* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **FAO No.181/2007**

% **3rd July, 2017**

SH. MAHESH NARAIN (DECEASED) THROUGH LRs
.....Appellant

Through: Mr. Raman Kapur, Senior Advocate with Mr. Aviral Tiwari, Advocate and Mr. Dhiraj Sachdeva, Advocate.

versus

SH. SUBHASH CHAND CHADHA & ANR. ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This First Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') is filed by the appellant/objector Mr. Mahesh Narain against the impugned judgment dated 23.12.2006 passed by the court below, whereby the court below has dismissed the objections of the appellant and upheld the 'Award' of the Arbitrator dated 12.10.2003.

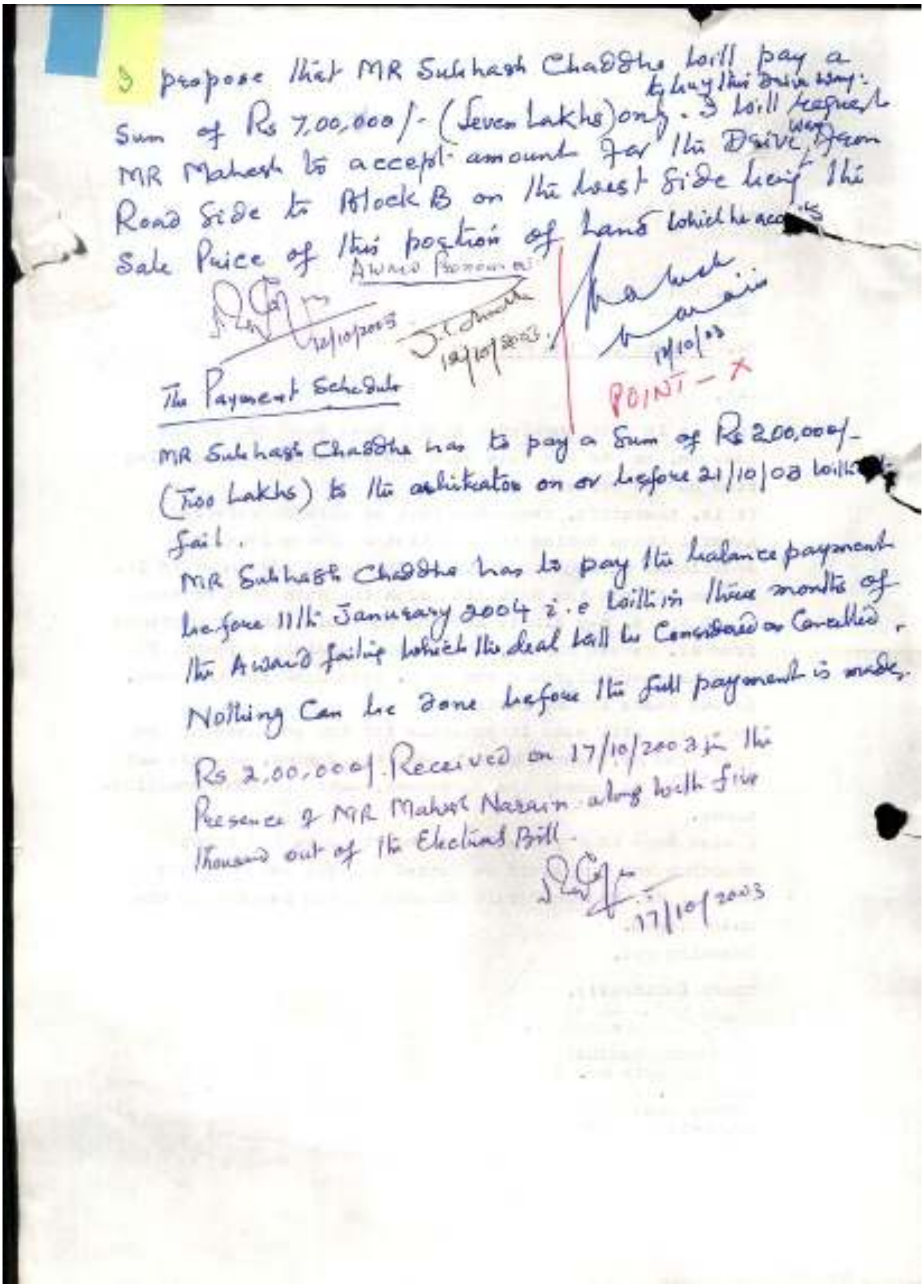
2. I note that the appellant expired during the pendency of these proceedings and he has been substituted by his legal heirs, and therefore reference of the appellant/objector in this judgment; wherever

the context so requires; will include reference to the legal heirs of the appellant/objector.

