

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE Ms. JUSTICE J. UMA DEVI

CIVIL MISCELLANEOUS APPEAL No.1057 of 2013 AND
CIVIL MISCELLANEOUS APPEAL (SR) No.27224 of 2015

DATED:22-09-2017

C.M.A. No.1057 of 2013

Between:

Pusapati Madhuri Gajapathi Raju ... APPELLANT

And

Pusapati Ananda Gajapathi Raju (died),
per legal representatives and others ... RESPONDENTS

COUNSEL FOR THE APPELLANT: Mrs. Sundari R. Pisupati

COUNSEL FOR RESPONDENT NOS.2 and 3: - Mr. V. Ravinder Rao, Senior
Counsel, for Mr. V.N. Anagani

COUNSEL FOR RESPONDENT NOS.4 and 5: Mr. E.V.V.S. Ravi Kumar

COUNSEL FOR RESPONDENT NO.6 : Mr. D.V. Sitarama Murthy, Senior
Counsel for Mr. N. Aswini Kumar

COUNSEL FOR RESPONDENT NOS.8 and 9 : Mr. M. Adinarayana Raju,
for Mr. Koka Satyanarayana

C.M.A. (SR) No.27224 of 2015

Between:

Pusapati Alak Narayana Gajapati Raju
and another ... APPELLANTS

And

P. Madhuri Gajapathi Raju
and others ... RESPONDENTS

COUNSEL FOR THE APPELLANTS: Mr. E.V.V.S. Ravi Kumar

COUNSEL FOR RESPONDENT NO.1: Mrs. Sundari R. Pisupati

COUNSEL FOR RESPONDENT NOS.3 and 4: - Mr. V. Ravinder Rao, Senior
Counsel, for Mr. V.N. Anagani

COUNSEL FOR RESPONDENT NO.5 : Mr. D.V. Sitarama Murthy,
Senior Counsel,
for Mr. N. Aswini Kumar

COUNSEL FOR RESPONDENT NOS.7 and 8: Mr. M. Adinarayana Raju,
For Mr. Koka Satyanarayana

THE COURT DELIVERED THE FOLLOWING:

COMMON JUDGMENT: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

These two civil miscellaneous appeals are directed against order and decree dt.24.06.2013 in Arbitration O.P. No.631 of 2007 on the file to the Court of the District Judge, Vizianagaram.

For convenience, the parties are referred to as they are arrayed in C.M.A. No.1057 of 2013.

2. The facts to the extent they are relevant for the purpose of adjudication of these appeals are stated hereunder.

Dr. P.V.G. Raju had three children through his first wife – Kusum. They are respondent Nos.1 to 3. Under registered document dt.19.10.1957 the coparcenary status of Dr. P.V.G. Raju's family was put an end to. On 12.11.1958 Dr. P.V.G. Raju constituted a public Trust, by name "MANSAS". Certain immovable properties belonging to the erstwhile joint family were vested in the said Trust for educational and charitable purposes. On 18.06.1960 partition of certain agricultural lands by metes and bounds has taken place between Dr. P.V.G. Raju and respondent Nos.1 and 2 - his two sons. By settlement deed dt.18.6.1960 some agricultural lands were settled in favour of respondent No.3 – daughter of Dr. P.V.G. Raju, through his first wife. Some other properties were also allotted to respondent No.3 under 1960 partition. It was agreed that the properties were to be registered in each sharer's individual name. Separate possession was delivered to each of them. In the year 1963 Dr. P.V.G. Raju divorced his first wife – Kusum and married the appellant. After P.V.G. Raju had three children, i.e., respondent Nos.4 to 6, through the appellant, as certain issues out of the previous partition arose, the same were referred to arbitration, under an agreement entered on 03.10.1970 between Dr. P.V.G. Raju, respondent Nos.1 to 3, the appellant and respondent Nos.4 to 6, to Raja of Bobbili. The reference of the dispute pertains to the properties covered by the previous partition, and settlement by

way of a fair and equitable division of the properties among the parties. On 28.06.1971, Raja of Bobbili gave his award. All the properties specified in schedules A to H were allotted to all the eight members of the family. The award was duly registered and was also made the decree of the Court on 21.4.1972 in O.S. No.70 of 1971. Under this award, twenty nine items of jewellery were partitioned as per joint note signed by all the parties.

