

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**Jayant
Vishwanath
Salunke**

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Jayant Vishwanath
Salunke

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**APPEAL NO. 32 OF 2017
IN
ARBITRATION PETITION NO. 456 OF 2015
WITH
NOTICE OF MOTION NO. 332 OF 2017**

Mehrunnissa Sheikh Abdul Rahim	}	
Having her address at 25, 3rd floor,	}	
Habib Park, Clare Road, Byculla,	}	
Mumbai 400 008	}	Appellant

versus

1. Rashidabai Allarakha	}	
Adult, Indian inhabitant, residing	}	
at 24, Nizam Street, Bhendi Bazar,	}	
Mumbai-400 003	}	
	}	
2. Zarina Barkatali Hooda	}	
Adult, Indian Inhabitant, residing	}	
at Sethi Chawl, Room No. 16,	}	
Hasnabad, Dr. Mazcarhenas Road,	}	
Mazgaon, Mumbai-400 010	}	
	}	
3. Abdul Karim Haji Noor Mohamed	}	
Adult, Indian inhabitant, residing	}	
at Mohamadi Manzil, 2 nd floor,	}	
Club Back Road, Byculla,	}	
Mumbai-400 027	}	
	}	
4. Afzal Haji Noor Mohamed	}	
Adult, Indian inhabitant, residing	}	
at Mohamadi Manzil, 2 nd floor,	}	
Club Back Road, Byculla,	}	
Mumbai-400 027	}	
	}	
5. Zarina Rahim Maredia	}	
Adult, Indian inhabitant, residing	}	
at Guru Himmat Co-op. Hsg. Soc. Ltd.	}	
Mount Road, Mazgaon,	}	
Mumbai-400 010	}	
	}	

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|--|---|-------------|
| 6. Imtiyaz Hasanali Maredia | } | |
| Adult, Indian inhabitant, residing | } | |
| at A/2, Darul Karim Bldg., | } | |
| Fidai Baug, S. V. Road, Andheri | } | |
| (West), Mumbai 400 058 | } | |
| 7. Mehendi Kasam Maredia | } | |
| | } | |
| 8. Rahemtulla Mamji Maredia | } | |
| Both adults, Indian inhabitants, | } | |
| residing at 306, Guru Himmatt | } | |
| Co-op. Hsg. Soc. Ltd., 3 rd floor, | } | |
| Mount Road, Mazgaon, | } | |
| Mumbai 400 010 | } | |
| | } | |
| 9. Malik Karim Maredia | } | |
| | } | |
| 10. Dilshad Sadruddin Maredia | } | |
| Both adults, Indian inhabitants, | } | |
| residing at Deep Bela Co-op. Hsg. | } | |
| Soc. Ltd., 1 st floor, Mt. Mary Road, | } | |
| Bandra (West), Mumbai-400 010 | } | |
| | } | |
| 11. Murad Barkatali Hooda | } | |
| Adult, Indian inhabitant, residing | } | |
| at 9, Aminabad Aga Hall, Nesbit | } | |
| Road, Mazgaon, Mumbai-400 010 | } | |
| | } | |
| 12. Sayed Othman Abdul Rehman | } | |
| | } | |
| 13. Sayedzubeda Abdul Rehman | } | |
| both adult Indian inhabitant, | } | |
| residing at Flat No. 7, 4 th floor, | } | |
| 'B' Block, Baitual Aman Co-op. | } | |
| Hsg. Society Ltd., Nagpada Junction, | } | |
| Mumbai 400 008. | } | Respondents |

WITH
 APPEAL NO. 442 OF 2016
 IN
 ARBITRATION PETITION NO. 646 OF 2015
 WITH
 NOTICE OF MOTION NO. 99 OF 2018
 AND
 NOTICE OF MOTION NO. 100 OF 2018