3. Right at the outset, I would like to put on record that the so called 'Award' dated 12.10.2003 is not an award in the sense of term as is legally understood. Actually, the Award dated 12.10.2003 is said by the Arbitrator and the respondent no.1 to be a consent agreement between the parties and just two words in the middle of the same are additionally written to call it an Award with the signatures of the Arbitrator. This Award will be referred to hereinafter as the first Award. The so called consent agreement in the form of consent Award is of just about six lines and rest of the page of the so called Award are the subsequent facts which took place thereafter i.e from 12.10.2003 to 17.10.2003. Also, as stated below, the Arbitrator thereafter got an 'Award' typed on a stamp paper dated 24.12.2003 but dated the 'Award' as 12.10.2003. In fact the Arbitrator on 24.12.2003 *suo moto*, in the absence of the parties to the 'Award' got the same registered before the Sub-Registrar. This formal Award is the second Award.

4. In order to understand what is being observed with respect to the so called Award dated 12.10.2003, and as has been aforestated in this judgment, let me reproduce the so called first Award dated

12.10.2003 in its scanned form, and which is as under:-


I propose that MR Subhash Chaddha will pay a Sum of Rs 7,00,000/- (Seven Lakhs) only to buy this Drive way. I will request MR Mahesh to accept amount for the Drive way from the Road Side to Block B on the west Side being the Sale Price of this portion of Land which he accepts
AWARD PRONOUNCED
12/10/2003
J.C. Chaddha 12/10/2003
Mahesh Narain 12/10/03
POINT – X
The Payment Schedule
MR Subhash Chaddha has to pay a Sum of Rs 200,000/- (Two Lakhs) to the arbitrator on or before 21/10/03 without fail.
MR Subhash Chaddha has to pay the balance payment within three months of before 11th January 2004 i.e within three months of the Award failing which the deal will be Considered as Cancelled.
Nothing Can be done before the full payment is made.
Rs 2,00,000/- Received on 17/10/2003 in the Presence of MR Mahesh Narain along with five Thousand out of the Electrical Bill.
17/10/2003

5. Why the so called first Award dated 12.10.2003 has been scanned by this Court and not typed is because it was required to note

the peculiarity of the expression “Award Pronounced” being written by hand of the Arbitrator somewhere in the middle of the page with his signatures, as also the fact of matter as regards the crucial language in the first five lines of this first Award with respect to the consent agreement being entered into showing different writing/language of the words “which he accepts” and which three words are in different hand writing than the hand writing in which the five hand written lines which are written on the document dated 12.10.2003. The first five lines in hand in the first Award are followed by the signatures of the appellant with the date of 12.10.2003. To further clarify, it is required to be stated that the appellant Mr. Mahesh Narain had filed objections to the Award by contending that the so called first five lines of the consent agreement and the consent first Award was never an Award and these five lines were only in the nature of a proposal, and that too initiated by the Arbitrator and not by the appellant Mr. Mahesh Narain, and after the proposal emanating from the Arbitrator in these five lines, the language was manipulated by adding words “which he accepts”, for the same to become a so called consent agreement resulting in the consent first Award. It is argued by the appellant that once only the five lines are read which are in the hand writing of the appellant Mr. Mahesh Narain and with his signatures thereafter dated 12.10.2003 at point ‘X’, it becomes clear that there is clear cut tampering because words “which he accepts” are not in the hand writing of the appellant Mr. Mahesh Narain but are of someone else and that the five lines which were signed by the appellant on 12.10.2003 was only and merely but a proposal, that too not of the appellant but only of the Arbitrator, that a particular passage in the property of the appellant will be sold by the appellant to the respondent no.1 herein, that is Mr. Subhash Chand Chadha. This passage is shown in orange color in the map annexed to the second Award which was passed subsequently by the Arbitrator and which is said to be dated 12.10.2003. This formal second Award is only a consent Award based on the consent agreement dated 12.10.2003 which has been reproduced above and it is not a typical Award of an Arbitrator which decides on merits the issues between the contesting parties.

6. Let me at this stage reproduce the so called second Award dated 12.10.2003 because this second Award said to be dated 12.10.2003 is actually on a stamp paper of a subsequent date 24.12.2003, and this second Award as stated above was got registered before the Sub-Registrar by the Arbitrator himself on 24.12.2003. This second Award alleged to be dated 12.10.2003 on the stamp paper of

24.12.2003 and registered before the Sub-Registrar on 24.12.2003 by the Arbitrator, reads as under:-

" **AWARD**

The dispute having arisen between Shri Mahesh Narain s/o Shri Seth Krishna Narain, R/o 2, Jamuna Road, Delhi and Mr. Subhash Chander Chaddha, s/o Shri Amar Nath Chaddha, R/o 2, Jamuna Road, Delhi, in regard to matter of sale Deed dated 29th March, 1994, regarding Property No.2, Jamuna Road, Delhi. Both the parties, with their free will and consent, referred the dispute for Sole Arbitration to me, vide their Arbitration Agreement, signed between the parties on 7th May, 2003 on stamped paper of Rs. One Hundred.