3. Respondent Nos.1 to 3 filed O.S. No.29 of 1974 in the Sub-Court, Vizianagaram, for division by metes and bounds of the properties mentioned in schedules I to VIII of the plaint, as per the shares specified therein. The suit was partly decreed and the properties specified in the award were ordered to be partitioned by metes and bounds. A preliminary decree was drawn up in respect of the specified items and the suit for the rest of the items was dismissed. Feeling partly aggrieved by the said judgment and decree, respondent Nos.1 to 3 filed A.S. No.283 of 1980 before this Court. By judgment dt.24.07.1992 this Court has dismissed the appeal while allowing the cross-objections in part, with respect to schedule-I properties. Respondent Nos.1 to 3 filed Civil Appeal No.5251 of 1993 before the Supreme Court. On 14.09.1995, Dr. P.V.G. Raju died. On 08.03.2000 all the parties jointly filed an application before the Supreme Court to refer the disputes for arbitration. A former Judge of the Supreme Court, Justice S. Ranganathan, was appointed as the Arbitrator by order dt.28.03.2000, of the Supreme Court. A claim petition was filed before the Arbitrator on 16.09.2000. On 26.05.2007 the Arbitrator made an interim award. Feeling aggrieved by the said award, the appellant filed Arbitration O.P. No.631 of 2007 in the Court of the District Judge, Vizianagaram. The said O.P. was dismissed by order dt.24.06.2013. Assailing this order, C.M.A. No.1057 of 2013 is filed. Respondent Nos.4 and 5 filed C.M.A. (SR) No.27224 of 2015 with a delay of 641 days against the said order.

4. Smt. Sundari R. Pisupati, learned counsel for the appellant, submitted that the learned Arbitrator travelled beyond the scope of reference inasmuch as, while all the properties partitioned in the year 1960 and also under the award of the Arbitrator made in 1971 were to be divided into seven equal shares and one such share to be allotted to each of the parties to the appeal, the learned Arbitrator has relied upon previous arbitration award and failed to allot shares to the respective parties as agreed in the joint application for reference. She has further submitted that the Arbitrator has committed a serious error in not allotting the ninety-nine diamonds and one emerald ring given to the appellant in 1971, even though it was proved that the same are stridhana property of the appellant. In support of her submissions, she relied upon the judgments in *Pratibha Rani v. Suraj Kumar*¹, *Rashmi Kumar v. Mahesh Kumar Bhade*².

5. Mr. E.V.V.S. Ravi Kumar, learned counsel for the appellants in C.M.A.(SR) No.27224 of 2015, adopted the submissions of the learned counsel for the appellant in C.M.A. No.1057 of 2013.

6. Opposing the above submissions, Mr. V. Ravinder Rao, learned Senior Counsel for respondent Nos.1 to 3, submitted that the learned Arbitrator was very much conscious of the scope of reference of the disputes, that he has only passed an interim award, by leaving several further determinations and the task of physical division of the properties to be considered in the final award with reference to the value of each item of the property and directing making of such adjustments as may be necessary and that therefore such an interim award is not liable to be interfered with. The learned Senior Counsel further submitted that the scope of interference with arbitration awards is limited to the grounds mentioned in Section 34 of the Arbitration and Conciliation Act, 1996 (for short, "the Act") and that the interim award does

¹ AIR 1985 SC 628

² (1997) 2 SCC 397

not suffer from any errors which fall within the scope for interference. The learned Senior Counsel has taken the Court through various portions of the award. He has also referred to and relied upon the judgments in *Madhani Construction Corporation Private Limited v. Union of India*³, *Oil and Natural Gas Corporation Ltd. V. Western Geco International Ltd.*⁴ and *Associate Builders v. Delhi Development Authority*⁵. As regards the ninety-nine diamonds and one emerald ring, the learned Senior Counsel submitted that in the year 1971 Dr. P.V.G. Raju has given these diamonds and emerald ring to respondent Nos.1 to 3, and that after allotment of these items to the said respondents he has stopped showing the same in the wealth tax returns. He has further argued that even as per the pleading of the appellant, Dr. P.V.G. Raju has placed the jewellery at the disposal of the family on being coerced by respondent No.1 in lieu of discharge of certain liabilities of Dr. P.V.G. Raju. The learned Senior Counsel submitted that the obligation towards Stridhana property lies with the husband only and that too the same is a moral obligation and not legal obligation and that such moral obligation does not bind the third parties. He has further argued that the appellant is a signatory to the list of the properties in the year 1971 and that she has voluntarily given up her claim over these items. He has further submitted that the learned Arbitrator has given cogent reasons for not accepting the claim of the appellant with regard to this item of the property, that the scope of interference with an arbitral award being limited, the lower Court has rightly dismissed the O.P. and that as the scope of the appeal under Section 37 of the Act is equally limited as that of the lower Court, the Award of the learned Arbitrator is not liable for interference.