1. Rashidabai Allarakha }
Adult, Indian inhabitant, residing }
at 24, Nizam Street, Bhendi Bazar, }
Mumbai-400 003 }
}
2. Zarina Barkatali Hooda }
Adult, Indian Inhabitant, residing }
at Sethi Chawl, Room No. 16, }
Hasnabad, Dr. Mazcarhenas Road, }
Mazgaon, Mumbai-400 010 }
}
3. Abdul Karim Haji Noor Mohamed }
Adult, Indian inhabitant, residing }
at Mohamadi Manzil, 2nd floor, }
Club Back Road, Byculla, }
Mumbai-400 027 }
}
4. Afzal Hajhi Noor Mohamed }
Adult, Indian inhabitant, residing }
at Mohamadi Manzil, 2nd floor, }
Club Back Road, Byculla, }
Mumbai-400 027 }
}
5. Zarina Rahim Maredia }
Adult, Indian inhabitant, residing }
at Guru Himmat Co-op. Hsg. Soc. Ltd. }
Mount Road, Mazgaon, }
Mumbai-400 010 }
}
6. Imtiyaz Hasanali Maredia }
Adult, Indian inhabitant, residing }
at A/2, Darul Karim Bldg., }
Fidai Baug, S. V. Road, Andheri }
(West), Mumbai 400 058 }
}
7. Mehendi Kasam Maredia }
}
8. Rahemtulla Mamji Maredia }
Both adults, Indian inhabitants, }
residing at 306, Guru Himmat }
Co-op. Hsg. Soc. Ltd., 3rd floor, }
Mount Road, Mazgaon, }
Mumbai 400 010 }

9. Malik Karim Maredia	}	
	}	
10. Dilshad Sadruddin Maredia	}	
Both adults, Indian inhabitants,	}	
residing at Deep Bela Co-op. Hsg.	}	
Soc. Ltd., 1 st floor, Mt. Mary Road,	}	
Bandra (West), Mumbai-400 010	}	
	}	
11. Murad Barkatali Hooda	}	
Adult, Indian inhabitant, residing	}	
at 9, Aminabad Aga Hall, Nesbit	}	
Road, Mazgaon, Mumbai-400 010	}	Appellants

versus

1. Mehrunnissa Sheikh Abdul Rahim	}	
Having her address at 25, 3 rd floor,	}	
Habib Park, Clare Road, Byculla,	}	
Mumbai 400 008	}	
	}	
2. Sayed Othman Abdul Rehman	}	
	}	
3. Sayed Zubeda Abdul Rehman	}	
Both adults, Indian inhabitants,	}	
residing at Flat No. 7, 4 th floor,	}	
'B' Block, Baitul Aman Co-op. Hsg.	}	
Soc. Ltd., Nagpada Junction,	}	
Mumbai-400 008	}	Respondents

Mr. Nishant Sasidharan with Mr. Sheelang Shah and Ms. Gauri Mestha i/b. M/s. L J Law for the appellants in APP/32/2017 and for respondent no. 1 in APP/442/2016.

Mr. Chirag Balsara with Mr. Huda H. Diamondwala i/b. M/s. Diamondwala and Co. for the appellants in APP/442/2016 and for respondent nos. 1 to 11 in APP/32/2017.

Mr. Javed Hussein with Mr. Mubashir Hussein, Ms. Munibah Iram, Ms. Saba Shaikh, Ms. Reshma Khatri, Ms. Firdus Khan, Mr. Munzir Hussein i/b. M/s. Hussein and Co. for respondent nos. 12 and 13 in APP/442/2016 and for respondent nos. 2 and 3 in APP/32/2017.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATE :- AUGUST 31, 2018

ORAL JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. In view of the earlier orders, the Appeals are admitted. Filing of paper-books is dispensed with. Notice of Appeals is waived. By consent, heard forthwith.

2. By this appeal (Appeal No. 32 of 2017), the appellant challenges the order of the learned Single Judge dismissing Arbitration Petition No. 456 of 2015.

3. By the impugned order dated 30th July, 2015, two arbitration petitions, one bearing no. 646 of 2015 and the appellant's arbitration petition have been decided together. Insofar as the appellant's Arbitration Petition No. 456 of 2015 is concerned, the challenge is that in the year 1961, Mr. Abdul Rahim Shaikh, the husband of the appellant before us carried on business of a canteen as a sole proprietor. That was carried on since her husband was in exclusive use, occupation and possession of the property, namely, City Survey No. 290, including the basement. He expired on 29th May, 1979 leaving