I, Raj Chopra s/o Late Shri Walaiti Ram Chopra, R/O 5/6, White House Apartment, 6, Jamuna Road, Delhi accepted the Arbitration reference.

Both the parties submitted their written as well as verbal submission on various dates, fixed by me. The statements of both the parties are recorded and also heard by me. After going through all the submissions, I award the following orders and judgments, which according to reference dated 7th May, 2003, shall be binding on both the parties.

<u>Re. Boundary Wall Between Plot Nos.2 & 3</u>

Mr. Mahesh Narain has a demand of Rs.10,000/- from Mr. Subhash Chaddha as this wall was rebuilt by Mr. Mahesh Narain, which collapsed during construction of the building. This wall is a demarcation between Plot No.2 and Plot No.3 and thus, no amount is payable by Mr. Chaddha for this rebuilt wall.

<u>Re. Sewage Line</u>

Mr. Mahesh Narain has demanded a sum of Rs.10,000/- from Mr. Subhash Chaddha as he has connected the sewerage from his house to the sewerage, constructed by Mr. Mahesh Narain. As this is one plot and the sewerage was constructed by Mr. Mahesh Narain from his portion of Plot C to the main sewerage. As the sewerage was only connected which was a normal course of sewerage system. Thus, no amount of Rs.10,000/- is payable by Mr. Chaddha to Mr. Mahesh Narain.

<u>Re. Electricity Bill</u>

There is a demand of Rs.20,000/- being the share of the Electricity Bill, out of the total bill of Rs.70,131.66, which Mr. Subhash Chaddha accepts to pay. Mr. Subhash Chaddha should pay this amount within seven days and payment receipt should be produced before me.

<u>Re. Bounday Wall on a/c of divison of Plot No.2, Jamuna Road between the portion of Shehzada Bahadur and the portion of B Block</u>

Mr. Subhash Chaddha has demanded a sum of Rs.75,000/- from Mr. Mahesh Narain, who has constructed a wall between the portion of Shehzada Bahadur and the portion 'B', purchased by Mr. Subhash Chaddha to effect the Division of the property. Mr. Narain said there were pillars to demarcate his area. The wall has been constructed to maintain privacy and to safeguard one's property. It is, therefore, awarded that no cost of the Boundary Wall constructed by Mr. Subhash Chaddha, is payable by Mr. Narain.

<u>Re. Construction of Drive Way</u>
Mr. Subhash Chaddha has further demanded as sum of Rs.15,000/- for having spent to construct the Drive way, which was to be constructed by Mr. Narain, as this was a common area, and shown as common passage of 10 ft. from Main Road to the portion 'C', 'A' & 'B'. As the Drive way is always provided by the Vendor. Thus, this amount of Rs.15,000/- is payable by Mr. Mahesh Narain to Mr. Subhash Chaddha. The amount should be paid within one week and payment receipt should be produced before me.

<u>Re. Meter Box on the Wall</u>
Mr. Mahesh Narain has an objection that a Meter Box is put up on the wall between Plot No.2 and Plot No.3 by Mr. Chaddha. On inspection, it is found that a Box is put up on the Wall, which has few boxes for Meters and also a wooden box is there and a Board is fixed on the wall. As it is a boundary wall between plot No.2 and Plot No.3, there should be nothing on it and everything should be removed immediately from the wall.

<u>Re. Putting a Garden Gate</u>
It is mentioned in the reference of Mr. Mahesh Narain that Mr. Chaddha has stopped him in putting a gate on his property (Garden). Mr. Mahesh Narain has the right to put up a gate on his garden. Without any hindrance from any of the vendees in this property.

Re.<u>Dispute of 10 ft. unhindered passage from East Side</u>
The point of 10 ft. unhindered passage as mentioned in the Sale Agreement dated 29th March, 1966, executed by the Vendor, Mr. Mahesh Narain in favour of Mr. Subhash Chander, Vendee of portion 'B" of the plot, is the point of dispute. The portion marked as green in the Map, attached to the Sale Deed, is earmarked as common unhindered passage of 10 ft. upto the portion 'B' by the Vendor, which was earlier confirmed by Mr. Sushil Sahu, the owner of portion 'A' in the Sale Agreement dated the 17th Aug., 1994. The dispute is continuing since the completion of house till date and many a times the dispute was referred to the Police, but all in vain.

