

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.348 of 2011

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1. Arun Kumar Mowar, son of late Lalit Kumar Singh Mowar,
 2. Sabad Swaroop
 3. Amit Anurag, both sons of Arun Kumar Mowar
 4. Aishwarya Mowar, son of late Anil Kumar Mowar, all resident of Jodhan Niwas, Mohalla and P.S. Sultanganj, Town & District Patna.
 5. Usha Mowar, wife of Late Surya Mauli Singh, resident of Village Marachi, P.S. Hathidah (Mokama), District Patna.

Principal Defendants 2nd Party/ Appellants
Versus

1. Madan Pd. Singh Mowar @ Madan Prasad Singh, son of late Rajeshwari Prasad Singh Mowar
2. Smt. Shail Kumari Devi, wife of Madan Prasad Singh Mowar, both resident of Avantika, Mohalla & P.S. Sultanganj, Town and District Patna.

Plaintiffs 1st Party/ Respondent 1st Party

3. Smt. Raj Laxmi Devi, wife of Jawahar Lal Singh, resident of Vishnu Colony, P.S. Ara, Towan and District-Ara
4. Smt. Renu Mowar, wife of Praveen Kumar, resident of Lane No.1, Daldali Road, P.S. Kadam Kuan, Town and District-Patna.
5. Smt. Veena Singh, wife of Late Chandan Kumar Singh, resident of C/o Dr. A.C. Singh, Chincholi Road, Malad, P.S. Malad, Mumbai, Maharashtra
6. Smt. Tanuja Roy, wife of Chitranjan Roy, resident of Ashok Nagar, P.S. Kankarbagh, Town & District-Patna
7. Alka Kumari, wife of Gautam Singh, resident of C/o M.P.S. Mowar, Awantika, Sultanganj, P.S. Sultanganj, District-Patna

Respondent Nos.3 to 7 are daughters of Madan Prasad Singh Mowar.

Plaintiffs 2nd Party-Respondent 2nd Party

8. Smt. Shobha Mowar, wife of late Anil Kumar Mowar
9. Ankur, minor son of late Anil Kumar Mowar, minor under the guardianship of his mother and next friend Smt. Shobha Mowar

Respondent Nos.8 to 9 are resident of Jodhan Niwas, Mohalla and P.S. Sultanganj, Town and District-Patna

Principal Defendants 2nd Set/ Respondent 3rd Set

10. Colonel K.K. Mowar, son of late B.P.S. Mowar, resident of Jodhan Niwas, Mohalla and P.S. Sultanganj, Town and District Patna.

Proforma defendants/ Respondent 4th Set--Respondents

Appearance :

For the Appellant/s :	Mr. Kundan Bahadur Singh-Advocate
	Mr. Arjun Prasad Singh-Advocate
	Mr. Raj Krishna Jha-Advocate
For the Respondent/s :	Dr. K. N. Singh-Sr. Advocate
	Mr. Pawan Kumar-Advocate
	Mr. Sudhir Kumar Jha-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 26-02-2016



Instant appeal has been filed on behalf of appellants/ defendants 2nd party against the order dated 07.03.2011 passed by the learned Subordinate Judge-V, Patna City in Title (Partition) Suit No.66 of 1997 whereby and whereunder an objection petition dated 06.06.2005 filed on their behalf under the guise of Section 34 of the Arbitration and Conciliation Act, 1996 has been rejected, consequent thereupon, confirming the award.

2. Bereft of unnecessary details, it is manifest that respondent 1st party/ respondent 2nd party/ plaintiffs have had drawn up Title (Partition) Suit No.66 of 1997 wherein, after appearance of the appellants/ respondent 3rd set/ defendants, the parties came to terms and on account thereof, a joint petition was filed on 20.03.2004 in accordance with Section 89 of the C.P.C. showing their inclination to have the dispute resolved through arbitration and for that, both the parties have had nominated Sri Surya Mauli Singh, sole arbitrator and the learned Subordinate Judge-IIIrd, Patna City in seisin of the matter allowed the same on the same day i.e. 20.03.2004. The aforesaid arbitrator, Sri Surya Mauli Prasad Singh, on account of physical incompetency communicated the Court regarding his inability to perform as an arbitrator and therefore, requested the Court to discharge him which, the learned lower Court accepted vide order dated 28.05.2004. On the same day, another joint petition was filed on



