

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 22ND DAY OF APRIL 2016

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

O.P.No.553 of 2011

and

O.A.No.880 of 2012

and

A.No.5018 of 2014

O.P.No.553 of 2011:

In the matter of the
Arbitration Act 1996

And

In the matter of Arbitration in
terms of Clause 20 of the Deed
of Partnership Dated 17.03.1999
between B.Vasudevan and
G.Satyan and award dated
06.07.2011.

G.Sathyan
S/o. N.Gunaseelan,
Rep.through his Power of Attorney Mrs.S.Saraswathy,
No.44A, 16th Street,
Sri Venkateshwara Nagar,
Kottivakkam, Chennai - 600 041. ...Applicant/ Petitioner

Vs.

1. B.Vasudevan
S/o. S.Balashanmugam,
No.1/562, East Coast Road,
Kottivakkam,
Chennai - 600 041. ... 1st Respondent/1st Respondent

2. Hon'ble Justice T.Somasundaram (Retd.,)
No.1/1686, 15th Street, H Block,
Anna Nagar West,
Chennai - 600 040. ...2nd Respondent/ 2nd
Respondent

Original Petition praying that this Hon'ble Court be
pleased to

a)set aside the impugned Arbitration Award dated 06.07.2011
passed by the Second Respondent.

b)declare that the Petitioner is entitled to continue the
partnership business in terms of Clause 17 of the Partnership
Deed dated 17.03.1999.

O.A.No.880 of 2012:

In the matter of Arbitration
and Conciliation Act 1996 and
In the matter of Arbitration
Clause No.20 of the Deed of
Partnership dated 17.03.1999
between B.Vasudevan and
G.Sathyan, Award dated
06.07.2011

Shri B.Vasudevan
S/o.S.Balashanmugam
No.11, Balaji Street,
Saidapet, Chennai -15,
And also at
No.1/562, East Coast Road,
Kottivakkam
Chennai - 41

...Applicant

versus

G.Sathyan
S/o.N.Gunaseelan,
Rep.through his Power of Attorney
Mrs.S.Saraswathy,
No.11, Balaji Street, Saidapet,
Chennai -15
And also at
No.44A, 16th Street,
Sri Venkateshwara Nagar,
Kottivakkam,
Chennai - 41

...Respondent

Original application praying that this Hon'ble Court be pleased to appoint a Third Party receiver with a direction to him to take charge of the affairs and administration of hospital and pharmacy running in the A schedule property and described in the B Schedule, to furnish, produce and render true statement of accounts of the partnership business run in the name and style of "Sivasubramaniam Nursing home" along with the Medical store in the name and style of "Ragahvendra Medicals" or in any other name and also produce all records, registers and books of accounts, bank statements and furnish necessary copies to the parties to this Application once in a fortnight periods.

A.No.5018 of 2014:

G.Sathyan
S/o.N.Gunaseelan,
Rep.through his Power of Attorney
Mrs.S.Saraswathy,
No.44A, 16th Street,
Sri Venkateshwara Nagar,
Kottivakkam,
Chennai - 600 041

...Applicant/Petitioner

VS

1.B.Vasudevan,
S/o.S.Balashanmugam,
No.1/562, East Coast Road,
Kottivakkam, Chennai -600 041

...1st Respondent

2.Hon'ble Justice T.Somasundaram (Retd.)
No.1/1686, 15th Street, H Block,
Anna Nagar West, Chennai - 600 040

...2nd Respondent

Application praying that this Hon'ble Court be placed to

direct the 1st Respondent to give no-objection certificate for
<https://hcservices.ecourts.gov.in/hcservices/>

obtaining licence for running the pharmacy business as

described in item no.2 to schedule B to the claim petition of the 1st Respondent pending disposal of the Original Petition.

This original petition along with these applications coming on this day before this court for hearing court made the following order:

This original petition is filed under Section 34 of the Arbitration and Conciliation Act to set aside the award dated 06.07.2011 and to declare that the petitioner is entitled to continue the partnership business in terms of clause 17 of the partnership deed dated 17.03.1999.

2. The case of the petitioner is as follows;

2.1) The petitioner and the respondent No. 1 entered into a partnership vide partnership deed dated 17.03.1999, through which they had agreed to run a nursing home in the name and style of Siva Subramanina Nursing Home. They also entered into another partnership deed dated 14.04.2003 by which a pharmacy was started in the name and style of Rangavendra Medicals.