The owner of portion 'B' was denied the passage of 10 ft. from the portion marked as Green from the portion of 'A'. On inspection of the premises, it was clearly found that there was only 4 ft. as clear passage and the balance 6 ft. was occupied by way of big stairs. Mr. Mahesh Narain, the Vendee, also accepted that a clear passage of 10 ft. is not provided to the vendee of portion 'B', which was actually to be provided by Mr. Sushil Sahu, the confirming part on the Agreement to Sale dated 17th August, 1994, but Mr. Mahesh Narain, while executing the Sale Deed with Mr. Sushil Sahu, wherein the following lines were mentioned.

> "That the Vendor also hereby undertakes that he shall give unhindered clear, pedestrian passage from his portion purchased to the portion marked as 'B'. There was no mention of the 10 ft. unhindered passage thus, Mr. Sushil Sahu left only 4 ft. pedestrian passage instead of 10 ft. unhindered passage."

I am convinced that the owner of the portion 'B' has not been provided a 10 ft. unhindered passage by the Vendor, in collusion with the owner of portion 'A'.

I asked Mr. Mahesh Narain to have encroachment of 6 ft. removed by requesting Mr. Sushil Sahu in order to maintain the peace of the complex;

but I have been informed by Mr. Mahesh Narain that Mr. Sushil Sahu has refused to do anything and is not interested to remove the 6 ft. encroachment.

Mr. Sushil Sahu came to my office and showed an agreement dated 29th October, 1994, signed by all the three residents of Block A, B & C. Later on, the contents of the Agreement were received from Mr. Mahesh Narain, duly signed by him, duly typed on a plain sheet, which was not the photo copy of the original Agreement.

Under the circumstances, the East side passage seems to be shady in many ways and I do not think it proper that any award be passed on this disputed portion, which may not result into clashes and disputes later on.

Hence, I award that the common passage of East Side should remain as it is, i.e., in Status-quo position, for use of all the residents of Plots A, B & C., as is already being used. Mr. Subhash Chadha has given a letter that he is prepared to buy the West Side passage of the plot against payment from Mr. Mahesh Narain, which has been several times referred during the proceedings of the case. Mr. Mahesh Narain has now accepted to sell this additional passage to Mr. Subhash Chadha. I award that the said Drive way from the West Side be given to Mr. Subhash Chadha against a payment of Rs.7,00,000/- (Rs. Seven Lakh), which will be paid in full, within a period of three months of the Award, i.e., by 11.1.2004 (from the Award dated 12/10/2003). In case, Mr. Subhash Chaddha fails to make the payment of Rs.Seven Lakh on or before 11/1/2004, the deal will be treated as cancelled, without further negotiations.