behalf of respective parties nominating three arbitrators, Sri Shyam Kishore Prasad Singh, Sri Mithileshwar Prasad Narain Singh, Sri Hritkeshwar Prasad Narain Singh with a request to entrust the dispute for arbitration, which the learned lower Court accepted and by the same order dated 28.05.2004, referred the matter directing the arbitrators to file award on or before 22.06.2004. Then thereafter, the matter of controversy arose which will be discussed at an appropriate stage of this judgment, however, the arbitrators filed award having no date affixed thereupon and subsequently to that, the parties were noticed whereupon their appearance effected followed with filing of objection, which has been rejected by the order impugned confirming the award, hence this appeal.

3. Manifold argument has been made while challenging the order impugned on behalf of appellants. The first and foremost argument happens to be that the learned lower Court in cryptic manner, brushing aside the mandate of law and further, on an illegal ground that objection has been filed much after three months than the prescribed period, rejected the objection.

4. To substantiate their plea, it has been submitted that arbitrators, virtually entered into an act of arbitration in partisan manner and that happens to be reason behind that neither the place of proceeding has been fixed nor parties have been allowed to lead their

evidence nay supplemented the award along with proceeding while filing before the learned lower Court and consequent thereupon, the award is suffering from inherent defect.

5. Furthermore, it has been submitted that because of the fact that arbitrators have gone in favour of adversary on account thereof, have made unwarranted disclosures which never occurred and further, purposely introduced only to justify their illegal action. The learned lower Court without any cogent and reliable evidence in support thereof, instead of rejecting the award on the ground of persisting deficiency, thrown away the objection made on behalf of appellants based upon legal grounds. To substantiate the same, it has been submitted that award was never shown at an earlier occasion than witnessing the same in Court, no offer was ever made to the appellants, but contends the averments that both schedules were placed before the appellants out of which, one has been selected by the appellants as, such offer was made by the plaintiff and further, without having been properly substantiated, the learned lower Court accepted the same as gospel truth and on that very basis, rejected the objection being time barred.

6. It has further been submitted that at an initial stage of arbitration, though no place was fixed, but at the request of arbitrators, presence of appellants is found admitted at the place of respondents/



plaintiffs where the appellants faced humiliation at their end in presence of arbitrators and further, was not permitted to stay, hence he walked away. Consequent thereupon, it was incumbent upon the arbitrators to have informed the appellants regarding shifting of venue, so that appellants would have proper representation. That means to say, subsequent action of arbitrators happen to be in contravention of law, as neither venue was found duly acknowledged nor presence of appellants were. Hence, the action of arbitrators could not be perceived in accordance with law.

7. Furthermore, it has also been submitted that vide order dated 28.05.2004, award was to be filed on 22.06.2004, which never materialized nor any prayer was made on behalf of arbitrators to extend the time. True it is that during intermediary period, no objection was filed on behalf of appellants before the learned lower Court, but the aforesaid lapses at the end of the appellants had not exonerated the obligation having at the end of the arbitrators to ask for extension of time and that happens to be reason behind that award has been filed without any date. It has got a purpose and that happens to be only to dupe the Court. Whatever reason has been assigned, is found not at all substantiated by any kind of document. As such, it has been submitted that the order passed by the learned lower Court happens to be wrong, illegal and is fit to be set aside.



8. On the other hand, the learned counsel for the respondents/ plaintiffs have submitted that appellants/ defendants have filed instant appeal in formal way only to prolong the litigation as, one of the plaintiffs namely Madan Prasad Singh Mowar @ Madan Prasad Singh happens to be an old, infirm as well as suffering from different natures of ailments. Appellants/ defendants being shrewd litigant are in search of an opportunity that after death of Madan Prasad Singh Mowar, he could pounce upon other surviving heirs in order to have undue advantage. Furthermore, it has also been submitted that from the order impugned, it is evident that the learned lower Court had taken into consideration each and every point, so raised, on behalf of appellants and had explained the same in legal way whereupon rejected the prayer. That being so, the order impugned did not attract interference.