2.2) The respondent No. 1 through letter dated 10.06.2008 submitted his resignation by stating that he is relinquishing his responsibilities as Managing Partner. The petitioner through letter dated 26.06.2008 expressed his intention to settle the account of the respondent No. 1 and also asked him to handover all the amount and vouchers for settling his share.

2.3) On 31.10.2008 a memorandum of understanding was entered into between the parties to continue the partnership business for a period of six months and to find out a prospective buyer within such period, so as to sell the entire assets of the partnership firm and also the land which, admittedly, does not form part of the assets of the partnership firm. The said land is jointly owned by the petitioner and the respondent No. 1 in equal shares. It was also agreed under the Memorandum of Understanding to extend the period of understanding if a buyer is not found within the such time.

2.4) The respondent No. 1 on the day before expiry of MOU instructed the banks to stop operation of the partnership firm account. The petitioner filed a Civil Suit for allowing the petitioner to operate the said account. By order dated 14.05.2009 the City Civil Court at Chennai directed the bank to honour all the cheques issued prior to 30.04.2009.

2.5) Thereafter the respondent No. 1 filed an application under Section 9 of the Arbitration and Conciliation Act before this Court in which by an order dated 16.11.2009, the respondent No. 1 was permitted to access all the records, registers and books of accounts of the Nursing Home and take copies of the records. This Court also directed the parties to settle their disputes before the Arbitrator. Consequently parties have gone before learned Arbitrator, who is the

respondent No.2, by raising the arbitral dispute.

2.6) The learned Arbitrator passed an award on 06.07.2011, thereby winding up the partnership firm and to settle the accounts of the firm between the parties in terms of the Section 46 and 48 of the Partnership Act. The Learned Arbitrator further ordered that the assets of the partnership firm to be sold to the highest bidder in auction to be held between the petitioner and the respondent No. 1 and the successful bidder is permitted to continue the same business of the firm using the assets and goodwill of the said firm after apportionment of the sale proceedings between the parties as indicated in the award. Thus the present Original Petition is filed challenging the award.

2.7) The learned Arbitrator erred in coming to a conclusion that the firm will be dissolved on retirement of one of the parties to the partnership deed. The learned Arbitrator failed to interpret clause 17 of the partnership deed correctly. The learned Arbitrator erred in coming to a conclusion that the petitioner does not have the right to continue the partnership business after settling the accounts of the respondent No. 1. The learned Arbitrator ought to have seen that a memorandum of understanding dated 30.10.2008 was entered into between the parties and therefore the retiring partner is entitled to take the value of his share by allowing the remaining partner to continue the business of the firm.

3. Mr.R.Krishnamurthy, learned Senior Counsel appearing for the petitioner submitted as follows;

3.1) The petitioner is not having grievance in respect of the portion of the award passed by the learned Arbitrator under Clause 5(a), (b), (c), (e) of para 16. The petitioner is only aggrieved against clause 16(2) of the award whereby, the learned Arbitrator directed to conduct the auction between the parties to sell the assets of the partnership firm. When the 1st respondent has admittedly expressed his willingness to retire from the partnership firm and go out of the business, there is no necessity to conduct an auction between the parties to sell the assets of the partnership firm to the highest bidder of such auction. When the petitioner is willing to pay the share of the respondents under the partnership firm, the question of bringing the property for auction, even though between the parties, does not arise.

3.2) This Court has already appointed a valuer who in turn valued the assets of the partnership firm and filed his report on 24.06.2014. Therefore, as per the valuation report, the petitioner will pay the share of the 1st respondent and run the business thereafter on his own. The land in which the partnership firm, namely the hospital, is situated, does not admittedly, belong to the partnership firm and on the other hand it belongs to both the petitioner and respondent No. 1 equally, in their individual capacity. Already the 1st

respondent issued a notice on 10.03.2016 to the petitioner seeking for partition of the land. Therefore, insofar as the land is concerned, it has to be dealt with separately through common law remedies. The award thus is not capable of execution.

3.3) The petitioner is now running the nursing Home. While arriving at quantum of profit of the firm, the learned Arbitrator failed to take into the account of the subsequent income tax returns therefore, the quantum arrived by the learned Arbitrator towards the profit of the firm as Rs.7.5 lakhs was on mere presumption. The petitioner is willing to pay the share of the 1st respondent towards the profit of the firm based on the subsequent income tax returns filed after 2009-10. The learned Arbitrator failed to take into consideration of unsecured loan.