behind the appellant-petitioner and five sons. The entire property is stated to be the subject matter of a partnership, but owned by the deceased Abdul Rahim Shaikh. The estate on his death was inherited by the appellant-petitioner and the five sons. They being the only heirs and legal representatives, it is stated that the petitioner is an illiterate lady. On 27th June, 1977, a partnership firm was constituted and duly registered to operate and conduct a business of hotel under the name and style as "Hotel Sagar". Till 5th February, 2009, the respondents to this appeal and the present appellant-petitioner carried on this business in partnership. Eight partnership agreements entered into are all referred to in para 3 of the arbitration petition and further, two retirement deeds as well. In the memo of the arbitration petition itself, it is stated that these documents are admitted and therefore, marked as exhibits by the sole Arbitrator. The business was conducted in partnership, but none of the partnership deeds mention about the properties of the firm. There are also retirement deeds, but these retirement deeds also make no reference to the rights in the property. After referring to all the partnership deeds, it is stated that under a deed of partnership marked as Exhibit "C-24" before the sole Arbitrator dated 12th July, 2002, the parties recorded terms and conditions of the partnership and stated that the business would be that of

running and conducting a guest house, lodging house and hotel and it is such a business that the partnership carried on from time to time.

4. It is stated that there was a dispute and which resulted in the petitioner-appellant being put to notice by the respondents of dissolution of the firm. Since there was a dispute with regard to the shares, the matter was referred to the sole Arbitrator. The sole Arbitrator made his Award and undisputedly, that Award records all the above facts. It also records the stand of the appellant. By the Award, which was pronounced by the sole Arbitrator on 30th September, 2014, he declared as under:-

“Award

10.32 In the light of the aforesaid findings and also the understanding recorded on 3rd April, 2014, the following Award is passed.

(i) Any liability of the firm that may arise for the period prior to 5th February, 2009 shall be borne exclusively by the Claimants and the Claimants shall indemnify the other partners of any liability that may arise from the said period;

(ii) For any liability relating to the period after 5th February, 2009, Respondent No. 1 shall be exclusively liable and the other partner shall not be liable in any manner whatsoever. Respondent No. 1 shall indemnify the other partners for any liability that may be borne by them for the period after 5th February, 2009;

(iii) The firm has acquired rights and interests in the ground floor, first floor, second floor and third floor terrace of the building known as “Hotel Sagar” situated at Baitul Aman, corner of Bellasis Road and Maulana Azad Road, Mumbai 400 008 and the same are the

properties of the firm.

(iv) Considering the fact that the dispute is between partners of a firm that stand dissolved and the nature of the disputes, the parties shall bear their own costs.

Dated this 30th day of September, 2014.

Mumbai

DR. BIRENDRA SARAF
SOLE ARBITRATOR”

5. It was this Award, which was challenged by the appellant-sole petitioner before the learned Single Judge.

6. In the companion appeal, a challenge is raised to that part of the order passed by the learned Single Judge upholding the Award to the extent that the appellants-petitioners therein failed to establish any right in respect of the basement.

7. The main appeal being Appeal No. 32 of 2017, we have extensively referred to the pleadings in the arbitration petition, the backdrop in which the reference to an arbitration was made and the Award.

8. Mr. Sasidharan learned counsel appearing for the appellant would submit that the learned Single Judge has failed to notice that the Award is challenged on the ground that by section 34, sub-section (2)(b), if the court finds that the arbitral Award is in

conflict with the public policy of India, then, that can be interfered with. Mr. Sasidharan, while elaborating his submissions, would urge that though by section 1 of the Indian Evidence Act, 1872, it is amply clarified that the provisions of the Indian Evidence Act, 1872 would not be applicable to proceedings before an Arbitrator, but the fundamental and underlying principles would still apply. Relying upon a judgment of the Hon'ble Supreme Court in the case of *M/s. Bareilly Electricity Supply Co. Ltd. vs. the Workmen and Ors*¹, it is submitted that the learned Single Judge failed to notice the salutary principles laid down therein. It is submitted that the Hon'ble Supreme Court held that the whole of the procedural and substantive law in the form of the Civil Procedure Code, 1908 and the Indian Evidence Act, 1872 is part and parcel of the principles of natural justice. The principles of natural justice demand, what is no evidence cannot be accepted and acted upon. Therefore, the Indian Evidence Act, 1872 may not be applicable, but these principles are clearly attracted.