9. To substantiate such plea, it has been submitted that appellants from their own conduct for sworn all the grounds whatever been raised at the present moment. To substantiate the same, it has been submitted that by having presence of appellants at the place of respondents/ plaintiffs where the arbitration proceeding commenced and proceeded, is indicative of the fact that venue was already duly identified and in likewise manner, condoned the delay so visualizing during course of commencing the arbitral proceeding admittedly after



due date fixed by the Court. That means to say, active participation of appellants during course of arbitral proceeding is indicative of the fact that the parties have not found the time to be in salubrious, and that being so, it will be presumed that the parties have waived the hurdle and on account thereof, appellants cannot be allowed to re-agitate the matter. That means to say, appellants cannot be allowed to approbate/reprobate in same sequence. That means to say, once the legal obligation have been given up then, it cannot be allowed to re-agitate. The aforesaid events have rightly been waived by the respective parties as both the parties were uncle and nephew as well as the arbitrators also happen to be their common relatives whom, both the parties have trusted and that happens to be reason behind that the legal deficiencies were ignored. It has also been submitted that conduct of appellant, now happens to be beyond purview in terms of Section 4 of the Arbitration & Conciliation Act, 1996.

10. It has also been submitted that the arbitrators, who happen to be common relative have got no personal interest either this side or that side and further, as the appellants/ defendants failed to place by cogent and reliable evidence, regarding their hostility, partiality, and further, the recitals of the award justifies its genuineness, therefore, it has rightly been accepted by the learned lower Court. To substantiate the same, it has been submitted that the



respondent/ plaintiff happens to be uncle, hence after preparation of schedule, offer was given to respondent, nephew to pick up one schedule, which he did, and the award, accordingly divulge the events. Furthermore, on account of such eventuality, it is apparent that presence of parties was there, and being so, they have got an access to award.

11. It has further been submitted that when appellant/ defendant with ulterior motive declined to sign over the award, respondent/ plaintiff also refrained to sign. That does not mean that award should be invalidated on that very score. It has further been submitted that learned counsel for the appellants has incorrectly stated that arbitrators took into consideration beyond the terms of reference.

12. It has also been submitted that from the order impugned, it is evident that a copy of award had already been received by the learned counsel for the appellant, and as no objection was filed within prescribed time, hence the learned lower Court rightly rejected the objection so raised on behalf of appellant.

13. Before adjudicating upon the substratum of the award in question, certain salient features commanding the issue is to be seen. Section 89, Sub-clause-2(a) of the C.P.C. prescribes application of Arbitration & Conciliation Act, 1996 whenever the matter is referred for arbitration or conciliation mode of settlement. That being



so, there happens to be no hurdle in construing that the present dispute coming up before the arbitrators as directed by the Court on joint prayer of the parties and on account thereof, there would be applicability of Arbitration and Conciliation Act, 1996 (for brevity Act). As such, the requirements, so prescribed therein, is to be seen and for that, certain relevant provisions are to be considered in order to properly appreciate the grounds so raised on behalf of respective parties.

14. The first Section which should be taken note of in the present context happens to be Section 4 prescribing waiver whereupon parties are forbidden to raise an objection over award under garb of waiver. For better appreciation, same is quoted below:-

Section-4. Waiver of right to object- A party who knows that-

- (a) Any provision of this Part from which the parties may derogate, or*
- (b) Any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.*

That means to say, if the party has chosen to deviate from a set of

rules so prescribed, then in that event, the parties are precluded from raising such grievance subsequently and in likewise manner, happens to be relinquishment of any right in terms of arbitration agreement.

15. Under Chapter-III, it is evident that mode of appointment of arbitrator has been prescribed while under Chapter-IV, jurisdiction of arbitral tribunal has been laid down. Chapter-V prescribes conduct of arbitral proceedings whereunder Section 18 speaks a mandate whereunder both the parties are to be equally treated and further, be given full opportunity to present his case. Section 19 gives some sort of regularization while conducting arbitral proceeding in a way that strict compliance of C.P.C. as well as Evidence Act during course of consideration of relevancy of document has been assorted. Section 20 speaks regarding fixing of place of arbitral proceeding. Section 21 speaks regarding commencement of arbitral proceeding, prescribing the date on which reference has been made, Section 22 the language of the proceeding, Section 23 statements of claim and defence, Section 25 prescribing the eventualities in case of default of a party. Section 26 dealing with extra-ordinary power to be exercised by the arbitral tribunal by way of appointing an expert and further, Section 27 gives a liberty to the party to pray before the Court for recording of the evidence.