3.4) In support of his contentions with regard to the Income tax returns to say that they are documents to be relied on for ascertaining the profit details, the learned Senior Counsel relied on a decision of this Court reported in **2006(1) MLJ 350, Triveni Enterprises (Registered) rep. by P.Ramarao vs G.Manjulamba @ G.S.Manjula rep by her Power of Attorney Agent G.Surendra Gupta**. Therefore the finding of the Learned Arbitrator is arbitrary and capricious. The award is passed beyond the claim made in the claim petition therefore, the same cannot be considered. Perverse award can be interfered

with as held in **2007 (13) SCC 236, The Security Printing and Mining Corporation of India Limited vs Gandhi Industrial Corporation**. The learned Senior Counsel further relied on **AIR 2008 SC 456, ONGC Ltd., vs. Garaware Shipping Corpn. Ltd.**, and **AIR 1988 Bom 187, Abbashbhai K.Golwala v. R.G.Shah**.

4. No counter affidavit is filed by the respondent. However the learned Senior counsel Mr.T.V.Ramanujan appearing for the respondent No. 1 submitted that his oral submissions are enough for this Court to decide the issue since the award passed in detail speaks for itself while none of the grounds raised by the petitioner would satisfy this Court that there is not even a little scope to interfere with the award by exercising its power under Section 34 of the said Act. Thus, he submitted as follows;

5. This OP is not to be construed as an appeal against the award passed by the Arbitrator. No grounds are made out as required under Section 34 of the Arbitration and Conciliation Act for interfering with the award. The petitioner has not stated as to what is there in the award against public policy. As per the partnership Act, the partnership business can not continue when there are only two persons out of whom one retires. Therefore, the learned Arbitrator right dissolved the firm and allowed the parties to take part in the auction. The conclusion arrived at by the Arbitrator with regard to the quantum of profits was rightly done based on income tax

returns. The petitioner is now trying to settle the share of the respondent in respect of the land based on the value as prevailed in the year 2014. In any way, the land is not the subject matter of the award or partnership firm. The 1st respondent has not permitted the petitioner to run the hospital. If the petitioner is willing to pay 50% of the assets as per valuation report, the 1st respondent will accept. In so far as the land is concerned the respondent is not willing to part the land with the petitioner. Assets of the partnership firm are movable and superstructure alone. The award is not self contradictory and, clause 17 of the Partnership deed is not illegal. Clause 4 of Para 16 of the award permitted the respondent herein who is the claimant before the Arbitrator to run the business. If clause 17 of the deed is not applicable, then how the respondent can participate in the auction. In support of his contention, he relied in **2016(1) CTC 438, Chettinad International Coal vs. Kamarajar Port Limited**, (KRCBJ), **2015 (3) SCC 49, Associate Builders vs Delhi Development Authority**, .

6. Heard the learned Senior Counsels appearing on either side and perused the materials placed before this court.

7. The point for consideration in this petition is as to whether the award passed by the learned Arbitrator is liable to be interfered with based on the grounds raised by the petitioner who was the respondent before the Arbitral

Tribunal.

8. Before considering the above said question, let me record one admitted position, as submitted by the learned Senior Counsel for the petitioner that the petitioner is not aggrieved with the award in so far as the relief granted under clause (5) (a) (b) (c) (e) (f) of Para 16 are concerned. It is the submission of the learned Senior Counsel for the petitioner that the petitioner is aggrieved only against the relief granted under clauses (2) and 5(d) of para 16 of the award. It is also admitted by the learned Senior Counsel appearing for the petitioner that the respondent herein, who is the claimant before the Tribunal, is entitled to have his due share in the partnership firm and that the petitioner is willing to pay such share of the respondent. Therefore it is evident that entitlement or liability of the respective parties is not in dispute. What is not acceptable to the petitioner is the direction of the Tribunal directing the assets of the partnership firm to be sold in the auction to be held between the partners. In other words, the objection of the petitioner is to the effect that when the respondent has expressed his willingness to retire from the partnership firm and go out of the business, there is no necessity for auctioning the assets of the partnership firm. Thus, it is contended that when, admittedly, the petitioner is running the hospital, he must be permitted to continue the business of the partnership firm either as a sole proprietor or by adding

new partner, after paying the due share of the respondent out of the value of the assets of the partnership firm which are valued through valuer by this court, without auctioning the same between the partners. In nutshell, the core contention of the petitioner is to the effect that an unwilling partner, who expressed to go out of the business, need not be compelled to take part in the business by auctioning the property, even though such auction takes place between the partners.

