 it was stated as under:

“14. The Claimants are not getting any profits from the business and they estimate that each one of the Claimant shall be entitled to the payment of Rs. 1,00,000/- (Rupees One Lakh) per month from the year 1990 to 1995 and thereafter even on a reasonable expectation and return of Cinema Hall and other facilities, each of the Claimants became entitled to receive at least Rs.1,50,000/- (Rupees One Lakh Fifty thousand only) upto the year 2000. In or around year 2000 the business of Cinema Halls saw a boom and the prices of tickets and profits from other services like eatables etc. increased manifold. Therefore, even on a reasonable basis, each of the claimant is entitle to the payment of Rs.2,00,000/- (Rupees two lakhs only) per month upto the year 2005 and thereafter at the rate of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) per month towards the profits and in this manner each one of the Claimant is entitled to receive a sum of more than Rs. 3,20,00,000 (three crore and twenty lakhs only) from the Respondents along with interest at the rate of 18% per annum from the date of accrual of the income till payment upto the date of filing of the claim petition and therefore, it would be in the interest of justice that a Receiver be appointed to divide the profits equally amongst the parties as the property is being miss-managed by the Respondents to meet their selfish interests or in the alternative each claimant be paid his share of profits till the Award. The Hon’ble Arbitrator may be pleased to give the Award in terms of the above as also declare the claimants as owners of 20 per cent each in the property in dispute viz No. 54, Suraj Parbat, East of Kailash, New Delhi.”

28. An amended reply was filed by Defendant No. 1, Mr. Mohan Lal Kukreja in which it was again sought to be urged that in view of the continued litigation he had suffered huge losses. He, therefore, sought to recover a sum of Rs. 11,95,20,000 together with interest @ 18% per annum

from the Claimants. It was *inter alia* averred by Mr. Mohan Lal Kukreja that in their respective income tax returns ('ITRs') for AY 1991-92 the Plaintiffs had not shown any income from the firm and had not made any mention of any forged retirement deed. Reference was made to an order dated 25th February 1998 passed by the learned Additional Sessions Judge in proceedings arising out of FIR No. 428 of 1993 in which the averment of learned counsel for the Defendants that the Income Tax Commissioner had found the dissolution deed to be genuine was noted. It was averred that the partnership deed dated 10th July 1984 was a forged and fabricated document. Interestingly, the averments in the reply included those that were refused to be permitted by the learned Single Judge by order dated 31st January 2006 in IA No. 900 of 1997 for amendments to the written statement.

29. The Plaintiffs pointed out in their replication that this was far beyond the scope of reference and a similar attempt by the Defendants had already been rejected by the learned Single Judge by an order dated 31st January 2006. It was further pointed out that Mr. Mohan Lal's review petition against the order of the DB affirming the decision of the Single Judge dated 30th November 2007 was also dismissed on 22nd May 2009.

30. Defendant No. 2, Mr. Madan Lal Kukreja filed his written statement before the learned Arbitrator stating that he had retired from the partnership firm on 15th August 1990 and therefore, has no right, interest, claim or liability in the said partnership business. Mr. Madan Lal submitted that he was not a necessary party to the arbitral proceedings and thus, his name ought to be deleted or dropped from the array of parties. He maintained that the partnership stood dissolved on 15th August 1990 by a retirement deed

executed on 16th August 1990. The constitution of the said firm was consequently changed from a partnership to the sole proprietorship of Mohan Lal Kukreja. As regards the allegation of the Plaintiffs that he had conspired with Mohan Kukreja to forge the retirement deed, Madan Kukreja referred to the observations of the ASJ, Delhi in his order dated 26th February 1998 in the criminal proceeding arising from FIR No. 428 of 1993.

31. It must be noted at this stage that the proceedings arising from FIR No. 428 of 1993 have been stayed by the High Court by its order dated 7th October 2009 in Criminal Revision No. 445 of 2007.

32. A separate statement of claim was filed by Plaintiff No. 3, Mr. Raj Kumar Kukreja before the learned Arbitrator on 3rd June 2009. He reiterated the claims made by the other two Plaintiffs.

Award of the Sole Arbitrator

33. The learned Arbitrator framed the following questions for determination:

“(1) Is it correct that partnership of M/s. D.R. Kukreja & Co. has been dissolved mutually on 15th August 1990?

(2) Whether the retirement deed/dissolution of firm dated 15th August 1990 has been signed by all the retiring partners, and if so, to what effect?

(3) Whether each of the three Claimants is entitled to Rs. 3,20,00,000 or any amount from the Respondents as damages/loss of profit?

(4) Whether the second Claimant Raj Kumar is entitled to claim damages amounting to Rs. 1,00,00,000 or any other amount on account of alleged mental agony and torture caused by the

Respondents?

(5) Is the Respondent – Mohan Lal Kukreja, entitled to an amount of Rs. 27,85,05,504, which includes interest, or any other amount from the Claimants as alleged in the counter-claim?

(6) To what relief, if any, any of the parties is entitled as per the statement of claim and counter-claim?

(7) To what amount of cost any of the parties is entitled and from whom?"

34. In the impugned Award dated 26th May 2014, the learned Arbitrator noted that the three claimants as well as Mr. Mohan Lal had filed their respective affidavits. No affidavit was filed by Mr. Madan Lal. Mr. Mohan Lal also filed affidavits of two witnesses, viz., Mr. Jugal Uppal and Mr. Pramod Bhargava. Mr. Mohan Lal was examined as RW-1. Mr. Pramod Bhargava and Mr. Jugal Uppal were examined as RW-2 and RW-3. Mr. Mohan Lal also filed an affidavit of a Mr. I.K. Malhotra, Manager of M/s. D.R. Kukreja & Co. However, he was given up as witness since he was not available for cross-examination and his affidavit was struck off from the record.