³ (2010) 1 SCC 549

⁴ (2014) 9 SCC 263

⁵ (2015) 3 SCC 49

7. We have carefully considered the respective submissions of the learned counsel for the parties with reference to the material on record. Having regard to the rival submissions of the learned counsel for the parties, the following points emerge for consideration.

- (i) Whether the Arbitrator has exceeded the scope of reference while passing the Award with regard to the properties other than the Stridhana property?
 - (ii) Whether the award relating to the Stridhana property is sustainable?
 - (iii) Whether the award is in the nature of interim award or final award?
- and,
- (iv) Whether the award is liable to be interfered with?

Re Point (i)

8. All the parties have filed a joint memo, vide I.A. No.6 of 2000 in Civil Appeal No.5251 of 1993. The reference of the dispute delineated in the said I.A., is as follows:

- (i) *"The entire subject matter of the appeal in dispute including the properties that were partitioned in 1960 between late P.V.G. Raju and his two sons Sri P. Anand Gajapathi Raju and Sri P. Ashok Gajapathi Raju, and the lands given to daughter Smt. Sunita Prasad and the properties that were divided in the award proceedings in pursuance of the award of Kumararaja of Bobbili of 1971;*
- (ii) *All the shares with companies, certificates, bonds, Government securities and all movable and immovable properties mentioned in para (i) including impartible properties except those which have been alienated by late P.V.G. Raju during his life time before his death on 14.11.1995, subject to proof, will be divided into seven equal shares and allot one such share to each of the parties to the appeal;*
- (iii) *The arbitrator will also take into account 99 diamonds and one emerald ring given to the appellants in 1971 and claimed to be streedhana property of Smt. Maduri V. Raju. The arbitrator will decide whether the aforesaid items are the streedhana properties or not of Smt. Madhuri V. Raju. In case the arbitrator comes to the conclusion that the said diamonds and emerald ring are not streedhana property of*

*Smt. Madhuri V. Raju, all the parties to the appeal are entitled to 1/7th share equally in the said diamonds and emerald ring; and
The arbitrator will not take into account the findings recorded by the courts below.*

The learned counsel for the appellant submits that as the whole issue of partition was thrown open with specific reference to 1960 partition and 1971 award, the Arbitrator ought not to have been guided by the said two instruments and that in the light of the specific agreement between the parties that all the shares with companies, certificates, bonds, Government securities and all movable and immovable properties, except those which are alienated by P.V.G. Raju during his life time will be divided into seven equal shares and one such share be allotted to each of the parties to the appeal, the learned Arbitrator has erred in considering 1960 partition and 1971 arbitration award as still existing and allowed himself to be guided by those instruments. Dealing with this contention urged before him, the learned Arbitrator rendered the following finding:

“Above all, the contention is based on the assumption that the 1960 and 1971 partitions have disappeared or been obliterated which is an incorrect assumption. These two partitions are legally alive and effective, one by way of a registered partition deed and the other by a decree of a court passed on 21.04.1972. The respective parties had acquired rights in specific items of property thereunder. Nothing has happened to obliterate them. For understandable reasons, the earlier partitions dealt with only some of the properties of the family. Now the members – male and female – have agreed to divide all the properties in equal shares and they have agreed that, while doing this, the earlier partitions should also be taken into account and a comprehensive partition decided upon. For doing this, it is open to, but not obligatory, on the arbitrator to scrap the earlier partitions altogether. If, and to the extent, the arbitrator decides to retain the earlier partitions in tact, they will continue to remain effective. It is only if he decides otherwise that his decision may have the effect in law of superseding the earlier arbitrations.”