9. On the other hand, it is contended by the learned senior counsel for the respondent that after the retirement of one out of two partners, the partnership ceases to exist and therefore, remaining partner cannot continue the business as a matter of right.

10. Admittedly, the assets of the partnership firm is the building and the movables therein. The land on which the building is constructed does not form part of the assets of the partnership firm, even though the same is admittedly belonging to the petitioner and the respondent, in equal share, in their individual capacity. With this factual background in mind, let me consider the award passed by the learned Arbitrator to find out as to whether the same is in any way perverse or against the public policy or ex-facie illegal or in any way shocking the conscience of this court.

Arbitrator sought for an award for winding up of the partnership firm by closing the hospital and pharmacy shown as "B" schedule property. He also sought for an award to adjudicate and direct the respondent to pay him a sum of Rs.3,24,54,000/-. The learned Arbitrator after framing 17 issues, passed a detailed award by going through each and every aspects of the matter thoroughly and gave a finding with certainty and clarity. A thorough reading of the entire award would show that the learned Arbitrator has meticulously considered the facts, circumstances, all aspects of the matter and the contentions of the respective parties as well as the evidence let in by them and passed the award in a well balanced manner.

12. At paragraph No.7.2, the learned Arbitrator dealt with the land and found the admitted position that the land is not forming part of the assets of the partnership firm and on the other hand, it belongs to the petitioner and the 1st respondent equally. At paragraph No.7.4, the learned Arbitrator dealt with Memorandum of Understanding marked as Ex.C7 dated 30.10.2008 entered into between the parties after acceptance of the resignation of the claimant/respondent herein. The learned Arbitrator has pointed out that in the said Memorandum of Understanding, the parties have accepted that the assets of the firm along with the land shall be sold between the parties to the Memorandum of Understanding.

Thus, the learned Arbitrator found that the notice dated

10.06.2008 sent by the claimant relinquishing his responsibility as the Managing Director as valid and that the claimant deemed to have retired from the partnership. The learned Arbitrator, at paragraph Nos.7.5 to 7.8, discussed with regard to the status of the partnership business after the retirement of the one partner out of two, by considering various case laws. Ultimately, the learned Arbitrator has found that the partnership consisting of two partners gets dissolved on the retirement of one of the partners. The learned Arbitrator also strongly relied on the Memorandum of Understanding marked as Ex.C7 in support of his conclusion.

13. No doubt the learned Senior counsel on both sides harped upon the above issue with regard to entitlement of the other partner to continue the business. Relevant provisions under the partnership Act were also referred to, in respect of the above said contention. But this Court is of the view that it is not necessary to go into such question now which is a mixed question of law and facts, in view of the factual aspects of the matter which culminated into passing an award protecting the interest of both the parties by allowing them alone to take part in the auction to be conducted in respect of assets of the partnership firm and permitting the successful bidder/partner to continue the business. Therefore, in view of the findings rendered by the Arbitral Tribunal that such successful bidder/partner can continue the business, this Court need not make any exercise in deciding the above issue

which is more of academic in nature than a practical solution, especially under the admitted position that both the parties would like to continue the business as has been contended before the Learned Arbitrator as well as before this Court.

14. While considering the next question as to whether the petitioner herein who was the respondent therein can continue the partnership business after settling the accounts of the respondent, the learned Arbitrator considered the said issue from paragraph Nos.7.9.1 to 7.11.2 of the award in detail also by considering the case laws cited on the side of the respective parties and ultimately found that on the dissolution of the partnership firm, the petitioner herein is not entitled to continue the business as a sole proprietor. While considering the other issues at paragraph No.8.1, the learned Arbitrator has found that the Memorandum of Understanding dated 30.10.2008 entered between the parties and marked as Ex.C7 is valid and binding on them.