35. On the side of the claimants, Mr. Sunder Kukreja was examined as CW-1. Mr. Raj Kumar Kukreja was examined as CW-5. During the pendency of the proceedings, Mr. Ram Chander Kukreja died and his legal representatives were brought on record. Mr. Navin Kukreja, son of the deceased Ram Chand Kukreja, was examined as CW-2. The Claimants also examined Mr. S.K. Mukhi, the then Principal Scientific Officer, CFSL as CW-4. For the purpose of his evidence the record of CS(OS) 2190 of 1992

was summoned by this Court. Mr. Madan Lal Kukreja participated in the proceedings and cross-examined CW-1 and CW-5. He, however, did not cross-examine CW-2, Mr. Navin Kukreja and CW-4, Mr. S.K. Mukhi.

36. As far as the documentary evidence was concerned, the learned Arbitrator noted that the principal documents in the case were the partnership deed dated 10th July 1984, the alleged retirement deed dated 16th August 1990, the four vouchers allegedly showing receipt of payment of Rs.50,000 by each of the retiring parties other than Mr. Mohan Lal Kukreja and the report of the Principal Scientific Officer, CFSL. Reference was also made to certain records of the Income Tax Department pertaining to continuance or otherwise of the partnership.

37. The learned Arbitrator analysed the evidence of Mr. Pramod Bhargava (RW-2) who claimed to have gone to the Sapna Cinema premises on 16th August 1990 to settle his accounts and found Mr. Mohan Lal Kukreja present there along with the other brothers. Mr. I.K. Malhotra and Mr. Jugal Uppal were also stated to have been present at that time. The learned Arbitrator found that Mr. Pramod Bhargava was not a dependable witness. He could not produce any relevant document to prove his visit to Sapna Cinema at the time when the alleged retirement deed was signed. In response to a pointed question as to whether any cheque was issued to him in the course of settling of accounts on the said date, Mr. Bhargava stated that “as the account was small the amount was settled by cash.”

38. The learned Arbitrator then discussed the evidence of Mr. Jugal Uppal (RW-3), a business man who stated that he knew Mohan Lal and his

brothers. The learned Arbitrator observed:

"In his testimony he claimed to have been present at the time when the deed of retirement was prepared by Sunder Kukreja and executed among the brothers and also to have signed the same as a witness. *Inter alia*, when he was asked whether any money transactions was transacted in his presence on 16th August 1990, he replied that "it was a very small amount." When asked what the worth of Sapna Cinema was in 1990, he replied "I never thought of that," and when he was further asked if the value of the same would be around 40-50 crores, his answer was "I cannot say." He denied being in the business of real estate and that he knew the actual value/worth of Sapna Cinema in 1990 but refrained to disclose the same as, being Mohan Lal Kukreja's friend, he intended to support his false case."

The learned Arbitrator was of the view that Mr. Jugal Uppal did not inspire confidence. His evidence rather pointed to "the forgery of the retirement deed."

39. The learned Arbitrator then examined in detail the evidence of Mr. Madan Lal Kukreja. In particular, the learned Arbitrator noted that "time and again Madan Kukreja stressed that the retirement deed and the vouchers were prepared at the same time on 16th August 1990." When confronted with evidence that the vouchers were prepared on 15th August 1990, he changed his story and stated that the vouchers were prepared before 15th August 1990 when it was mutually agreed between the parties to dissolve the firm. The learned Arbitrator noted the neither Mr. Madan Lal nor Mr. Mohan Lal could explain as to when and how the alleged retirement deed was prepared and why stamp paper for executing the retirement deed was purchased two and half months earlier to 16th August 1990. The learned Arbitrator, therefore, found that "the evidence of execution of the retirement deed and

signatures of the witness on the documents are not reliable.”

40. The learned Arbitrator set out portions of the evidence of Mr. Madan Lal and noted:

“A bare perusal of the cross-examination of Madan Kukreja would show that he does conceal many facts, is not truthful witness and is coming in connivance with Mohan Kukreja. Certain questions were put to Madan Kukreja regarding the value of the property of Sapna Cinema and how the amount of Rs. 50,000 paid to the Claimants as retiring partners was arrived. Madan Kukreja expressed his ignorance.”

41. The learned Arbitrator then discussed extensively the evidence of Mr. Mohan Lal Kukreja followed by the evidence of Mr. Sunder Kukreja and Mr. Raj Kumar Kukreja. As regards the evidence of Mr. S.L. Mukhi, the learned Arbitrator noted that he was extensively cross-examined by learned Senior counsel for Mohan Lal Kukreja. As many as 169 questions were put to him. The learned Arbitrator listed the following 9 circumstances which, in his opinion, showed that, even apart from the report of the CFSL, the retirement deed was not genuine:

"(i) On Independence day, 15th August 1990 that payment of Rs. 50,000 to each of the partners was given in cash. Why not by cheques?

(ii) Books of accounts have not been produced by the Respondents to show on 15th August 1990 how each of the retiring partner was entitled to Rs. 50,000 as per the books of accounts of the partnership.

(iii) When this cash amount was withdrawn from the bank or was cash available with the Respondents from the proceeds of sale of tickets of Cinema?

(iv) Market value of the Sapna Cinema on that day was running into crores though exact figure is not coming from the Respondents. It is also not shown by the Respondent as to how the figure of price of cinema hall would equate with the properties given to the retiring partners as alleged by the Respondents.

(v) The records of the Registrar of Firms, and that of the Motion Picture Association in respect of D. R. Kukreja & Co. show that the erstwhile partnership was still continuing.

(vi) There are different dates on the Retirement Deed and the vouchers and no acceptable explanation has been given.

(vii) The non-judicial stamp paper on which alleged retirement deed has been written was purchased much before the date of its execution. Again no explanation is forthcoming as to how come that stamp paper should have been purchased much earlier and who got the stamp paper purchased. Who prepared and how the subject of the retirement deed was written.

(viii) There have been changing of version as to how retirement deed got to be executed and when the settlement is alleged to have taken place.