9. On a careful consideration of the reasoning of the learned Arbitrator, we feel that it is a plausible one. It does not flow from the three clauses of the joint application for reference that the Arbitrator must completely ignore

the partition deed and the arbitration award or that these two instruments have outlived their purpose. The learned Arbitrator has specifically observed that male and female members of the family have agreed to divide all the properties in equal shares and that they have also agreed that while doing this, the earlier partitions should also be taken into account and a comprehensive partition decided upon. In paragraph 142 of the award, the learned Arbitrator also placed on record the agreement of all the parties that the award of 1971 may be permitted to stand, save for the modification now necessary to partition the lands allotted to P.V.G. Raju. However, he has also recorded the dissent of the appellant on the ground that there was an error in the list of properties allotted to respondent No.5 (respondent No.3 before the Arbitrator), who is the second son of the appellant. The Arbitrator of course found this contention as flimsy and rejected the same by giving detailed reasons. It is in this context, that the learned Arbitrator opined that it is open but not obligatory for him to scrap the earlier partitions altogether and that only to the extent that he decides to continue to allow the previous partitions in tact, they remain effective.

10. Irrespective of whether the earlier partition and the arbitration award must be retained or scrapped, the bottom-line is that all the properties covered by the 1960 partition and also the arbitral award of 1971 except the properties alienated by Dr. P.V.G. Raju during his lifetime, have to be divided into seven equal shares and one such share to be allotted to each of the parties to the appeal. The request of all the members of the family has also been specifically recorded by the arbitrator in paragraph 141 of his award as extracted hereinbefore. Being conscious of the fact that the parties have agreed to the partition of the properties into seven equal shares, the learned Arbitrator has directed that the properties should be so divided and allotted among the parties. He has, however, made clear that by doing so, it will not

follow that each sharer will be entitled to 1/7th share in each asset as some items have been divided differently under 1960 and 1971 instruments. Those divisions have been accepted by the learned Arbitrator with slight modifications. The Arbitrator further made it clear that the final adjustments relating to the value of the properties allotted to each of the sharers will be made while passing final award.

11. In the light of the above, it is not possible to accept the submission of the learned counsel for the appellant that by taking into consideration the previous partition and the award and in not allotting 1/7th share in each of the items of the properties to all the sharers, the learned Arbitrator has exceeded the terms of reference. In our opinion, the learned Arbitrator was not solely guided by the previous partition and the award, but he declined to disturb the arrangement made in those instruments wherever he found that such arrangements were just and equitable. For the aforementioned reasons, point No.(i) is held against the appellant.

Re Point No.(ii)

12. Ninety nine diamonds and one emerald ring claimed to be the Stridhana property were included in items 20 and 22 of Schedule V of the claim petition (item 6 of the schedule property in the counter claim by the appellant). The reference of the dispute as agreed between the parties with regard to the Stridhana property is contained in paragraph (1) clause (iii) which was already reproduced hereinbefore. On a careful reading of this clause, the entire dispute referred to the Arbitrator under this clause could be conveniently divided into two parts. In the first part, the arbitrator has to first decide whether the ninety nine diamonds and one emerald ring are the Stridhana properties of the appellant. In the second part, the parties agreed that if the Arbitrator holds that the property does not constitute Stridhana property of the appellant, all the parties are entitled to 1/7th share equally. It is clearly implied

from the second part of the dispute referred to the Arbitrator, that the diamonds and the emerald ring are not liable for partition, if they are held to be the Stridhana property of the appellant. It further follows therefrom that if the Arbitrator holds that the diamonds and the emerald ring constitute the Stridhana property, the further question may not arise and it has to be necessarily held that the appellant alone is entitled to the said property.

13. The appellant has contended before the Arbitrator that both these items and also items 2, 6 and 7 of schedule V of the claim petition are not partible. The learned Arbitrator in paragraph 121 of his award rendered an unequivocal finding that category [A] items – ninety nine diamonds and one emerald ring, were shown in the wealth tax returns of Dr. P.V.G. Raju for the assessment years 1965-66 and 1966-67 as Stridhana jewellery given to the appellant. He has observed that “it cannot also be disputed, having regard to the status of PVG Raju, that he could, and normally would, have given jewellery to his wife as Stridhana at the time of his engagement and marriage. The trial court has also come to the same conclusion.” Having held so, the Arbitrator however referred to the division on 13.07.1971, the absence of reference to these items in the PVG Raju’s wealth statements post 1971, the appellant handing over these items to late PVG Raju and the improbability of the appellant throwing these items in the family hotchpot under coercion. The learned Arbitrator also went into the legal position regarding the Stridhana property with reference to the judgments in *Browne v. Dunne*⁶, *State v. Nahar Singh*⁷ and *Rajendra Prasad v. Darshana Devi*⁸ and rendered a finding that while there can be no doubt about the proposition laid down in the aforementioned cases, the acceptance of the mere fact that the appellant had helped her husband in this manner to meet his liabilities does not invalidate the bona fides or validity of