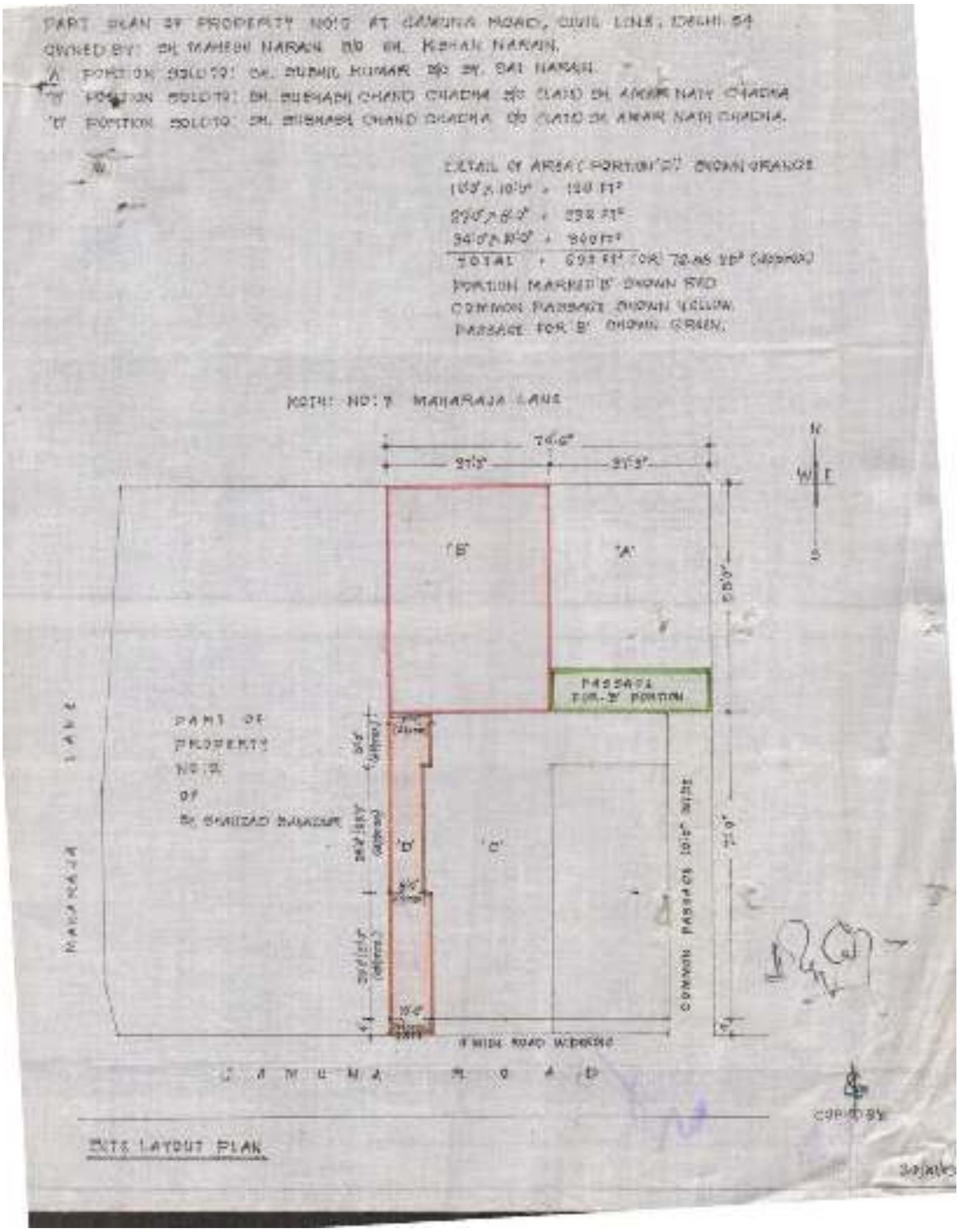
This passage will be the exclusive property of Mr. Subhash Chaddha who will provide a door from the wall of demarcation for maintenance of sewerage and other service amenities of Mr. Mahesh Narain. On receipt of the full amount by 11.1.2004, Mr. Mahesh Narain will give complete possession of the Drive way area of about 74-1/2 ft. of length from the Main Road and about 8 to 10 ft. wide at place for which, a proper Sale Deed will be executed by Mr. Mahesh Narain, in favour of Mr. Subhash Chaddha.

It is also awarded that Mr. Subhash Chaddha will deposit an initial amount of Rs.2,00,000/- (Rs. Two Lakh) before 21/10/2003 with the Arbitrator.

Pronounced in presence of
both the parties, this 12th
day of October, 2003.
Sd/-
(Raj Chopra)
Arbitrator"

7. This Court further notes that the second Award dated 12.10.2003 contains a page no.5 which is admittedly of a subsequent date than the date of the Award, i.e page no.5 of the second Award is dated 17.10.2003 whereas this Award itself is dated 12.10.2003.

8. To understand the disputes which are required to be decided, it would be necessary at this stage to refer to the plan which is annexed with the second Award and this plan annexed to the second Award is as scanned below:-



9. Since we have reproduced above the consent agreement which is actually the consent first Award, as also the formal second Award dated 12.10.2003 on the stamp paper dated 24.12.2003 (and registered before the Sub-Registrar on 24.12.2003), and also the site plan annexed to the second Award, it would now be possible to state the facts for understanding and crystallizing the disputes and without reproducing of which it would have been indeed difficult to understand the aspects which are to be examined and decided in this appeal. To understand the facts of the case, the plan annexed with the second Award would be most relevant and only on the basis of that plan, the facts can be understood which are now stated as under.

10. The appellant was the owner of a plot totaling to an area of 783 sq. yards. This plot was property No.2, Jamuna Road, Civil Lines, Delhi. With respect to this property, the appellant agreed to sell two portions of the same to two different persons while retaining the remaining plot for himself. First person who purchased one part of the plot of the appellant was one Mr. Sushil Kumar Sahu (who is not a party to the arbitration proceedings and these proceedings) and the second person was respondent no.1 herein, namely Mr. Subhash Chand Chadha. To both these persons an area of 219.6 sq. yds. was agreed to be sold out of total plot of 783 sq. yds. Both these portions which were