(ix) During the cross-examination of Claimant No. 2, Raj Kumar Kukreja, it was put to him that the value of the land of Rs. 300 sq.yard on which his house is built situated at Sant Nagar (Next to East of Kailash) was Rs. 15 to 20 crores during 1992, Sapna Cinema building is on land of 2500-3000 sq.yard value of the land on which Sapna Cinema is built would therefore run into cores.”

42. The learned Arbitrator noted that the core issue was as follows:

“For me the issue is simple that there is a partnership dated 10.07.1984 which defines the specific shares of the five partners. It contains the terms of the partnership. Each partner has 20% share in the profit & loss of the business. Partnership is at Will.

Each partner shall be entitled to retire from the partnership by giving six months' notice in writing to other partners of his intention to do so or by mutual agreement in writing. Admittedly no retiring partner has given notice; Books of accounts of the partnership have not been brought to show as to what of the funds were taken out and from which capital account or otherwise of the partner to invest in other business or for buying any property. Retirement deed dated 16th August 1990 does not contain any recital as to which partner is to get which business/property. I would not, therefore, go beyond the terms of partnership deed and retirement deed.”

43. The learned Arbitrator noted that an attempt had been made to conceal the real value of the property, i.e., Sapna Cinemas. For this purpose, the best evidence would have been the Income Tax Returns of the firm from 1985 to 1990 and from 1990 to 2009. The learned Arbitrator then discussed the four vouchers wherein each of the retiring partners is shown to have received Rs. 50,000 in cash on account of the retirement and how each of them were in the handwriting of both the Defendants. No explanation was forthcoming by either Mr. Mohan Lal or Mr. Madan Lal as to how the vouchers had been filled up. The date 15th August 1990 was separately written on the respective portions of the vouchers by both of them. The learned Arbitrator noted the distinction between ‘retirement’ and ‘settlement’ and that while Mr. Mohan Lal had stated that the amount was given on account of retirement, Mr. Madan Lal had stated that it was given on account of a family settlement. The learned Arbitrator concluded that “it is difficult for me not to believe the statement of the Claimants/stand of the Claimants that their signatures on the retirement deed and on the vouchers have been forged.”

44. The learned Arbitrator found that many questions raised by the Claimants remained unanswered. He noticed as follows:

“Retirement deed did not suggest any family settlement. Business of the partnership was the Cinema business with each partner having 20% share in the profit and loss of the business of the Cinema. Partnership is at will. Six months notice is required in any retirement of partner. There is no such notice given by any of the Claimants. Under the partnership deed each partner could have his own business and asset acquired from that business would not be a part of the partnership business. Respondent No. 1 Mohan Lal Kukreja never raised any plea in his submission in 1990 to 1996 in the Hon’ble Delhi High Court where proceedings had been pending under Section 20 of the Arbitration Act, 1940. Scope of the reference to the arbitrator by the Hon’ble Supreme Court cannot be restricted to any other proceedings of any nature. Rs. 50,000 paid to each of the Claimants was insufficient consideration for retirement. Respondent No. 1 did not produce any account books of D.R. Kukreja & Co. to show what was the state of affairs of the finances at the time of retirement deed and how Rs. 50,000 was paid to each partner on 15th August 1990. That retirement deed is not a genuine document gets support from the report of CFSL.”

45. The learned Arbitrator also the consequences of factum of retirement being acted upon in the event that the alleged retirement deed was not genuine. In response to the argument of Mr. Mohan Lal that Sapna cinema was not the property of the partnership firm, the learned Arbitrator noted that it was the firm which constructed the cinema over the plot. The Income tax Officer had levied capital gain tax on the partners on the basis that the cinema was the property of the partnership firm. While Mr. Mohan Lal Kukreja had filed an appeal

against the assessment order he did not challenge the finding that the cinema property belonged to the partnership firm, D.R. Kukreja & Co. The learned Arbitrator also noted that Mr. Mohan Lal did not produce the accounts of D.R. Kukreja & Co. He could have shown the account books of the firm on the date of the retirement deed as further evidence. The learned Arbitrator concluded:

“It is apparent that Respondents joined hands to create a fake document in the form of retirement deed containing false signatures of the Claimants and in that process also prepared cash vouchers containing false signatures of the Claimants. All this was done to deprive the Claimants to their right as partners in terms of the partnership deed dated 10th July 1984, which remains in force and rights of partners continue to flow from that. Evidence on record shows that retirement deed and the vouchers do not bear signatures of the Claimants much as the Respondents may allege to the contrary.”

46. On the question of relief, the learned Arbitrator noticed that the Claimants did not lead evidence to show what the profits of the firm in the hands of each of the partners were. The documents filed with the report of the Local Commissioner (‘LC’) appointed by the High Court in the proceedings between the parties included audited balance sheets of the firm, D.R. Kukreja & Co. for the running of the cinema business for the period from 1991 to 2004. The learned Arbitrator, based on these figures, estimated the profits for 2004-2009 at Rs.3,00,000 per annum. No party had filed any objections to the report of the LC. Therefore, the learned Arbitrator accepted the audited balance sheets filed along with the LC’s report for the purpose

of molding the relief. The learned Arbitrator, on that basis, held as under:

“Thus each of the 5 partners would be entitled to Rs. 7,36,227.26 as his share of profit from the partnership business from 1991 to 2009. Accordingly each of the Claimant will be entitled to Rs. 7,36,227.26 with interest @ 18% per annum upto the period of filing of statement of claim till award which is to be held accordingly. Claimants will also be entitled to future interest @ 18% per annum on the amount of award from the date of the award till payment. However, no future interest will be payable for two months in case Respondent pays to the Claimants amount of the award within this period.

It is the Respondent No. 1 who is liable to pay as it is he who has taken charge of the Cinema business on the basis of the retirement deed which is not genuine and has been running the show all this period depriving the Claimants of their lawful rights. As regards cost of the proceedings is concerned both Respondents are liable to pay. It is so as Respondent No. 2 is also a party to prepare retirement deed which is not genuine and which contains fake signatures of the Claimants. Respondent No. 2 is also very much party to the forged vouchers showing payment and receipt of Rs. 50,000 to each of the Claimants.”