15. The learned Arbitrator after taking note of the stand of the petitioner herein that he is willing to carry on the business as a proprietor subject to the settlement of share due to the outgoing partner and that he is always ready and willing to pay the due share to the claimant, considered elaborately at paragraph No.8.9, as to what could be the proper course to be adopted for settling the accounts of the dissolved firm. For proper appreciation, the relevant portion

of the observation made therein is useful to be referred to which reads as follows:

"8.9....considering the facts and circumstances of this case and looking at the nature of business and the equal share of the partners in the business, I am of the view that the proper course to be adopted by the Tribunal in this case for the purpose of settlement of accounts of the Firm under Sec. 46 & 48 of Partnership Act is to direct the sale of the assets of the Firm to the highest bidder in the auction to be held between the partners viz the claimant and the respondent. I am also of the view that ends of justice will be met if this Tribunal direct the sale of the assets of Firm and give the assets of the Firm to the partner who offers highest price for the assets of the Firm because by this procedure, the partner who offers the highest price for the assets of the Firm will get the assets of the Firm including the goodwill and it will also ensure that the other partner gets the reasonable and appropriate price for his share in the assets of the Firm as he is also participating in the auction and given an opportunity to make his offer."

16. Thus the learned Arbitrator after specifically pointing out that both the parties want to continue the same business using partnership assets, observed that it is appropriate that the assets of the firm have to be sold to one of the partner who offers higher price in the auction to be

held between the partners and that the auction should be confined only between the partners. The learned Arbitrator relegated the exercise of selling the assets of the Firm to the partner who offer higher price, by directing the parties to put the award for execution before competent Civil Court under section 36 of the Arbitration and Conciliation Act.

17. Considering all the above stated facts and circumstances and the detailed award passed by the learned Arbitrator, this court is of the view that there is not even a little scope for this court to interfere with the award while exercising the power under section 34 of the Arbitration and Conciliation Act. Undoubtedly, the thorough consideration of the facts and circumstances and the case as projected before this court by the respective parties would only show that the petitioner herein is seeking this Court to take a different or alternative view than the one taken by the learned Arbitrator that too by reappreciating entire factual aspects of the matter. Needless to say that this court cannot go into such factual aspects and substitute its own view, in the place of the view taken by the learned Arbitrator, even assuming such alternative view is possible. In other words, this court sitting not as a Court of Appeal, is not entitled to either to reappreciate the facts or the evidence let in by the parties or substitute its own view in the place of the view expressed by the learned Arbitrator, as has been held by the

739, Swan Gold Mining Limited vs Hindustan Copper Limited. It is well settled that even there are two views possible, such possibility alone cannot be a ground to interfere with an award since the learned Arbitrator is considered to be the final Judge on the facts and this court while exercising jurisdiction under section 34 of the Act, cannot substitute its view in the place of the Arbitrator. I have already taken such a view in a decision rendered by me and reported in **2016 (1) CTC 438 (cited supra)** wherein at paragraph Nos.19 and 20, it has been observed as follows:

"19.It is well settled that this court is not sitting as a court of first appeal nor it is its duty to re-appreciate the evidence or facts already placed, pleaded and considered by the Arbitral Tribunal. At this juncture, I would like to point out the basic difference between the judicial proceedings before the courts of law and the arbitral proceedings before the Arbitral Tribunal constituted under the Special Enactment Act viz., Arbitration and Conciliation Act 1996. First of all, the proceedings before the Arbitral Tribunal in its strict sense cannot be equated with an alternative remedy available before the Authorities under various statutes. On the other hand, it is an independent proceedings contemplated under the alternate dispute resolution mechanism. In fact, it replaces the regular judicial proceedings. Therefore, it is not as though the parties are also at liberty to approach the court of law to resolve their dispute by submitting themselves to the regular

judicial proceedings like a suit. It is well settled that if the parties have entered into an agreement containing arbitration clause, any dispute arising out of such contract or agreement shall have to be referred to and decided by the arbitral proceedings only and not by the court. In so far as the judicial proceedings before the court of law is concerned, the parties to the litigation cannot choose their Judge. On the other hand, in the arbitral proceedings, the parties can choose their own Judge or Judges to decide the issues and therefore, the decision rendered by such Arbitrator/Arbitrators sitting as a Judge or Judges to the litigation, is the final decision on facts as admittedly this Court is not exercising its power under section 34, sitting as a court of first appeal. Further, the scope of interference under section 34 of the Act is also very limited as has been stated by the Apex Court.