sold fell at the back part of the plot of 783 sq. yds. In the plan annexed to the second Award the portion which was sold to Mr. Sushil Kumar Sahu is referred to as portion 'A' whereas the portion which was sold to the respondent no.1 is referred to as portion 'B'. Since portions 'A' and 'B' were at the back of the plot, therefore, access was required to reach the portions marked 'A' and 'B', from the front side of the plot. This was done and access was granted by carving out a 10 ft wide passage which falls to the east of the plot and is to the extreme right of the site plan when we see the site plan in the file. This 10 ft wide passage only reaches and touches upon the portion 'A' which was first agreed to be sold (i.e there was an agreement to sell) and thereafter sold (i.e a sale deed executed) to Mr. Sushil Kumar Sahu. With Mr. Sushil Kumar Sahu, the agreement to sell entered into is dated 25.4.1994. Since the 10 ft wide passage from the front to the back portion only gave access to plot A and still further passage was required to reach the plot B hence in this agreement to sell with Mr. Sushil Kumar Sahu it was mentioned that one portion of the plot 'A' which was sold to Mr. Sushil Kumar Sahu, being a passage, would be used as an unhindered and clear passage for reaching the plot/portion marked as 'B' and which plot B was agreed to be sold (agreement to sell dated 17.8.1994) and thereafter sold (sale deed dated 29.3.1996) to the respondent no.1 herein. The 10 ft wide passage on the extreme right side of the plan which is for reaching the portion 'A' from the main road is marked in very light yellow color in the map annexed to the second Award. Though, this yellow color is not very clearly visible, the passage itself is clearly marked and hence i.e this 10 ft wide visible passage is clearly visible and as is being shown on the extreme right side of the plan. This 10 ft wide portion is marked in green color and this passage in green color forms part of the plot 'A' which was sold to Mr. Sushil Kumar Sahu. Therefore, to reach the portion 'B' one has to enter from 10 ft wide passage falling to the right side of the plot and which passage then reaches the green color portion passage forming part of plot 'A', and then from this green color portion one reaches the plot 'B' of the respondent no.1. The two passages being the10 ft wide passage on the right side of the plot and the green color portion when taken together form an inverted 'L' alphabet with the smaller base of the inverted 'L' being the green colored portion. As already stated above the agreement to sell dated 25.4.1994 of the appellant with Mr. Sushil Kumar Sahu, and which is prior in point of time, got thereafter fructified by the sale deed dated 14.3.1995 and which was with respect of portion A, and that the agreement to sell which was entered into between the appellant and the respondent no.1

is dated 17.8.1994 with respect to portion 'B' and the same was fructified in terms of sale deed dated 29.3.1996.

11. Disputes and differences arose between the appellant and the respondent no.1 on account of parking of the cars in the yellow portion passage of 10 ft wide which commences from the entrance of the plot and reaches the green color passage portion of the plot marked as 'A'. There also had arisen disputes on account of certain obstructions made by Mr. Sushil Kumar Sahu in the green color portion in the plot marked as 'A', and which was the access passage for the respondent no.1 to reach its plot 'B', however such disputes of obstructions in the green color passage were not the subject matter of the arbitration proceedings and the arbitration proceedings were only between the appellant Mr. Mahesh Narain and the respondent no. 1 Mr. Shubhash Chand Chadha. Mr. Shushil Kumar Sahu was not a party to the arbitration proceedings. Respondent no.2 herein was appointed as an Arbitrator and who has conducted certain informal proceedings between the parties, meaning thereby that there were no formal pleadings as are found in legal proceedings and also that there was no evidence led in the arbitration proceedings.

12. At this stage I note that though there were various objections raised under Section 34 of the Act by the appellant with

respect to the fact as to whether at all there was an arbitration agreement or that the respondent no.2 was only a Mediator and not an Arbitrator or that the Award is beyond the scope of the arbitration agreement and the reference or that at all whether there were arbitration proceedings conducted or only mediation proceedings conducted, before this Court however, learned senior counsel for the appellant has confined his argument to the issue that there was never a consent agreement dated 12.10.2003 between the appellant and the respondent no.1 for selling of the orange colored portion in the site plan annexed to the second Award and which orange colored passage falls to the Western side of the plot i.e left side of the site plan as seen in the Court file. In sum and substance the sole argument urged on behalf of the appellant is that gross fraud has been committed upon the appellant inasmuch as there has never been a consent agreement between the appellant and the respondent no.1 whereby the appellant had allegedly agreed to sell the orange colored passage to the respondent no.1 for a sum of Rs.7 lacs and as written in the so called consent agreement-cum-first Award dated 12.10.2003. It is argued that the very language of the first five lines of the first Award dated 12.10.2003 shows that there only existed a *suo moto* proposal by the Arbitrator to the appellant to sell the orange colored passage to the respondent no. 1 for Rs. 7 lacs and the Arbitrator observed that the appellant would be accepting this proposal, and that the appellant is wrongly alleged to have accepted the proposal on account of his signatures existing along with the date of 12.10.2003. The appellant argues that the fact of the matter is that at the end of the five lines written there have illegally been caused two hand-written interpolations with the most important interpolation and tampering being of adding of the words "which he accepts" and which were never there in the original five lines ending on the top of the page of the so called consent agreement dated 12.10.2003. To buttress the argument, learned senior counsel for the appellant argues that the illegality of the Award and fraud upon the appellant is so *ex facie* clear when we see the consent agreement-cum-Award dated 12.10.2003 because this is inconceivable as to why suddenly two words of "Award Pronounced" have been written in the middle of the page and which are completely incongruous not only in the setting but also in the language of the five lines which appeared just before these words "Award Pronounced". It is then argued that how could at all in disputes of an existing 'L' shaped passage could at all the appellant have agreed to sell a completely different subject matter being the orange colored portion and that too falling in the exactly opposite left side of the plan and which was never in the remotest sense the subject matter of disputes of parking and obstructions in the 'L' passage. Learned senior counsel for the appellant finally argued that the aforesaid most important arguments with respect to complete illegality of the so called consent agreement-cum-Awards dated 12.10.2003, and the fraud played upon the appellant, and which were argued on behalf of the appellant before the court below, have been completely blurred over by the court below in the impugned judgment. It is argued by the appellant that the impugned judgment dated 23.12.2006 is an apology with respect to aforesaid issues involved which were to be decided including the case of the blatant tampering and the fact of their not at all existing any consent agreement-cum-Award dated 12.10.2003, as these issues have not been discussed at all in the impugned judgment, and the relevant portions of which read as under:-