47. The counter-claim of Mr. Mohan Lal was rejected. The learned Arbitrator noted that there was a specific order of the Court prohibiting Mr. Mohan Lal from letting out and collecting rental from the cinema premises. The learned Arbitrator rejected the claims of Mr. Raj Kumar Kukreja for compensation for the mental agony and torture suffered by him due to the arbitration proceedings. The learned Arbitrator held that the Claimants would be entitled to the costs of the arbitration proceedings in the sum of Rs. 9 lakhs payable by both the

Respondents. The learned Arbitrator was, however, careful to add as under:

“I however wish to make it clear that my task as directed by the Hon’ble Supreme Court is “to decide the dispute between the parties including the dispute whether the alleged retirement deed was genuine or not”. Having held that retirement deed is not genuine and partnership deed dated 10th July 1984 is in force, I have delved only on civil liability of the parties and I did not concern myself with any alleged criminal liability or otherwise of any of the Respondents by my holding of the retirement deed being not genuine.”

48. The operative portion of the Award reads as under:

“(1) I hold that the retirement deed dated 16th August 1990 is not genuine. This is a fake document. It does not dissolve the partnership dated 10th July 1984. Claimants have not retired from the partners constituted as per partnership deed dated 10th July 1984.

(2) Each of the Claimants viz: Sunder Kukreja, Raj Kumar Kukreja and legal representative of Ram Chandra Kukreja (since deceased) are entitled to Rs. 7,36,227.26 with interest @ 18% per annum from 1st April 2009 to till the date of award. Claimants are also entitled to future interest @ 18% per annum on the amount of award from the date of award till payment. However, no future interest will be payable in case amount of award is paid to the Claimants within two months from the date of the award. It is Mohan Lal Kukreja, Respondent No. 1 who is liable to make payment of amount under the award to each of the Claimants.

(3) Claimants are also entitled to cost for an amount of Rs. 9 lakhs (Rupees 3 lakhs to each of the Claimant) payable by both Respondent No. 1 and 2, Mohan Lal Kukreja and Madan Lal Kukreja equally.”

Objections to the Award

49. Two sets of objections have been filed. The first is by Mr. Mohan Lal Kukreja, being IA No. 9728/2015 and the other is by Mr. Madan Lal Kukreja, being IA No 3967/2015. The pleadings in both sets of objections were completed.

50. The Court does not consider it necessary to refer to the orders passed prior to the final hearing of these objections as those are already part of the record. It may be noticed that the parties were permitted to file any additional documents which formed a part of the arbitral record. The record of CS (OS) No. 2190 of 1992 was also called for. The submissions of learned Senior counsel for all the parties were heard at length over 7 dates of hearing.

51. Mr. P.V. Kapur, learned Senior counsel and Mr. Navin Chawla, learned advocate, appeared for Mr. Sunder Kukreja and Mr. Ram Chander Kukreja. Ms. Meenakshi Arora, learned Senior counsel and Mr. Gurbaksh Singh, learned counsel appeared for Mr. Raj Kumar Kukreja. On the side of the Defendants, Dr. A.M. Singhvi learned Senior counsel and Mr. Rupinder Singh Suri, learned Senior counsel appeared for Mr. Mohan Lal Kukreja and Mr. Parag P. Tripathi, learned Senior counsel and Mr. Suman Kapur, learned advocate appeared for Mr. Madan Lal Kukreja.

52. The first substantial objection is that the learned Arbitrator failed to consider vital facts and evidence including: the apparent family verticals that were formed; the fact of there being a family settlement; direct evidence regarding the retirement deed and vouchers; admissions made by Mr. Raj

Kumar Kukreja (Plaintiff No. 3); the suppressions and contradictions made by the Plaintiffs; the inconsistencies in the CFSL report and the testimony of Mr. Madan Lal Kukreja, one of the retiring partners.

53. The second broad objection is that the impugned Award suffers from errors apparent on the face of the Award. In support of this argument, it was contended that first, the learned Arbitrator erred in holding that Mr. Mohan Lal Kukreja fabricated the retirement deed dated 16th August 1990, and secondly, that undue and misplaced reliance has been placed on the opinion of the handwriting expert. The third broad objection is that the impugned award is 'grossly perverse'. The fourth objection is that the learned Arbitrator misconducted the arbitral proceedings.

54. On behalf of Mr. Madan Lal Kukreja, apart from supporting the stand of Mr. Mohan Lal Kukreja, an objection was taken to the effect that an inconsistent conclusion has been arrived at by the learned Arbitrator inasmuch on the one hand it was held that the retirement deed dated 16th August 1990 was not a genuine document and therefore, all the five partners of M/s. D.R. Kukreja & Co. continued to be the partners of the firm and were each entitled to Rs. 7,36,227.26 p with interest @ 18% per annum but, on the other hand, the learned Arbitrator failed to award the said sum to Mr. Madan Lal despite him being one of the retiring partners.

55. The second major objection of Mr. Madan Lal is that it is unthinkable that any prudent person would forge a document in the nature of retirement deed to the detriment of his own interest and deprive himself of a share in the partnership business. There was absolutely no evidence that Mr. Madan

Lal was party to the alleged forgery of the retirement deed by which Mr. Mohan Lal became the sole proprietor.

56. The third objection of Mr. Madan Lal is that the finding of the learned Arbitrator that he was a party to the preparation of the forged retirement deed would seriously prejudice him in the criminal case pending between the parties on the same allegation. Therefore, the learned Arbitrator exceeded his jurisdiction which amounts to legal misconduct. There was no evidence to show that Mr. Madan Lal had created a false retirement deed and even the CFSL report did not disclose the authorship of the disputed signatures of the claimants. In any event, no specific signatures or handwriting samples of Mr. Madan Lal Kukreja were ever taken for comparison. It was submitted that “in fact Defendant No. 2/Objector honestly stated that part of the voucher were filled up by him” which showed his bonafides. According to Mr. Madan Lal, the factum of filing of the vouchers was “completely trivial and inconsequential fact/ circumstance, therefore, the impugned award is perverse”.