⁶ 2 (1893) – 6R67 (HL)

⁷ (1998) 3 SCC 561

⁸ (2001) 7 SCC 69

surrender of the jewels to her husband. He then referred to the division of the properties under the 1971 award which was allowed to become final by the decree of the court without any protest by PVG Raju or the appellant.

14. While referring to the Judgments of the Supreme Court in *Pratibha Rani* (1 supra), the learned Arbitrator held that in view of the division of the properties in the year 1971, there is no need for reconsideration regarding the Stridhana items. He relied upon the affidavit dated 28-7-2003 filed by the respondents which reads:

“On 13.07.1971 with the consent of the 1st respondent Late Sri P.V.G. Raju divided some items of Jewellery into 8 equal Shares, including 99 Diamonds and an Emerald Ring. A list was prepared and it was signed by the 1st respondent also. The Claimants proposed that the parties should agree that each one could keep his or her share without disturbing the partition. The 2nd and 3^d respondents have agreed to the said proposal. There was no dissent by the 4th respondent. The claimants further state that if the proposal is accepted by all, Claimants are prepared to release the share of Late Sri P.V.G. Raju in these items in favour of the respondents. It is further submitted that if the proposal is accepted the Claimants agree that the total land allowed to be retained by the parties can be divided into 7 equal shares, allotting one such share to each of the Claimants and Respondents.”

Considering the above extracted portion of the affidavit, the learned arbitral Tribunal held as under :

“I think the claimants would be acting fairly if they would adhere to this offer. In other words, the allotment of 1971 regarding the items set out in Schedule X to the claim petition among the seven parties now here will stand and that the share allotted therein to PVG (I, 111) will stand allotted exclusively to the four respondents in equal shares.

Subject to the above recommendations, it is held that these items can no longer be treated as the stridhana and hence the exclusive property of R-1 and that, as they have been already allotted to the three claimants in the division of 13.07.1971, they cannot be considered for partition once again in these proceedings.

The position regarding items 2, 6 and 7 have been considered earlier in paras 86 to 90 ante and they have been found to have been gifted to R-1 by PVG in his life time. The question of his competence to do is being considered below under topic IV.”

(emphasis supplied)

The learned Arbitrator further held as under:

“...So also, the exclusive right of Respondent-1 to the items of jewellery given to her as Stidhana cannot be questioned but she had agreed to surrender them and make them available for partition in 1971 and no case has been made out for disturbing that division.”

15. With reference to the plea of respondent Nos.1 to 3 that if the Arbitrator decided that they have to return these items to the appellant, they should be given some items in lieu thereof, the learned Arbitrator held that in the event he accepts that the allocation of these items to respondent Nos.1 to 3 was the result of some coercion or fraud, the appellant is entitled to get them back as her exclusive property following the ratio in *Pratibha Rani* (1 supra). He has further observed that the division of 1971 would have lost its meaning and a repartition of the other assets included in the division may have to be considered. The learned Arbitrator however held that in view of the conclusions reached by him, there is no need for any such reconsideration and the allotment of the items and he has accordingly confirmed these items to respondent Nos.1 to 3. At the same time he has observed that these items may have had, and continue to have, a special value to the appellant and he would leave it open to the parties to work out an arrangement by which the appellant can get the diamonds and emerald ring on payment in cash of their value today or by transfer to respondent Nos.1 to 3 of some other jewellery of equal value. He has accordingly left the arrangement entirely to the parties by mutual consent.

16. Under Section 34(2)(a)(iv) of the Act, an award can be challenged if it 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. In a slew of judgments arising under the

Arbitration Act, 1940, the Apex Court held that the Arbitrator travelling outside the scope of reference commits misconduct as envisaged under Section 30(a) of the said Act rendering the award invalid. Therefore these judgments apply in all fours to a case where the Arbitrator travels beyond the scope of reference.

