

109

**RA-104-C-II-2016 IN
FAO NO.1533 OF 2010**

M/S JAGTUMAL MURARI LAL AND ANOTHER

V/S

SUSHAM SINGLA AND OTHERS

Present: Mrs. Amrita Panda, Advocate
for the review petitioner.

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?

AMIT RAWAL, J. (ORAL)

Prayer in this application is for review of the order dated 20.11.2015, whereby the FAO No.1533 of 2010 has been allowed and the Award dated 21.03.2006 and the order passed by the Objecting Court dismissing the objections, have been set aside.

Review of the aforementioned order has been sought on the following grounds:-

1. That the Court while sitting in an appeal under Section 37 cannot re-appraise and re-appreciate the evidence led before the Arbitrator.
2. The objectors did not take the plea of provisions of Section 19(2)(g) of the Indian Partnership Act, 1932.
3. Copy of the partnership deed dated 17.12.2000 is not part and parcel of the record of the Arbitrator.

4. The alleged agreement to sell dated 01.10.2002 was not a draft agreement and a sum of ₹ 2,75,00,000/- was actually paid and thus, there is an error apparent on record.

In support of aforementioned grounds, she relies upon the judgment of Hon'ble Supreme Court rendered in *“State of Rajasthan V/s Puri Construction Co. Ltd. and another” 1994 (6) SCC 485*, and *“State of Maharashtra V/s Hindustan Construction Company Ltd.” 2010 (4) SCC 518*.

Mrs. Amrita Panda, learned counsel appearing on behalf of the review petitioner submits, that the aforementioned grounds are sufficient for seeking review of the order. There is an error apparent on record, particularly, this Court while entertaining in an appeal cannot re-appraise the evidence to find out that the conclusion drawn on the certain facts by the Arbitrator were erroneous and therefore, the order can be set aside. The Arbitrator was appointed with the consent of the parties and both the parties submitted to its jurisdiction.

I have heard learned counsel for the review petitioner and appraised the paper book and of the view that there is no ground for review of the order is made out as there is no error apparent on record. On going through the objections filed by the partnership firm-appellant, the following objections would reveal that the power of one of the partners to act on behalf of the firm individual capacity, was specifically urged and raised. For the sake of brevity, objection No.3(iii) reads thus:-

“3 (iii) That Rajiv Gupta could not act on behalf of the firm in individual capacity without the written authority/power of attorney from three partners i.e. Rajiv Kumar Karta Rajiv kumar

HUF, Sunaina Gupta and Raghav Gupta. Since there has been no authorization or consent, so Rajiv Kumar itself in this individual capacity had no entity and could not enter in to any agreement.”

It is a settled law that the statute is not pleaded, but only referred to. The objections noticed above have been taken in view the background of the provisions of Section 19 (2)(g) of the 1932 Act, therefore, the aforementioned contention is hereby repelled.

As regards the partnership deed dated 17.12.2000 being not part and parcel of the record of the Arbitrator, I am of the view that both the parties allegedly entered into a draft agreement dated 01.10.2002, knowing fully well that Rajiv Gupta was one of the partners of M/s Jagtu Mal Murari Lal. His act and conduct was being drawn from the power i.e. terms and conditions of the partnership deed. In view of such manner, the reference to the terms and conditions of the partnership deed, in my view, would not be tantamount to re-appreciation and re-appraisal of the evidence being not part and parcel of the record is wholly misconceived and misplaced.

It is undisputed that the agreement to sell was actually entered into between the firm through Rajiv Gupta and the signatures of other two partners, namely, Sunaina Gupta and Raghav Gupta had not been obtained, while entering into agreement, as the property in dispute was not owned by the Rajiv Gupta, in his individual capacity. The principle of buyer beware is always applicable, in cases of agreement to sell, where a person after verifying the revenue record and other attenuating circumstances, knowing that the party i.e. vendor was whether an actual owner of the same or not, therefore, the contentions seeking review of the order is hereby rejected.

The Arbitrator rendered Award in the following manner:-

“3. No decision could be arrived at between the two parties as to which of the two options were to be exercised. It was again left to the arbitrator to take a decision on the point.

While trying to arrive at the possible figure which could be used as enhanced compensation too there was a great deal of discussion about various principles that could be employed without being able to arrive at a mutually acceptable figure. By implication this decision too was left to the arbitrator.

Terms and Conditions

- 1. The Malwa Cinema property will be sold to Mr. Susham Singla.*
- 2. Mr. Susham Singla will pay ₹ 39.5 crores for the property. This will be over and above the ₹ 2.5 crores that he as already paid.*
- 3. Mr. Rajiv Gupta will obtain a conversion of the property to free hold within three months of the date of this award, of his own expenses.*
- 4. In case Mr. Gupta fails to obtain the free hold within the stipulated three months, he will authorize Mr. Singla to obtain it on his behalf. The actual cost of conversion to free hold will then be deducted from the ₹ 39.5 crores that Mr. Singal will pay to Mr. Gupta*
- 5. The terms and conditions of payment and registration process will be worked out mutually with legal advice in the presence of the arbitrator.*
- 6. The entire transaction will be completed within six months of the date of this award.*
- 7. This award supersedes all earlier agreements, claims and settlements.*

Sd/- Harish Dhillon

21.03.2006”

On the perusal of the aforementioned findings, there is no discussion to any submissions made on behalf of the parties to the *lis*, my view as already expressed in the order sought to be reviewed, award has been held to be not confirming the provisions of sub-Section 3 of Section 28. The aforementioned provisions cannot be read in isolation have to be in conjunction with the provisions of Section 34, vide which, aggrieved party assailed the award by filing the objections. As regards the terms and conditions of the agreement entered into between the parties, it does not show and proved that it was actually agreement to sell which ordinary and prudent person enters into. No separate receipt of the payment of ₹ 2,75,00,000/- has been shown or proved on record, much less, there is no candid admission or any other evidence brought on record to show that the vendor had received a sum of ₹ 2,75,00,000/- in cash. In fact, it was a draft agreement where parties intended to enter into formal agreement.

Accepting an argument, hypothetically, this Court is made to form an opinion that a sum of ₹ 2,75,00,000/- had been actually paid as an advance and review has been sought for refund of the amount as while setting aside the award, there is no order with regard to the refund of the amount. The view expressed in the order, had been on the basis of the documentary evidence i.e. draft agreement which do not envisage separate receipt or intention of the parties that a sum of ₹ 2,75,00,000/- in cash, was paid, in essence, vendee had not placed on record any document or a bank record showing withdrawal of such a huge amount.

There is no dispute to the ratio decidendi culled out in the judgments cited hereinabove, but the facts and circumstances of each case have

to be examined. The judgment rendered in *State of Rajasthan's* case (supra) pertains to the Arbitration Act 1940, whereas as per the 1996 Act, the scope of objections have been limited, in my view, the objections were falling within the aforementioned parameters and accordingly, Award has been set aside on the ground stated in the order sought to be reviewed.

Keeping in view the aforementioned facts, there is no error apparent on the face of record, and no ground is made out for interference in the application seeking review/recalling of the order dated 20.11.2015.

For the foregoing reasons, the review application is dismissed.

23.04.2016
yogesh

**(AMIT RAWAL)
JUDGE**