Scope of interference with an Award

57. At the outset the Court would like to briefly recapitulate the legal principles concerning the Courts’ powers to interfere with a reasoned award in exercise of its powers under Sections 30 and 33 of the 1940 Act.

58. In ***M/s. Sudarsan Trading Co. v. The Government of Kerala AIR 1989 SC 890*** the Supreme Court stated the position of law as follows:

“[R]easonableness of the reasons given by the Arbitrator cannot be challenged. Appraisal of evidence by the Arbitrator is never a

matter which the Court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of the evidence. The Arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the Arbitrator.”

The Supreme Court also reiterated that:

“An award may be set aside on the ground of error on the face of the award, but an award is not valid merely because by a process of inference and argument it may be demonstrated that the Arbitrator has committed some mistake in arriving at his conclusion.”

The Supreme Court also pointed out that there is a distinction between an error ‘within’ jurisdiction, i.e., an error apparent on the face of the award, and an error ‘in excess of’ jurisdiction. In the latter case, the courts can look into the arbitration agreement but in the former, it cannot, unless the agreement was incorporated or recited in the award. The Court is only to examine whether in arriving at the decision the Arbitrator has acted correctly or incorrectly. The Supreme Court observed that the Court has no jurisdiction to substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the Arbitrator had acted contrary to the bargain between the parties.

59. In ***Food Corporation of India v. Joginderpal Mohinderpal*** AIR 1989 SC 1263 the Supreme Court clarified that “it is not misconduct on the part of an arbitrator to come to an erroneous decision, whether his error is one of fact or law, and whether or not his findings of fact are supported by evidence.” It was further clarified that an award can be set aside on the ground that it has errors apparent on the face of the award only “if in the award there is any proposition of law which is apparent on the face of the

award, namely, in the award itself or any document incorporated in the award.” Further it is not necessary for the Court to examine the merits of the award with reference to the materials produced before the learned Arbitrator. The Court cannot “sit in appeal over the views of the Arbitrator by re-examining and re-assessing the materials.”

60. In ***Puri Construction Pvt. Ltd. v. Union of India* AIR 1989 SC 177** it was pointed out that “when a court is called upon to decide the objections raised by a party against an arbitration award, the jurisdiction of the court is limited, as expressly indicated in the Arbitration Act, and it has no jurisdiction to sit in appeal and examine the correctness of the award on merits.”

61. In ***Union of India v. A.L. Rallia Ram* AIR 1963 SC 1685** the Supreme Court pointed out that the Court may set aside an award on the ground of “corruption or misconduct of the arbitrator, or that a party has been guilty of fraudulent concealment or wilful deception. But the Court cannot interfere with the award if otherwise proper on the ground that the decision appears to it to be erroneous. The award of the arbitrator is ordinarily final and conclusive, unless a contrary intention is disclosed by the agreement.” The Supreme Court also pointed out that “Wrong or right the decision is binding, if it be reached fairly after giving adequate opportunity to the parties to place their grievances in the manner provided by the arbitration agreement.” The above principles were reiterated in ***M/s. Hind Builders v. Union of India* (1990) 3 SCC 338**.

62. It is necessary at this stage to refer to the decision relied upon by the

Defendants, namely, ***K.P. Poullose, v. State of Kerala AIR 1975 SC 1259*** where the award of the Arbitrator was interfered with under Section 30 (a) of the Act on the facts of that case. It was explained that misconduct under Section 30 (a) comprises “legal misconduct which is complete if the Arbitrator on the face of the award arrives at an inconsistent conclusion even on his own finding or arrives at a decision by ignoring very material documents which throw abundant light on the controversy to help a just and fair decision.”

63. The Defendants have also relied upon the decision in ***M/s. Arosan Enterprises Limited v. Union of India AIR 1999 SC 3804*** where the Court explained what was meant by "legal misconduct" in the following words:

"[T]he erroneous application of law constituting the very basis of the award and improper and incorrect findings of fact, which without closer and intrinsic scrutiny, are demonstrable on the face of the materials on record, have been held, very rightly, as legal misconduct rendering the award as invalid.

...Where the error of finding of facts having a bearing on the award is patent and is easily demonstrable without the necessity of carefully weighing the various possible viewpoints, the interference with award based on erroneous finding of fact is permissible. Similarly, if an award is based by applying a principle of law which is patently erroneous, and but for such erroneous application of legal principle, the award could not have been made, such award is liable to be set aside by holding that there has been a legal misconduct on the part of the arbitrator. In ultimate analysis it is a question of delicate balancing between the permissible limit of error of law and fact and patently erroneous finding easily demonstrable from the materials on record and application of principle of law forming the basis of the award which is patently erroneous."

64. Keeping the above principles in mind the Court proceeds to examine

each of the grounds of challenge put forth by the Defendants to the impugned Award of the learned Arbitrator.

The issue concerning the family settlement

65. In the first place, it may be observed that the Award is a reasoned one running into 92 pages. It discusses in detail the pleadings as well as the evidence led by the parties, both documentary and oral.

66. On the question of whether there was a family settlement, it needs to be recalled that it was only by way of IA No 900 of 1997, five years after the filing of the written statement in CS (OS) 2190 of 1992, that Defendant No. 1 sought to amend it to include averments regarding a family settlement. The submission that prior thereto such a plea was urged before the ITO on two occasions is of no avail since the Plaintiffs were not parties to those proceedings. It is claimed that on 22nd July 1995 an affidavit was filed in CS (OS) No. 2190 of 1992 giving details of the family verticals created. However, in the written statement filed in the main suit there was no such averment. This was what necessitated the filing of IA No. 900 of 2007 by Defendant No. 1 on 28th January 1997 seeking to amend the written statement. The said application was dismissed by a detailed order dated 31st January 2006. Consequently, Defendants No. 1 and 2 were not permitted to bring on record facts pertaining to the alleged family settlement. Defendant Nos. 1 and 2 filed an appeal against the order dated 31st January 2006 being FAO (OS) No. 460 of 2006 which was dismissed by the Division Bench on 30th November 2007. The DB did not interfere with the order dated 31st January 2006 insofar as the dismissal of IA No. 900 of 1997 was concerned.