17. In *Jivarajbhai Ujamshi Sheth and others. v. Chintamanrao Balaji and others*⁹ after considering the judgment of the Privy Council in *Champsey Bhara & Co v. Jivrai Ballo Spinning & Weaving Co. Ltd.*¹⁰, the Supreme Court held that “the primary duty of the arbitrator under the deed of a reference in which was incorporated the partnership agreement, was to value the net assets of the firm and to award to the retiring partners a share therein. In making the “valuation of the firm”, his jurisdiction was restricted in a manner provided by paragraph 13 of the partnership agreement. As the arbitrator has expressly stated in his award that in arriving at his valuation, he has included the depreciation and appreciation of the property, the arbitrator has travelled outside his jurisdiction and the award was on that account liable to be set aside. This was not a case in which the arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed question submitted for his adjudication. It is a case of assumption of jurisdiction not possessed by him, and that renders the award, to the extent to which it is beyond the arbitrator's jurisdiction, invalid...”. Hidayatulla, J, in his concurring judgment, observed:

“The first point is therefore to decide what were the limits of the arbitrator's action as disclosed by the reference and the deed of partnership and then to see what the arbitrator has actually done and not what he may have stated loosely in his award. This is the only way in which the excess of jurisdiction can be found. If the interpretation of the deed of partnership lies with the arbitrator, then there is no question of sitting in appeal over his interpretation, in view of the passage quoted above from Champsey's case (supra), but if the parties set limits to action by the

⁹ AIR 1965 SC 214

¹⁰ AIR 1923 PC 66

arbitrator, then the arbitrator had to follow the limits set for him, and the Court can find that he has exceeded his jurisdiction on proof of such action."

18. In *Associated Engineering Company v. Government of Andhra Pradesh*¹¹, the Supreme Court held:

"27. If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdiction error. Such error going to his jurisdiction can be established by looking into material outside the award. Extrinsic evidence is admissible in such cases because the dispute is not something which arise under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The dispute as to jurisdiction is a matter which is outside the award or outside whatever may be said about it in the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such jurisdictional error needs to be proved by evidence extrinsic to the award..."

28. In the instant case, the umpire decided matters strikingly outside his jurisdiction. He out stepped the confines of the contract. He wandered far outside the designated area. He digressed far away from the allotted task. His error arose not by misreading or misconstruing or misunderstanding the contract, but by acting in excess of what was agreed. It was an error going to the root of his jurisdiction because he asked himself the wrong question, disregarded the contract and awarded in excess of his authority. In many respects, the award flew in the face of provisions of the contract to the contrary.

29. The umpire, in our view, acted unreasonably, irrationally and capriciously in ignoring the limits and the clear provisions of the contract. In awarding claims which are totally opposed to the provisions of the contract to which he made specific reference in allowing them, he has misdirected and misconducted himself by manifestly disregarding the limits of his jurisdiction and the bounds of the contract from which he derived his authority thereby acting ultra fines compromissi."

19. Let us now apply the settled legal principles discussed above to the instant cases. From the finding of the learned Arbitrator referred to above, it is manifest that the diamonds and emerald ring were held to be the Stridhana property of the appellant. But he opined that as the allotment of 1971 is allowed to stand, they can no longer be treated as the Stridhana property of

¹¹ (1991) 4 SCC 93

the appellant. In our considered opinion, the limited scope of reference of the dispute pertaining to the diamonds and the emerald ring is to decide whether they are the Stridhana property or not and whether they continue to be the Stridhana property or not. As per the unequivocal understanding among the parties, if the items are held to be not the Stridhana property, they must be divided into seven shares and one share has to be allotted to each of the parties. With due respect, we feel that the learned Arbitrator having held that the subject items were Stridhana property, has exceeded his jurisdiction by proceeding further and holding that these items though Stridhana items once, no longer continue to be Stridhana by falling back upon the 1971 award and justifying retention of these items by respondent Nos.1 to 3. If the parties have treated the 1971 award as sacrosanct, they would not have framed the reference clause with respect to these items in the manner as they did. In other words, if they intended that the Arbitrator must decide the further issue whether the items ceased to be Stridhana, such intention would have been clearly reflected in the reference. Reading the reference even in the most liberal manner, such intention could not be culled out therefrom.