16. Chapter-VI deals with the activity of the arbitral



tribunal bifurcating it in two parts other than an international commercial arbitration as well as international commercial arbitration. Section-28 deals with rules to be applicable during course of preparation of award while Section 29 suggests the procedure of preparation of award by way of majority in case, there happens to be more than one arbitrator. Section 30 is settlement, Section 31 prescribes certain ingredients in order to invalidate arbitral award, Section 32 contains termination of proceedings after final arbitral award is filed or/ and withdrawal at the end of the claimant, parties have agreed to terminate, in the opinion of the arbitral tribunal, the same has become unnecessary or impossible. Section 33 prescribes additional power for correction, interpretation of award, additional award.

17. Section 34 having been identified solely under Chapter-VII of the Act, laying down the criteria whereupon arbitral award could be set aside on a petition filed on behalf of respective parties.

18. Section 34(1) suggests that an application filed on behalf of aggrieved may be entertained for setting aside the arbitral award in case, it fulfils the criteria so laid down under Sub-section 2 and 3 of Section 34 of the Act. For better appreciation, the same is quoted below:-

“34. Application for setting aside arbitral award. —

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

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

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

(i) a party was under some incapacity, or

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

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

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

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

contains decisions on matters not submitted to arbitration may be set aside; or

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

(b) the Court finds that—

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

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

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

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

19. After conjoint reading of Sub-rule-2 and 3, it is clear that for setting aside the arbitral award on the ground so enumerated, three months time has been prescribed from the date of receipt of arbitral award or in case of extension of period in terms of Section 33, from the date on which request has been disposed of with an exception that aforesaid tenure may be extended for a further period of 30 days in case, there happens to be ample material on the record to suggest that objector was prevented by sufficient cause. Giving a pause, this provision is to be read together with Section 5 which makes clear that an arbitration award that is governed by Part-I of the Act can be set aside only on the grounds mentioned under Section 34(2),(3) and not otherwise.

20. Reverting back as discussed above, Chapter-V of the Arbitration and Conciliation Act commands the procedure to be carried out during course of arbitral procedure providing fair, efficient and capable of meeting the needs of arbitration, also to provide due space for assigning proper reasons for an arbitral award, to ensure that the tribunal remains within the limits of its jurisdiction



and lastly, to minimize the supervisory rules of Courts during arbitral process. Furthermore, it is evident that Section 34(2)(a) of the Act deals with the merits of the decision rendered by an arbitral award. The aforesaid provision is revisited in the background of some sort of allegation having attributed at the end of the appellants and further, to adjudicate upon the grounds so flashed at the end of appellants for setting aside the award in consonance with applicability of Section 4 of the Act. The ground for setting aside the award so prescribed happens to be with regard to incapacity of the party, the arbitration agreement is not being a valid one, the party having no proper notice of appointment of an arbitrator of an arbitral proceeding, otherwise unable to present his case, the arbitral award deals with the dispute not contemplated by or not falling within the terms of submission to arbitration, beyond the scope of the submission to arbitration, composition of the tribunal or arbitral procedure was not in accordance with agreement of the parties, and as is evident, the learned counsel for the appellants has substantially challenged the conduct of the arbitrator in terms of Section 18 of the Act and further, under Sub-section 2(a)(iii) of Section 34, and conjoint reading of both two reminds the principle of “audi alteram partem”.

21. At the present moment, the conduct of the parties should also be taken note of. It has been admitted on behalf of



appellants that without having identification of proper place for conducting arbitral tribunal, the arbitrators sat at the place of respondent no.1/ plaintiffs where he had participated during first meeting held in the 1st week of July, as per telephonic information given by the arbitrators where the parties submitted their pleadings before the arbitrator. Furthermore, it is also an admitted fact that in the 2nd week of July, arbitrators visited village and made inspection. Then thereafter, the arbitrators sat in last week of July, 2004. After long lapse of time, again the arbitrators sat at the place in the month of December and during course thereof, it has been alleged by the appellants that he was humiliated by Madan Prasad Singh, who did not allow him to participate whereupon till the day of filing of award in Court, neither there was conduction of arbitral proceeding nor he was communicated with regard thereto nay informed with regard to place of sitting of the tribunal.