The matter was remanded to the learned Single Judge only to the extent of having to decide whether the retirement deed dated 16th August 1990 and the receipts/ vouchers were genuine. The Defendants did not carry the matter further in appeal to the Supreme Court. With the High Court not permitting Defendant Nos. 1 and 2 to amend their written statement incorporating the above averments concerning the family settlement, the question of their seeking to do so in the arbitration proceedings did not arise.

67. Therefore, there was no issue before the learned Arbitrator concerning the so-called family settlement. The scope of the proceeding before the learned Arbitrator as determined on a collective reading of the orders dated 31st January 2006 of the learned Single Judge and the judgment of the Supreme Court dated 26th March 2009, was to examine whether the retirement deed and the vouchers were genuine or not. At the hearing on 13th January 2010 the learned Arbitrator framed issues but none related to the existence of a family settlement.

68. Nevertheless the learned Arbitrator did consider this issue. In internal page 66 of the impugned Award, the learned Arbitrator observed as under:

“Defence of the Respondent is that before the retirement deed was signed, there was a settlement among the partners. Under this settlement various properties were given to each of the partners and Respondent No. 1 got Sapna Cinema under this settlement. There is no document to prove the existence of the settlement or how it was arrived at. It may be that there was some informal arrangement between the partners but then that would not mean that in order to retain Sapna Cinema falling to the share of Respondent No. 1, Respondents will join hands and adopt this crude method of creating a fake document.”

69. The learned Arbitrator referred to the stand of Mr. Madan Lal regarding the family settlement as under:

“Since Mohan Lal Kukreja had been referring to family settlement, which ultimately resulted in the retirement deed, he was asked when he for the first time took the plea of family settlement. He said it was some time in 1990 but he did not remember the date. Then asked as to if that plea was taken before or after CFSL report dated 21st November 1996, he said he would not remember. He however admitted that it was correct that for the first time this plea was taken when he filed an amendment application in IA No. 900 of 1997 on 28th January 1997.”

70. Mr. Mohan Lal was asked whether the retirement deed and the family settlement occurred at two different stages or at the same time. He answered that it was at the same time. When he was subsequently asked if he had mentioned the family settlement in the retirement deed dated 16th August 1990, he answered in the negative and said “in fact I do not remember what is written in the retirement deed”. Therefore, the plea of the Defendants that the learned Arbitrator did not consider the issue concerning the family settlement or evidence in that regard is entirely without basis.

71. The Defendants relied on the decision in ***Ram Charan Das v. Girjanandini Devi AIR 1966 SCC 323*** which holds “that consideration having been passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter.” The Defendants referred to the annual return filed by M/s. Mohan Overseas showing all the shares of Madan Kukreja and/or his family stood transferred to Sunder Kukreja and/or his wife Seema Kukreja in the year 1989; a return that showed that all shares of Raj Kumar Kukreja in

Mohan Overseas Limited stood transferred to Sunder Kukreja and/or his wife on 12th April 1990 and a letter dated 4th April 1990 from Ram Chand Kukreja on behalf of M.M. Enterprises to the Bank of Madura Limited mentioning the retirement of Madan Kukreja from M.M. Enterprises with effect from 4th April 1990. These documents by themselves do not prove the existence of a family settlement.

72. It was then submitted that, in their statement of claim, the Plaintiffs admitted that they had received no income from M/s. D.R. Kukreja & Co. They also showed no such income in their income tax returns for AY 1991-92. Reliance was placed on the decision of the Supreme Court in ***Kale v. Deputy Director of Consolidation AIR 1976 SC 807*** where it was held that “if by consent of parties a matter has been settled, it should not be allowed to be reopened by the parties to the agreement on frivolous or untenable grounds.” Reliance was also placed on the decision in ***Hari Shankar Singhania v. Gaur Hari Singhania AIR 2006 SC 2488*** where a reference is made to the decision ***Kale*** (supra) to the effect that the Court should have, in that dispute, upheld the family arrangement instead of disturbing the same on ‘technical or trivial grounds’.

73. In the present case, there is no credible evidence to show that a family settlement was arrived at between the parties concerning Sapna Cinema and that this settlement was accepted by the parties and acted upon thereafter. Apart from the self-serving statement of Mr. Mohan Lal Kukreja that the entire business of M/s. D.R. Kukreja & Co. came to his share in the family settlement, and that of Mr. Madan Lal supporting his version, there is no other independent witness speaking to such fact. The Plaintiffs, on the other

hand, refer to Question No. 52 in the cross-examination of Mr. Mohan Lal Kukreja where he admitted that the plea of there being a family settlement was taken for the first time in the filing of IA No 900 of 1997.

74. The narration of facts bear out the contention of the Plaintiffs that the defence of a family settlement was sought to be formally brought on record by the Defendants only after the CFSL report was submitted. The Plaintiffs also contend that M/s. Mohan Overseas was purchased by Claimant No. 1 after paying consideration for the same. They deny that the said transaction was part of a family settlement. It is also pointed out that while the partnership deed of 10th July 1984 mentioned that there was a family settlement leading to the retirement deed, the purported retirement deed dated 16th August 1990 did not mention any such family settlement.