20. For the aforementioned reasons, we have no option except to hold that the award of the Arbitrator in respect of the Stridhana property travels beyond the scope of the reference and hence the same cannot be sustained. This point is accordingly answered.

Re Point No.(iii)

21. Under Section 2(c) of the Act, arbitral award includes an interim award. Under Section 31(6) of the Act, the Arbitrator 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. In *Mc.Dermott International Inc. v. Burn Standard Co. Ltd. and others*¹², the Supreme Court

¹² (2006) 11 SCC 181

held that an interim award in terms of Section 31(6) may be a final award on the matters covered thereby but made at an interim stage. Whether an award is interim in nature or the same is intended to be final, in our view, depends upon the true purport of the award gathered from the contents of the award. Therefore, in order to decide this aspect, the award needs to be looked into.

22. Part IX of the award contains the heading "CONCLUSIONS AND INTERIM AWARD". It could be gathered from Points 1 to 10 under para-156 of the award that the learned arbitrator while holding that the properties have to be divided into 7 equal shares and one share to each of the parties to be allotted, he has however ruled out the possibility of such division with respect to each asset. He did not allow the partitions of 1960 and 1971 to be disturbed except to a small extent specified against the relevant items. In para-157, the learned Arbitrator held as under :

"Though the points of controversy between the parties have been decided by this award, it will be only in the nature of an interim award as several further determinations and the task of physical division of the properties are yet to be considered. Appropriate orders recording the final partition will still have to be made thereafter and, in so doing, it will also be necessary to consider the value of the properties allotted to each of the sharers and direct such adjustments as may be necessary monetarily or in specie. One more important aspect to be considered at the time of the final discussion will be that of the mesne profits, if any, payable by the sharers in respect of properties allotted to other remaining in their possession. This will need a detailed consideration from several angles, extents, date, quantum etc. and will have to be considered later. For these purposes, the Tribunal will resume its sittings and pass appropriate orders after the parties have had time to study the contents of this award."

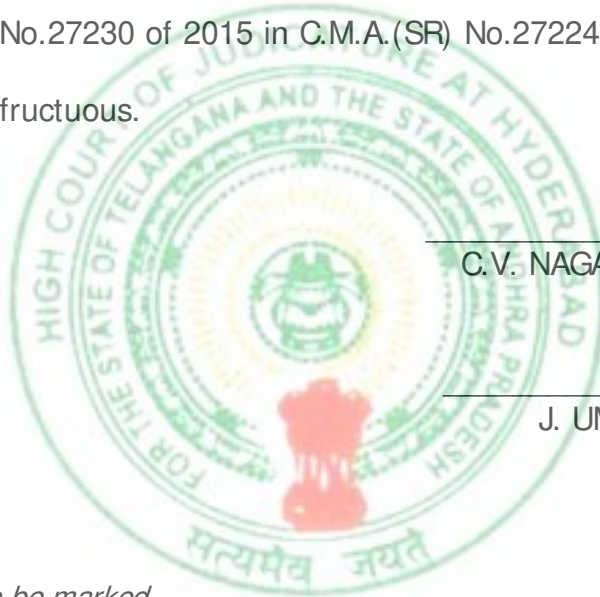
23. In the above reproduced para, the learned arbitrator has made his intention explicit that allotment of various items of properties to the parties is only interim in nature pending further determinations and the task of physical division has to be undertaken after the Tribunal resumes its sittings for making the final award. We therefore agree with the submissions of the learned Senior Counsel for respondent Nos.1 to 3 that the award in respect of movable

and immovable properties except the Stridhana property is only interim in nature pending passing of a final award. This point is accordingly answered.

Re Point No.(iv):

24. Having regard to the findings rendered above, the award is liable to be interfered only with respect to the Stridhana properties and the same is accordingly set-aside to the said extent alone. The Civil Miscellaneous Appeals are accordingly allowed in part by confirming the order of the lower Court confirming the arbitral award in all other respects.

As a sequel to disposal of the appeals, C.M.A.M.P. Nos.2190, 2191 and 2192 of 2013, 105 of 2015 and 1428 of 2016 in C.M.A. No.1057 of 2013, and C.M.A.M.P. (SR) No.27230 of 2015 in C.M.A.(SR) No.27224 of 2015 shall stand disposed of as infructuous.



C.V. NAGARJUNA REDDY, J

J. UMA DEVI, J

22-9-2017

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Note: LR copies to be marked.

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