20. Recently, in another decision reported in **2015**

(5) SCC 739, Swan Gold Mining Limited vs Hindustan

Copper Limited, the Hon'ble Supreme Court has considered the question of interpreting a clause in the contract and the scope for the court to re-appreciate the evidence and to arrive at different conclusion. The Apex Court categorically found that the court shall not ordinarily substitute its interpretation for that of Arbitrator and the interpretation of the contract is a matter of the

Arbitrator who is a Judge chosen by the parties and the court is precluded from re-appreciating the evidence and to arrive at a different conclusion. It is also found by the Apex Court therein that the finding of facts recorded by the Arbitrator cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him. At paragraph Nos.11, 12,18 and 19, the Apex Court observed as follows:

"11. Section 34 of the Arbitration and Conciliation Act, 1996 corresponds to Section 30 of the Arbitration Act, 1940 making a provision for setting aside the arbitral award. In terms of sub-section (2) of Section 34 of the Act, an arbitral award may be set aside only if one of the conditions specified therein is satisfied. The Arbitrator's decision is generally considered binding between the parties and therefore, the power of the Court to set aside the award would be exercised only in cases where the Court finds that the arbitral award is on the fact of it erroneous or patently illegal or in contravention of the provisions of the Act. It is a well settled proposition that the Court shall not ordinarily substitute its interpretation for that of the Arbitrator. Similarly, when the parties have arrived at a concluded contract and acted on the basis of those terms and conditions of the contract then substituting new terms in the contract by the Arbitrator or by the Court would be erroneous or illegal.

<https://hcservices.ecourts.gov.in/hcservices/> 12. It is equally well settled that the Arbitrator appointed by the parties is the final

judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him.

18. Mr. Sharan, learned senior counsel appearing for the appellant, also challenged the arbitral award on the ground that the same is in conflict with the public policy of India. We do not find any substance in the said submission. This Court, in the case of Oil and Natural Gas Corporation Ltd. (supra), observed that the term 'public policy of India' is required to be interpreted in the context of jurisdiction of the Court where the validity of award is challenged before it becomes final and executable. The Court held that an award can be set aside if it is contrary to fundamental policy of Indian law or the interest of India, or if there is patent illegality. In our view, the said decision will not in any way come into rescue of the appellant. As noticed above, the parties have entered into concluded contract, agreeing terms and conditions of the said contract, which was finally acted upon. In such a case, the parties to the said contract cannot back out and challenge the award on the ground that the same is against the public policy. Even assuming the ground available to the appellant, the award cannot be set aside as because it is not contrary to fundamental policy of Indian law or against the interest of India or on the ground of patent illegality.

19. The words "public policy" or "opposed to public policy", find reference in Section 23 of the Contract Act and also Section 34 (2) (b) (ii) of the Arbitration and Conciliation Act, 1996. As stated

above, the interpretation of the contract is matter of the Arbitrator, who is a Judge, chosen by the parties to determine and decide the dispute. The Court is precluded from re-appreciating the evidence and to arrive at different conclusion by holding that the arbitral award is against the public policy."

21. No doubt, it is true that this court is having power to interfere with the award, if it is not in conformity with the principles laid down by the Apex Court warranting such interference. But I do not find any of the grounds raised herein is in conformity with those principles warranting interference by this court.

22. First of all, it is an admitted fact that the land on which the superstructure put up is not belonging to the partnership firm nor it is forming part of the assets of the partnership firm. It is also an admitted fact that the said land belongs to both the parties in equal share in their individual capacity. Only the superstructure put up on the said land and the movables inside such superstructure are the assets of the partnership firm. It is also an admitted position that both the parties are not willing to part with their respective share in the land to the other by accepting the value of the same. On the other hand, the fact remains that one of the party has already initiated steps to file a

suit for partition before the competent civil court seeking for partition. It is also an admitted position during the hearing of the arbitral proceedings and as found by the learned Arbitrator that both the parties are willing to continue the business after dissolution of the partnership firm and both of them are agreeing to have their respective shares. Under the above stated facts and circumstances, I find that the learned Arbitrator has rightly taken a decision that the auctioning of the assets of the partnership firm between the partners is the only way out to solve the dispute once for all so that the successful partner can take the assets and run the business since such person is undoubtedly having half share in the land which does not form part of the assets of the firm. The question as to what will happen after the decree for partition in the suit is a different question which has to be considered and decided only by the competent Civil Court at the time of considering the application for passing the final decree therein. Therefore, this court, at this stage, cannot go into the same and give any finding. However as both parties are having equal share in the land, definitely the successful bidder, as of now, can continue to do the business in the said property subject to the outcome of the final decree to be passed in the suit for partition.