22. Certainly, by an order dated 28.05.2004, after recalling the earlier order dated 20.03.2004, accepted nomination of three arbitrators namely Sri Shyam Kishore Prasad Singh, Sri Mithileshwar Prasad Narain Singh and Sri Hritkeshwar Prasad Narain Singh, so furnished at the end of both the parties by way of joint petition directing the award to be filed by 22.06.2004. From the record, it is evident that till 22.06.2004, no sitting was made and



whatever been disclosed by the appellants has not been controverted by the respondents. Even then, keeping the issue before arbitral tribunal beyond the period of 22.06.2004 without having any sort of extension prayed for or granted by the Court concerned is another circumstance to be looked into, but the fact remains that by way of participation at the end of appellants afterward 22.06.2004 and further, even accepting plea of appellants, volunteering himself by way of participating in arbitral proceeding at the house of respondent no.1 is found duly steriled in terms of Section 4 of the Act, but presence of inherent lacuna, while conducting arbitral proceeding still remains on account of non-prayer at the end of either of the party as well as arbitrators themselves in terms of Section 33. That means to say, even submitting, beyond the period prescribed by the Court, before the arbitral proceeding, will not validate the award, as, it happens to be beyond the prescribed period.

23. Section 31 falling under Chapter-VI commands the event of award. For better appreciation, the same is quoted below:-

“31. Form and contents of arbitral award.-1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless-

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The, arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

(8) Unless otherwise agreed by the parties,-

(a) the costs of an arbitration shall be fixed by the arbitral tribunal;

(b) the arbitral tribunal shall specify-

(i) the party entitled to costs,

(ii) the party who shall pay the costs,

(iii) the amount of costs or method of determining that amount, and

(iv) the manner in which the costs shall be paid.

Explanation,-For the purpose of clause (a), "costs" means reasonable costs relating to-

(i) the fees and expenses of the arbitrators and witnesses,

(ii) legal fees and expenses,

(iii) any administration fees of the institution supervising the arbitration, and

(iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.”

24. Now, coming to the factual aspect, first of all, the award has to be seen. From Para-7 of the award, it is evident that there happens to be disclosure with regard to sitting of the arbitrators, consultation with both the parties. Both parties were ready to accept the decision on the basis of the evidence available before them i.e. plaint, written statement as well as physical inspection by the Panches whereupon they assured to put their signatures. In Para-8, it has been incorporated that 04th /6th, December, 2004, the arbitrators divided Schedule-6 and 7 properties in two parts over which all the arbitrators have put their signatures. Both parties were apprised with the decision and so, were requested to sign. Because of the fact that Arun Kumar Mowar, defendant no.1 declined to sign, on account thereof, signature of plaintiff no.1, Madan Prasad Singh Mowar was not obtained. In Para-9, it has been incorporated that the houses lying at village-Mauar, Rajgir, Nalanda and 10 Kattha land lying at Patna have been bifurcated in two parts. On the advice of Madan Prasad Singh Mowar, an option was given to defendant no.1, Arun Kumar Mowar to opt. As per wish of Arun Kumar Mowar, the houses having at Mauar and the plot at Patna have been given to the respective

parties. In Para-10 and 11, the mode of partition has been ascribed.

25. Therefore, from the award itself, it is evident that save and except incorporating under Para-2 of the award whereunder place of sitting disclosed as the Sultanganj Mohalla at Patna Town where copy of plaint and written statement was placed before the arbitrators, no description has been given at the end of the arbitrators with regard to further sittings. It is also apparent from the award that there happens to be complete absence with regard to serving a copy of the award to the respective parties. From the award impugned, it is further apparent that there happens to be complete disobedience of the provisions so prescribed under Section 31 of the Act as neither any reason has been assigned with regard to mode of partition having done at the end of arbitrators, neither date has been affixed nor place of arbitration has been shown and in likewise manner, non-serving of a copy of the award upon the respective parties. It is also evident from the award itself that same does not bear date below the signature of respective arbitrators.

26. From the order impugned, it is evident that learned lower Court had accepted the recitals of the award as a gospel truth which, on plain reading suggests that the Arbitrators were more inclined towards plaintiff/ respondent and on account thereof, more privilege is found in his favour and for that, the arbitrators themselves

might have explained.