75. Interestingly, in response to a question to Mr. Mohan Lal Kukreja as to whether he had filed any document to show any amount being paid by M/s. D.R. Kukreja & Co. for the properties at Sl. No. (iv) to (viii) at page 91 of his affidavit, he answered that “I have not filed any document.” When it was then pointed out that amounts were paid for each of the properties at (i) to (viii), he claimed that the money had been paid by the firm but that he did not remember the details. In response to a further question that the properties as mentioned at (vii) and (viii) of page 91 of his affidavit by way of evidence were in fact purchased in 1994-95 and 1995-96, he answered that “these properties were purchased as mentioned above, but purchased by Ram Chander Kukreja.” This answer belies his contention that prior to the retirement there was a family settlement concerning the properties. The learned Arbitrator noted that when asked why he had not filed accounts of

M/s. D.R. Kukreja & Co., Mohan Lal Kukreja answered that though they were not filed, they were mentioned in his affidavit.

76. The Court therefore negatives the objections of the Defendants/Objectors to the impugned Award to the extent that it holds that they have failed to show the existence of a family settlement or arrangement preceding the purported deed of retirement.

Challenge on the ground of non-consideration of direct evidence

77. Now the Court proceeds to consider the next broad ground relating to non-consideration of direct evidence by the learned Arbitrator. The Defendants take exception to the fact that the learned Arbitrator has brushed aside the testimonies of Mr. Pramod Bhargava (RW-2) and Mr. Jugal Uppal (RW-3) without giving any reasons. According to the Defendants, as these two witnesses were eye witnesses to the execution of the retirement deed, their evidence should have been preferred over that of the handwriting expert.

78. Turning to the evidence of Mr. Pramod Bhargava, the Court finds that the Defendants have only selectively quoted some portions of his evidence. The learned Arbitrator has, in fact, discussed Mr. Bhargava's evidence extensively. What are critical are his answers when cross examined on his evidence that he came to Sapna Cinema premises to settle his accounts with Mohan Lal Kukrej on 16th August 1990 and his brothers were present at that time. He explained that after having tea etc. the retiring partners left the Sapna Cinema premises and thereafter he settled his accounts with

Mr. Mohan Lal Kukreja. While the accounts were being settled, Mr. Mohan Lal showed him the retirement deed which the “brothers had left behind after their respective signatures, with Mohan Lal Kukreja as he became the sole proprietor of D.R. Kukreja & Co.” It is, therefore, plain that the retirement deed was not signed in the presence of Mr. Pramod Bhargava.

79. The evidence of Mr. Jugal Uppal has also been discussed in detail by the learned Arbitrator. When asked how many papers were prepared at the time of his visit to Sapna Cinemas on 16th August, 1990, Mr. Uppal answered that “no document was prepared in his presence and prepared documents were brought there.” The learned Arbitrator has, after analyzing in detail the answers given by Mr. Jugal Uppal, concluded that he did not inspire confidence. This is a matter of appreciation of evidence. It must be remembered that these witnesses deposed in the presence of the Arbitrator who had an occasion to observe their demeanour at close proximity. If the Arbitrator comes to the conclusion that such evidence did not inspire confidence, it cannot be said that the learned Arbitrator has simply brushed aside the evidence. This definitely is not a case of non-consideration of the evidence. This is also, therefore, not a summary dismissal of the evidence.

80. Mr. I.K. Malhotra, the other witness of the Defendants, was not produced before the learned Arbitrator. He was, in fact, given up by the Defendants. As regards the evidence of Mr. Madan Lal Kukreja, the learned Arbitrator has discussed it extensively. The learned Arbitrator pointed out that there were contradictions in the versions given by Mr. Mohan Lal and Mr. Madan Lal about the endorsements made on the vouchers, with one (Mr. Mohan Lal) saying that the payment was made pursuant to the retirement

deed and the other (Mr. Madan Lal) saying that they were made pursuant to the family settlement. The so-called direct evidence of fact of signing of the retirement deed by the partners is, therefore, unreliable and ambiguous.

Expert evidence

81. The Court proceeds to next examine the submission that the CFSL report is not credible. The report of the CFSL has been available since 21st November 1996. It supports the case of the Plaintiffs.

82. The decisions in ***Fakhruddin*** (*supra*) and ***Gulzar Ali*** (*supra*) require the Court to be cautious in accepting the evidence of an expert. The Court is required to consider the said evidence in light of the other evidence and circumstances. As pointed out in ***Sukhdeo Singh*** (*supra*), although Section 45 of the Evidence Act 1872 does not prevent the Court itself from comparing the disputed writings with the specimen/admitted writings, prudence demands that the Court should be extremely slow in venturing an opinion on the basis of mere comparison, more so, when the quality of evidence in respect of specimen/admitted writings is not of high standard.

83. The learned Arbitrator has discussed the evidence of the CFSL expert Mr. Mukhi (CW-4) in great detail. As noted by the learned Arbitrator, Mr. Mukhi was cross-examined on 23rd, 24th and 28th August 2002 and 9th and 10th October 2002. A total of 169 questions were put to him. The CFSL report in paras 1, 2 and 3 discussed the extensive comparison undertaken by the expert. No questions were asked in the cross-examination of Mr. Mukhi that indicated that he had failed to compare any of the available specimen signatures with the disputed signatures. The report of the CFSL was not

challenged for the period that the matter was pending in the Court i.e. prior to the reference of the disputes to Arbitration. Although several questions were put to Mr. Mukhi to question his competence, integrity and impartiality they did not yield much for the Defendants. In the circumstances, the learned Arbitrator cannot be faulted in placing reliance on the report of the CFSL.

84. As already noted, the learned Arbitrator listed out nine factors, other than the CFSL report, to come to the conclusion that the signatures on the retirement deed and vouchers were not of the Plaintiffs. Consequently, the Court negatives the plea of the Defendants that the learned Arbitrator committed a manifest error in relying on the report of the CFSL.

The 'admissions' of Raj Kumar Kukreja

85. It is urged by the Defendants that the learned Arbitrator ought to have considered the admissions made by Mr. Raj Kumar Kukreja to the effect that he ceased to be a partner of M/s. D.R. Kukreja & Co. from August 1990 onwards. It is pointed out that the income tax return of Mr. Raj Kumar stated that he was a partner till 15th August 1990 and that in his cross-examination he admitted his signatures on the said return filed on 22nd March 1993 for AY 1989-90. It is stated that in the admission/denial of the documents, the complete return of Raj Kumar Kukreja filed by Mr. Madan Lal before the learned Arbitrator was admitted by Plaintiff Nos. 1 and 3. It is pointed out that it was Plaintiff No. 2 who had originally filed the return of Mr. Raj Kumar Kukreja in the main suit CS (OS) No. 2190 of 1992.