23. It is contended by the learned senior counsel for the

petitioner that there is no necessity to bring the assets of the firm for auction when the respondent has already expressed

his willingness to retire from the partnership firm. I do not think that such submission holds good in view of the admitted fact that subsequent to the offer of resignation from the partnership by the respondent which was accepted by the petitioner, the Memorandum of Understanding dated 30.10.2008, marked as Ex.C7, was entered into between the parties wherein both of them agreed to value the movable, immovable, tangible and intangible assets of the firm including the land and sell the same to a prospective buyer for a sum of Rs.9.5 crores and share the sale proceeds equally between them also by agreeing to continue the said partnership firm for a period of six months so as to facilitate the sale in favour of the prospective buyer. Therefore, the intention of the parties is evident from the said Memorandum of Understanding to dissolve the partnership firm in view of the retirement of the one of the partner. Though, they have chosen to sell the same to a third party through such Memorandum of Understanding, the same was not materialized, for some reasons. Thereafter, when they come before the Arbitral Tribunal, both of them have expressed their willingness to continue the business independently after dissolution of the partnership firm. Taking note of all these aspects only, the Arbitral Tribunal has passed the award as stated supra with which I find no infirmity or illegality. The learned Arbitrator has rightly taken the view to sell the assets of the firm by way of auction confining the same only between the partners viz., the petitioner and the respondent herein. In fact, when they have originally intended to sell

the assets to a third party, the learned Arbitrator passed the award only in such a way by protecting the interest of both parties, as the successful bidder, being one of the partners, can continue the business without letting the business to go out of their hands to a third party. Hence, this Court is of the view that the award is a highly balanced and well protected one without affecting any one's interest.

24. Likewise, the learned Arbitrator while arriving at the future profits of the firm for the period from 01.04.2004 is concerned, has taken note of the income tax returns filed upto 2009-2010 and arrived at the figure of Rs.7,50,000/- per year as found in paragraph No.9.5 of the award. Such factual finding rendered based on the income tax returns does not require any interference by this court. As held by the Division Bench of this Court reported in **2006(1) MLJ 350, Triveni Enterprises (Registered) rep. by P.Ramarao vs G.Manjulamba @ G.S.Manjula rep by her Power of Attorney Agent G.Surendra Gupta**, such IT returns are valuable documents for considering the profit or loss. Even though it is sought to be contended by the learned Senior Counsel appearing for the petitioner that such arriving of the figure towards the future profits was not based on the subsequent income tax returns filed in respect of the years commencing from 2010-2011 onwards, the fact remains that on the date of considering the O.P. by the Arbitrator, the IT Returns for the financial year 2009-2010, which was filed as Ex.R12 alone is the relevant and

available document, as the award itself came to be passed on 06.07.2011. Hence this court cannot find fault with such finding rendered by the learned Arbitrator while arriving at the figure towards the future profits.

25. **AIR 1988 BOM 187, Abbashbhai K.Golwala v. R.G.Shah**, is relied on the side of the petitioner in support of the contention that business of partnership can be carried on even by individually as a sole proprietor or in partnership with others. The decision of the Apex Court reported in **AIR 2008 SC 456, ONGC Ltd., vs. Garware Shipping Corpn. Ltd.**, is relied on in support of the contention that this court can interfere with the award when the conclusions are perverse and the very basis of such award is wrong. Another decision of the Apex Court reported in **2007 (13) SCC 236, The Security Printing and Mining Corporation of India Limited vs Gandhi Industrial Corporation**, is cited on the side of the petitioner for the same proposition.

26. I do not think that the above decisions are helpful to the petitioner in any manner in view of the factual aspects of the matter more particularly when both the parties wanted to continue the business after dissolving the partnership firm and that the award also came to be passed by protecting both parties interest as discussed supra. Equally, I do not find any perversity on the findings rendered by the learned Arbitrator to apply the above decisions of the Apex Court. I

have already pointed out that the learned Arbitrator has rightly taken the view for auctioning the assets of the partnership between the partners themselves and such view does not warrant any interference. Even assuming another view is possible, that cannot give room for interfering with the award as has been held by the Apex Court in the decision reported in Swan Gold Mining Limited case.

27. On the other hand, **2015 (3) SCC 49, Associate Builders vs Delhi Development Authority**, is relied on the side of the respondent in support of the contention that when the award is not opposed to any public policy, this court cannot act as a Court of Appeal and correct the errors of fact even if any. At paragraph Nos. 33 and 36 of the said decision, it read as follows:

"33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts.

