

F.A.O.No.8946 of 2014 (O&M)

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

F.A.O.No.8946 of 2014 (O&M)

Date of Decision: June 01, 2016

Anil Kumar Jyotshi & another

...Appellants

Versus

Krishan Kumar Ganjoo & others

...Respondents

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

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

**Present: Mr.A.K.Chopra, Senior Advocate with
Ms.Rupa Pathania, Advocate,
for the appellants.**

**Mr.Naresh Markanda, Senior Advocate with
Ms.Kavita Markanda, Advocate &
Mr.Ashwani Talwar, Advocate,
for the respondents.**

AMIT RAWAL, J. (Oral)

The appellants are aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") for setting-aside of the award dated 5.5.2012.

Ms.Rupa Pathania, appearing for the appellants, in support of the grounds of appeal, has raised the following points:-

- 1) It is the conceded position on record that in the year 1986, Plot No. 972, Sector 14, Gurgaon was allotted in the name of late Nitya Nand Jyotshi and appellant No.1. On demise of Nitya Nand Jyotshi, all the siblings, i.e., legal heirs submitted to the jurisdiction of the Arbitrator. The Arbitrator exceeded its jurisdiction in reducing the share of the appellants to 28%, whereas it should have been 50+5% as Nitya Nand Jyotshi had only 50% share in the plot;
- 2) The Arbitrator has also not adopted the procedure, much less given chance to the parties to lead evidence with regard to the construction raised thereon;
- 3) The Arbitrator has brought/introduced his own personal knowledge, which is not permissible in law;
- 4) The pith and substance of the award would reveal that the other party had set up a plea of Benami and in the absence of any direct and cogent evidence, it cannot be believed that the cost of the construction raised on the plot was contributed by late Nitya Nand Jyotshi. Even no concession was given to the agreement arrived at as noticed

in the impugned award and, thus, the award is not in consonance with the provisions of the Act and, therefore, the objections were falling with the realm of Section 34 of 1996 Act, yet the Objecting Court without assigning any reasons had gone in arena of surmises by holding that the appellant has 50% share in the plot and not the construction raised thereon without there being any evidence. The finding is not sustainable in the eyes of law, which is not supported by any documentary evidence and, thus, urges this Court for setting-aside of the impugned order.

Mr.Naresh Markanda, learned Senior Counsel assisted by Mr.Ashwani Talwar, Advocate and Ms.Kavita Markanda, appearing on behalf of the respondents submits that all the parties are related to each other and accordingly appointed Shri Dharam Vir Batra as an Arbitrator, who was known to them, particularly to Nitya Nand Jyotshi. It is too late in a day to challenge the award, much less estopped to challenge the concession suffered by the Arbitrator. The award of the Arbitrator is sacrosanct and cannot be challenged in the manner and mode as has been projected in this Court. The occupation certificate was issued on 27.10.1987, which shows that there was no contribution at the instance of the appellants vis-a-vis the construction raised on the plot. He further

submits that there is limited scope of interference as per the provisions of Section 34 of 1996 Act and, thus, urges this Court for affirming the findings rendered by the Objecting Court.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is merit and force in the submission/plea of Mr.Chopra.

For the sake of brevity, operative part of the award reads thus:-

“I personally know the family of Shri Nitya Nand Jotshi since a long time from 1948 and was in regular contact with respected Shri Nitya Nand Jotshi since then and his two sons. The third generation grandchildren came in later. I was connected with the purchase of Gurgaon property and also helped Shri Nitya Nand Jotshi in getting the house constructed and made ready in 1988. Pt.Ji came in December 1988 with many family members and stayed in the house till March 1989 and then returned to Srinagar. Pt.Ji passed away in Srinagar in September 1989.

All expenses for the above deal (Land & construction) were made by Shri N N Jotshi. Mr.Anil Jothshi had just finished his studies. Pt. Ji is younger son, Shri Chand Nairan Jotshi had passed away in early 1980; he was survived by his three sons, namely Shri Krishan Kumar Ganjoo, Shri Raja (Bota), Shri Anil and a daughter. Shri Chand Narain Jotshi after the death of his wife got married

again to Smt. Usha Jotshi and had two sons, Shri Raman and Shri Yogesh.

Pt. jis eldest son Shri Jawala Nath Jotshi died in May 2000 after the death of Pt.ji in 1989. Shri Jawala Nath has a house in Jammu and Shri Chand Narain also set up a residential house and one shop with a little residential area at another place in Jammu, Late Shri Nitya Nand Jotshi had helped them in building the properties in Jammu. Pt. Ji had also allotted, the out-house in his Srinagar property to Shri Krishan Kumar eldest son of Shri Chand Narain. Pt. Ji had expressed his desire to give the first floor in the Gurgaon house to Shri Anil Jotshi, and Shri Rajkumar (Bota) being insolvent was living with grandmother Tulsi ji and later with Shri Anil.

This was accepted by all participants present today.

The plot area is 100 ftx45 ft = 4500 sq ft

Main flat area is shown as 58 ft x 35.3 ft = 2015 sq ft

NNJ Anil

Flat area on individual basis is 1008 sq ft 1007 sq ft

Entry road inside 50 ft x 10 ft 500 sq ft 250 sq ft 250 sq ft
2515 sq ft 1258 sq ft 1257 sq ft

Balance ground/front/back/sides 1985 sq ft 1985 sq ft Nil
4500 sq ft 3243 sq ft 1257 sq ft

Thus the following percentage is worked out,

1. Shri Nitya Nand Jotshi 72%

2. Shri Anil Jotshi 28%”

The dispute is only confined to Plot No.972, Sector 14,

Gurgaon. On perusal of the aforementioned findings, I am of the view that the Arbitrator, while deciding the controversy/lis between the parties, has introduced his own personal knowledge, which, in my view, should not be done in view of the provisions of Sections 12 and 13 of 1996 Act. Even otherwise, no opportunity to lead evidence had been granted to the parties. No evidence has come on record with regard to the finding of the construction raised by late Shri Nitya Nand Jyotshi. All these factors should have been determined only after the parties were given a chance to bring on record the material. In my view, Additional District Judge, Gurgaon should not have exceeded jurisdiction by holding that the Benami plea is permissible. Once the award has taken away the right of the parties without affording opportunity, the same cannot be sustained in the eyes of law and, thus, falls within the parameters of Section 34 of 1996 Act. Even the scope of public policy has also been enlarged by the Hon'ble Supreme Court in the judgment rendered in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.**

Accordingly, the award and the order under challenge are hereby set-aside.

Appeal stands allowed.

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Parties shall be at liberty to seek remedy in accordance with law for seeking appointment of the independent Arbitrator.

Nothing stated in this order shall be construed as an expression on the merits of the matter.

CM No.16317-CII of 2015

In view of the fact that the award and the order under challenge have been set-aside, the present application is also rendered infructuous and is disposed of as such.

June 01, 2016
ramesh

(AMIT RAWAL)
JUDGE