> "After giving my thoughtful consideration to the submissions of the counsel, I have come to the considered opinion that the petitioner has been failed to discharge his onus of proving the issues in his favour. The objections taken by him are sham and frivolous. In fact, on the basis of mere technicalities and minor irregularities he wants to back out from the admissions made by him despite of the fact that by way of arbitration agreement Ex.PW1/DX1 the matter was duly referred to the Arbitrator and the petitioner himself duly participated in the proceedings. By raising these objections he wants to avoid the implementation/action upon the award despite of the fact that he himself participated in the arbitration proceedings actively. The documents Ex.PW1/DX-17 duly bears the signature of the petitioner at point X in which the proposal of the payment of Rs.Seven Lakhs was made and the payment schedule was also formulated. The petitioner has not denied his signature upon the said document. Further the said document Ex.PW1/DX-5, Ex.PW1/DX-6, Ex.PW1/DX-7, Ex.PW1/DX-9, Ex.PW1/DX-10, Ex.PW1/DX-11, Ex.PW1/DX-12 and Ex.PW1/DX-14 all bear the signature of the petitioner and even the petitioner has admitted his signature on these

documents during the cross examination. The objections and irregularities pointed out by the petitioner are of minor and trivial nature and they do not go to the route of the matter. It cannot be said that the award is opposed to the public policy and is required to be adjudged void. Hence the petitioner has been failed to discharge his onus and accordingly all these issues decided against him.

10. **ISSUE NO.6:-**

Whether respondent no.2 had acted without jurisdiction and contrary to provisions Section 28 and/or against the well settled Public Policy of India in the matter of the purported Arbitration proceedings and the alleged Award dated 12.10.2003? …..(OPP)

The onus to prove this issue has been placed upon the petitioner who has claimed that

a) the Ld. Arbitrator has misconducted himself as well as the Arbitration proceedings.
b) he has failed to exercise jurisdiction vested in him by law.
c) he has exercised jurisdiction not vested in him in law.
d) he has acted illegally and with material irregularity in the exercise of jurisdiction was vested in him by law.

Therefore, the entire arbitration proceedings and the resultant award are vitiated by law, the same are contrary to the settled public policy of India as well as contrary to the provision of Section 28 of the Arbitration and Conciliation Act, 1996. The Award is liable to be set aside and quashed.

On the other hand according to respondent, petitioner himself is guilty of misconduct and is incompetent to challenge the award made/published by respondent no.2 which was given by him consequent upon following the due procedure in terms of reference. There existed a legal binding subsisting arbitration agreement between the parties. The petitioner duly participated in the proceeding. He even raised his claim. During cross examination there is specific admission by him on Ex.PW1/DX-1 to Ex.PW1/DX-18 and as such all the documents referred to during the course of cross examination were admitted by the petitioner and thus there is no substance in the allegations made in the petition. The award is perfectly valid and as such the same is executable.

In (2003) 5 SCC page 708, it was held that, "*The phrase "public policy of India" occurring in Section 4(2)(b) is not defined in the Act. The concept "public policy" is considered to be vague, susceptible to narrow or wider meaning depending upon the context in which it is used. Hence, it should be given meaning in the contest and also considering the purpose of the section and scheme of the Act.*

An award can be set aside if it is contrary to:

(a) fundamental policy of Indian Law; or
(b) the interest of India; or
(c) justice of morality; or
(d) in addition, if it is patently illegal.