..36. The third ground of public policy is, if

an award is against justice or morality. These are two different concepts in law. An award can be said to be against justice only when it shocks the conscience of the court."

27.1) The other decision of this Court reported in **2016(1) CTC 438, Chettinad International Coal vs. Kamarajar Port Limited**, is cited to contend that interpretation of a particular clause in an agreement when involves consideration of factual aspects, the view expressed by the learned Arbitrator in interpreting such clause is to be held final and this court cannot substitute its own finding, even assuming that another view or another interpretation is possible. At paragraph No.40 of the said decision, it has been observed as follows:

"40. In fact, interpretation of a particular clause in a contract or agreement may be of two types. One involving the factual aspects of the matter whereas the other involving the question of law. In some cases it may involve both. In so far as the interpretation involving factual aspects of the matter alone is concerned, the interpretation given by the learned Arbitral Tribunal, upon consideration of the factual aspects of the matter, cannot be interfered with by the court under section 34, even assuming that another view or another interpretation is possible, because this court is not the court of appeal to reappreciate the facts or evidence. On the other hand, if an interpretation involving a question of law and

its application and if the Arbitral Tribunal has misconstrued such law or failed to apply a law which ought to have been applied, while interpreting a particular clause or term of a contract or agreement, then this court can venture to set right things by applying the law correctly and express its view as to which should be the correct interpretation of the particular term or clause in the contract or agreement. In this case, I have already pointed out that interpretation of clause 15.1.4 involves pure consideration of factual aspects of the matter only which the learned Arbitral Tribunal has rightly exercised and expressed its view. Therefore, in the absence of any question of law to be considered and decided while interpreting the above said clause in this case, this court finds that the challenge made against such finding of the Arbitral Tribunal, is wholly misconceived. It may be for the purpose of postponing the execution of the award."

सत्यमेव जयते

28. It is well known that the arbitral proceedings are not regular court proceedings. In court proceedings, parties have no choice to choose their Judge, nor it is permissible also. In regular suits filed before the Civil Courts, the trial Judge, though renders judgment and decree after consideration of facts and circumstances in detail, still he is not considered to be the final fact finding authority, insofar as the dispute between the parties is concerned. That is why, a right of appeal is conferred under the statute on the

aggrieved party to agitate the matter before the appropriate Appellate Court. Thus, the Appellate Court while hearing the appeal and considering the correctness or otherwise of the decision made by the trial court, is undoubtedly entitled to go into the entire facts and circumstances of the case once again, reappreciate the same including that of the evidence let in by both parties. Therefore, such Appellate Court empowered to reappreciate the facts, circumstances and evidence, is considered to be the final fact finding forum. No doubt, as against the decision of the Appellate Court, further appeal lies before this court only when there is a substantial question of law arises for the consideration of this court. Therefore, in such civil suit proceedings the parties can agitate the matter in such stages. On the other hand, it is not so in the case of arbitral proceedings where the parties either choose their Judge of their choice or seek for such appointment of Judge through court, depending upon the terms of the arbitral agreement. Therefore, such person viz., the Arbitrator so chosen either by the parties or appointed by the court, is conferred with all powers to go into the real dispute between the parties and decide the same on merits, by acting as the final fact finding authority. In otherwords, he is not functioning in the capacity of the original authority alone in so far as the factual aspects of the matter is concerned leaving the scope for reappreciating such facts before any appellate forum. The special enactment

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namely Arbitration and Conciliation Act, does not provide an

appeal provision against the arbitral award. Therefore, such finding rendered by the arbitral tribunal being the final fact finding authority, cannot be interfered with by this court while exercising the power under section 34 of the Act so lightly or casually in the absence of any perversity on such findings. Thus parties to the litigation should, as far as possible, get satisfied with such findings and try to put an end to the litigation without agitating the matter again and again for the sake of fighting. After all, one should live with satisfaction in the life and such satisfaction lies in the mind not on the requirements.

28. Considering the above stated facts and circumstances, this Court is of the view that no interference is called for against the well considered award passed by the learned Arbitrator. No case is made out by the petitioner to set aside the award as none of the grounds would satisfy the requirement of law warranting such interference. Accordingly, the original petition fails and the same is dismissed. The connected applications are closed.

sd/.K.R.C.B.J

22.04.2016

//Certified to be a true copy//
Dated this the day of 2016.

S.s/15.06.2016

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