86. The Plaintiffs point out that Mr. Mohan Lal in his cross-examination admitted that he did not inform the Registrar of Firms about the alleged

retirement of the other partners. The membership of the partnership firm with the Motion Picture Association continued in the same manner as before 15th August 1990. A notice under Section 148 of the IT Act dated 15th September 1992 was served upon the Defendants by the Income Tax authorities requiring the partnership firm to file income tax returns for the AY 1992-93. It is only thereafter that by a letter dated 28th September 1992 (by which time the suit had been filed) that the Defendants contended for the first time that the partnership had been dissolved. The bank account maintained by the partnership firm was closed in July 1991. Another account was opened by Mohan Lal on 29th December 1992 as a proprietorship much after filing of the petition under Section 20 of the Act by the Plaintiffs. It is further pointed out that Form 12 for the AY 1990-91 of the firm, D.R. Company & Co., bears the signatures of all the parties. This is stated to have been filed on 31st August 1990 with the Income Tax authorities, i.e., after the alleged retirement deed of 16th August 1990. This does not mention the alleged dissolution under Section 184 (7) of IT Act for the continuation of registration for the AY 1990-91. The Plaintiffs contend that the photocopy of the return of Mr. Raj Kumar Kukreja for the accounting year 1991-92 in Part-III refers to M/s. D.R. Kukreja & Co.

87. The learned Arbitrator did consider in detail the evidence in regard to the 'admission' by Mr. Raj Kumar Kukreja. He quoted the portions of his cross-examination in which he answered in the negative to the question as to whether he had given a statement before the Income Tax Department regarding his retirement from the partnership of D.R. Kukreja & Co. Interestingly, barring the first page of the income tax return, only

photocopies of the other pages were produced. In response to another question regarding his having signed the income tax return on 22nd March 1993, Raj Kumar stated: "I do not know whether this is my signature. Then witness adds it appears to be my signature."

88. The learned Arbitrator has in the impugned Award considered this evidence and concluded that "Raj Kumar Kukreja could not have filed the return for Assessment Year to which it pertains." He concluded that "he was under the influence of his two elder brothers Mohan and Madan Kukreja." This again is a matter of appreciation of evidence by the learned Arbitrator which cannot be said to be perverse. This Court is not sitting in appeal over the findings of the Arbitrator on an appreciation of evidence.

Other grounds of challenge

89. Much has been said about the failure by the Plaintiffs to mention in their plaint in CS (OS) 2190 of 1992 the incident of 3rd June 1992 in respect of which an FIR was registered much later on 27th November 1993 even though the plaint was filed on 11th June 1992. It is stated that in the replication filed by the Plaintiff on 2nd February 1993 there was no mention of the incident on 3rd June 1992. It is submitted that on the one hand, the Plaintiffs contend that they came to know of the retirement deed only when a reply was filed in CS (OS) No. 2190 of 1992 and on the other, they have stated in the FIR that when the Plaintiffs were attacked on 3rd June 1992 the Defendants mentioned the retirement deed.

90. The case of the Plaintiffs, on the other hand, is that the original of the retirement deed was produced for the first time only on 18th November 1993.

It was only then that the Plaintiffs had *prima facie* material to substantiate their plea of forgery by the Defendants. In any event, the mere fact that the Plaintiffs stated in their complaint that on 3rd June 1992 the Defendants told them about the retirement deed does not amount to an admission by the Plaintiffs about the existence or genuineness of the said retirement deed.

Madan Lal's additional grounds of challenge

91. Mr. Madan Lal Kukreja on the one hand claims that the partnership was dissolved and therefore, he has nothing to do with it after 16th August 1990 and on the other hand he is aggrieved that the impugned Award is silent about his entitlement to a share of its profits as partner. The Court repeatedly asked Mr. Madan Lal Kukreja to clarify his stand. Mr. Parag Tripathi learned Senior counsel maintained that Mr. Madan Lal's case is that the family settlement did exist and had been acted upon and that he has been wrongly saddled with joint liability by the learned Arbitrator.

92. The learned Arbitrator has found that Mr. Mohan Lal and Mr. Madan Lal both prepared the vouchers, the signatures on which have been shown to not belong to the Plaintiffs. Mr. Madan Lal does not deny having been party to the preparation of the vouchers. Therefore, it is not as if the learned Arbitrator has not returned the specific findings against Madan Lal. At the same time the learned Arbitrator has clarified that he was only deciding on the question of civil liability. The Award would therefore not influence the outcome of the criminal proceedings against Mr. Madan Lal.

93. As regards Mr. Madan Lal having to equally share the costs of arbitration with Mr. Mohan Lal, the Court finds no reason to interfere with

the impugned Award, since the reasons therefor set out in the Award are not shown to be perverse or contrary to the evidence on record.

94. Mr. Madan Lal did not file any counter-claim before the learned Arbitrator. It will be open to Mr. Madan Lal to claim his share of the profits of the firm in appropriate proceedings in accordance with law.

Conclusion

95. For the aforementioned reasons, IA Nos. 3967 of 2015 and 9728 of 2015 filed by Mr. Madan Lal and Mr. Mohan Lal Kukreja respectively are dismissed with costs of Rs. 50,000 which shall be paid by them, in equal share, to the Plaintiffs within four weeks from today. IA Nos. 9727 and 9951 of 2015 are disposed of.

96. The impugned Award dated 26th May 2014 of the learned Arbitrator is made Rule of the Court. Decree sheet be drawn up accordingly.

S. MURALIDHAR, J

OCTOBER 9, 2015

Rk