The award in question has been passed by Ld. Arbitrator consequent upon following the due procedure of law in terms of reference. There existed a legal binding subsisting arbitration agreement whereby the dispute was mutually referred to arbitration and the petitioner himself duly participated in the proceedings. He made specific admission on documents

> Ex.PW1/DX1 to Ex.PW1/DX-18 and he duly admitted all the referred documents of defendant. Thus, there is no substance in the objections raised by the petitioner. The award in question was duly made after following the due procedure of law. It is neither against the public policy nor against the public interest. The petitioner has been failed to point out any material irregularity or gross illegality to vitiate the award. The award is perfect and valid and there is no force in the objection and accordingly the issue is also liable to be decided against the petitioner and same stands decided accordingly."

13. I completely agree with the arguments urged on behalf of the appellant. Firstly it is noted that second and the formal Award dated 12.10.2003 is beyond doubt not written on 12.10.2003 but was written on 24.12.2003 because the back of the stamp paper of the formal second Award dated 12.10.2003 bears the date 24.12.2003. No doubt in this regard remains because the Award itself was *suo moto* got registered by the Arbitrator in the absence of the appellant on 24.12.2003. Also, as rightly argued on behalf of the appellant, the Award contains a page no.5 and which is dated 17.10.2003, thus once again showing that formal second Award dated 12.10.2003 did not exist on 12.10.2003. What is extremely important to note is that the crucial first five lines of the so called consent agreement-cum-Award dated 12.10.2003 written in hand were only in the nature of a proposal by the Arbitrator and there did not exist even a proposal by the appellant. In the opinion of this Court this proposal of selling of the orange colored passage for Rs.7 lacs by the appellant to the respondent no.1 is clearly a fraud upon the appellant on account of the clear cut

collusion between the respondent no.1 and the Arbitrator because not only the language of the first five lines but the fact that the three words "which he accepts" which are written at the end of the five lines are not in the same handwriting which is of the first five lines of the so called consent agreement-cum-first Award dated 12.10.2003. Also, this Court finds it most unusual and grossly illegal as to how can the two words "Award Pronounced" suddenly appear in the most incongruous way at the bottom of the five lines of the so called consent agreement. The words "Award Pronounced" by the Arbitrator and then signed by him on 12.10.2003 along with signatures of the respondent no.1 on 12.10.2003 are so completely out of the place that this Court completely refuses to accept that a consent agreement-cum-consent first Award should be held to be existing. This Court holds that there was never any consent agreement dated 12.10.2003 for the appellant to sell orange colored portion in the site plan annexed to the second Award to the respondent no.1 for a sum of Rs.7 lacs and as has been held by the Arbitrator in his Award dated 12.10.2003, more so because the only disputes before the Arbitrator was as regards the 'L' shaped passage. There is yet another reason for holding that there does not exist any consent agreement between the appellant and the respondent no.1 for selling the orange color passage by the appellant to the respondent no.1 for a sum of Rs.7 lacs because in the so called informal proceedings which have been recorded by the Arbitrator prior to 12.10.2003 there is not even a whisper of any agreement being entered into, much less for a sum of Rs.7 lacs for selling of the orange colored passage by the appellant to the respondent no.1. It is therefore as if suddenly and magically on 12.10.2003 that the Arbitrator gave a proposal, the same was accepted by the appellant, resulting in the selling of the orange colored portion for Rs.7 lacs to the respondent no.1 and Award thereafter is accordingly pronounced. The illegality and fraudulent nature of the Awards becomes clear from the subsequent formal second Award allegedly dated 12.10.2003 but which never existed on 12.10.2003 with the fact that the Arbitrator *suo moto* got the Award firstly put on a stamp paper which is dated 24.12.2003 and thereafter *suo moto* got the Award registered before the Sub-Registrar on 24.12.2003. Once there is no consent agreement allegedly dated 12.10.2003 by the appellant to sell the orange colored passage for a sum of Rs.7 lacs to the respondent no.1, there does not arise any issue of passing of a consent Award on the basis of the same in terms of the so called five lines which contain interpolation and tampering of the three words “which he accepts” at the end of the five lines of the so called consent agreement dated 12.10.2003.

14. Accordingly for all these reasons the appellant is entitled to succeed. The impugned judgment dated 23.12.2006 is set aside. The objections filed by the appellant under Section 34 of the Act are allowed. The impugned first Award dated 12.10.2003 written in hand as also the formal second impugned Award dated 12.10.2003 (and which is actually dated 17.10.2003 and 24.12.2003) are accordingly set aside. Parties are left to bear their own costs.

JULY 03, 2017 **VALMIKI J. MEHTA, J**
Ne/srb