27. From the order impugned, it is also evident that learned lower Court took into consideration the endorsement made by the arbitrators that learned counsel for the defendants had already received award on 22.02.2005. No such endorsement is available in the award. The aforesaid event is also found suspicious one in the background of the fact that the award did not disclose that either of the party was represented through advocate before him. Moreover, when the appellant declined to sign over award, then receiving a copy thereof, by his counsel is not at all found appreciable.

28. Now, coming to the other aspect as is visualizing from the record of the learned lower Court, after passing of order dated 28.05.2004 by which 22.06.2004 was date fixed for awaiting award. It is evident from order dated 18.02.2005/ 22.02.2005 that award was filed, which was directed to be kept on record. It also speaks that an application was filed on behalf of arbitrators for acceptance of award. Respective parties were absent. It has also been incorporated that parties, if so they desire, may file an objection. Next date was fixed on 02.03.2005, on which date, parties have put their appearance and the next date was fixed on 03.05.2005. Then thereafter, on 10.03.2005, a petition was filed on behalf of plaintiffs to recall the date on the ground that award has already been filed on



22.02.2005, therefore, the same be heard on priority basis. The aforesaid order also speaks that defendants' counsel Sri Navin Kumar appeared and submitted that he is unable to inform his client regarding any other date than already fixed since before. It has also been incorporated that the learned counsel had agreed that defendants may be noticed inviting their objection, if any, regarding arbitration award. It has further been incorporated that it will not cause prejudice to the defendants, if the date already fixed since before is kept and they be noticed inviting objection as well as also intimating next date fixed for hearing on that very score, the date was recalled, plaintiffs' petition was heard and then, the learned lower Court invited objection from the defendants and for that, directed to notice. From the said order, it is also evident that copy of the arbitration award was received by the respective counsels of plaintiffs and defendants on 22.02.2005. It has also been incorporated that on behalf of defendants, Sri Ratnesh Prasad, learned counsel had received award.

29. The order impugned itself speaks two contradictory events. The first one, at an earlier occasion, learned counsel Sri Navin Kumar appeared on behalf of defendants while at the other part, Sri Ratnesh Prasad has been shown to have received award on behalf of defendants on 22.02.2005. Neither such kind of endorsement is available in the margin of the order sheet nor at any page of the

award. How, the learned lower Court had identified 22.05.2005 is a matter of concern. Not only this, the award also speaks regarding receiving of copy of award on 22.05.2005. Then in that event, which of the version should be correct, acceptable? When is found unsubstantiated from record.

30. The second aspect happens to be with regard to recalling of date during the intermediary stage which ought not, as, material available on the record suggest that there was no eminent cause available before the Court. Not only this, when vide order dated 10.03.2005 objection was invited, which was filed on next date at the end of appellant, then in that event, again illegally was submitted by the learned lower Court in rejecting the objection as time barred. That being so, rejection of objection made on behalf of appellant over the award on the ground of limitation in terms of Section 34(3) of the Act is found non-applicable.

31. In **Navodaya Mass Entertainment Limited v. J.M. Combines reported in (2015) 5 SCC 698**, it has been held under Para-8:-

“8. In our opinion, the scope of interference of the Court is very limited. The Court would not be justified in reappraising the material on record and substituting its own view in place of the Arbitrator’s view. Where there is an error



apparent on the face of the record or the Arbitrator has not followed the statutory legal position, then and then only it would be justified in interfering with the award published by the Arbitrator. Once the Arbitrator has applied his mind to the matter before him, the Court cannot reappraise the matter as if it were an appeal and even if two views are possible, the view taken by the Arbitrator would prevail. (See: Bharat Coking Coal Ltd. Vs. L.K. Ahuja, (2004) 5 SCC 109; Ravindra & Associates Vs. Union of India, (2010) 1 SCC 80; Madnani Construction Corporation Private Limited Vs. Union of India & Ors., (2010) 1 SCC 549; Associated Construction Vs. Pawanhans Helicopters Limited, (2008) 16 SCC 128; and Satna Stone & Lime Company Ltd. Vs. Union of India & Anr., (2008) 14 SCC 785.)”

32. Consequent thereupon, the order impugned is set aside. Appeal is allowed.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated-26.02.2016
Vikash/-

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