9. It is then urged and by elaborating the above submissions that the Award relies upon a photocopy of a supplementary deed. A photocopy of a supplementary deed cannot be taken on record and marked as exhibit, much less read in evidence. It is no proof of the existence or contents of the primary document, namely, the

¹ 1971(2) SCC 617

agreement for sale, to which it is a supplement. The primary document, namely, agreement for sale was falsely stated to be not in possession of the respondents. Equally, the original of this supplementary deed was not stated to be in possession of the respondents. The learned Arbitrator as also the learned Single Judge totally omitted from consideration the position in law that such a photocopy is, therefore, not admissible in evidence. That is also not admissible in evidence because it was unregistered. Mr.Sasidharan would submit that if the objection is to the admissibility of the document, then, such an objection can be raised even at the stage of the arguments before the Arbitrator, even in a petition under section 34 to challenge the Award and even in this appeal. This issue goes to the root of the matter. Hence, the principles of waiver or acquiescence have no application. The learned Arbitrator as also the learned Single Judge clearly erred in relying upon such documents to uphold the claim of the respondents. The findings in the Award are wholly perverse. They are contrary to the fundamental principles of Indian law. It is in these circumstances that the Award is contrary to the public policy of India.

10. Reliance is placed by Mr. Sasidharan on several judgments of the Hon'ble Supreme Court, including the one referred above.

11. On the other hand, Mr. Balsara appearing for the respondents would submit that there is no merit in this appeal. The arguments are purely afterthought. If the learned Arbitrator as also the learned Single Judge have proceeded on the basis that the petitioner-appellant's husband may have right, title and interest in the property, but insofar as the structure constructed thereon, from which the hotel business was being carried on, there was indeed a partnership. The deed in relation thereto refers to the business of the partnership. That the partnership deed refers to the hotel business would denote that such a business, particularly of a lodging house cannot be carried out unless there is a structure and in which structure, there are rooms. If the rooms have to be occupied by the guests and the amount that they paid for such occupation was the income derived by the firm, then, the respondents would throughout urge that the appellant-petitioner must satisfy this court as to how the income from such business was shared by the partners, that admittedly from 1979 till 2002 such a partnership existed. If the income and expenditure was shared and divided and in the shares set out in the partnership deed, then, such arguments have absolutely no substance.

12. The learned counsel would submit that the Arbitrator has

referred to the oral and documentary evidence on record. He has weighed, appreciated and appraised it. He would submit that the Arbitrator preferred to rely on the documents produced on behalf of the respondents for the simple reason that while cross examining the witnesses of the respondents, the appellant-petitioner could not demolish any of their assertions. Secondly, there are vital admissions given by the appellant-petitioner. If she was an illiterate lady and she went to the extent of denying the fact as to who constructed the building, who executed the partnership deed, what was the business, then, the Arbitrator found it unsafe to rely on her version. Thus, this is a case of appreciation of oral and documentary evidence on record. That has been done properly by the Arbitrator. He applied the correct legal principles. The learned Single Judge found no infirmity or error therein. Hence, this is not a case where the Award is contrary to the public policy of India. None of the underlying fundamental principles are given a go bye or have been brushed aside, as complained. On the other hand, what is evidence alone has been relied upon. Once this is a case of the above nature, then, this Award need not be interfered with. Consequently, the appeal be dismissed.

13. In the case of *Bareilly Electricity Supply Co. Ltd.* (supra),

the Hon'ble Supreme Court has laid down the salutary principles. That was a case where reliance was placed on a balance-sheet. It was argued that the balance-sheet itself will not prove the fact that the law requires a party to prove. In the sense, if there is any entry therein, the entry would have to be proved independent of what the balance-sheet records. The balance-sheet itself cannot be taken as a proof of the claim and that was the issue considered in some other judgments of the Hon'ble Supreme Court. In that context, the Hon'ble Supreme Court has held that the Indian Evidence Act, 1872 cannot strictly apply, but what is not evidence, cannot be acted upon. The principles on which heavy reliance is placed by Mr. Sasidharan are indeed salutary. The question, however, is their application to the facts and circumstances of a given case.

14. In the other decision, heavily relied upon by Mr. Sasidharan, the Hon'ble Supreme Court was considering as to when secondary evidence can be tendered or allowed to be led. In the case of *R. V. E. Venkatachala Gounder vs. Arulmigu Viswesaraswami and V. P. Temple and Anr.*², the Hon'ble Supreme Court was considering as to whether the judgment and decree in the second appeal passed by the High Court of Madras, which set aside that of the courts below resulting in dismissal of the suit of the

2 (2003) 8 SCC 752

appellant-plaintiff, is correct. After referring to all the pleadings, the oral and documentary evidence and the substantial question of law, on which the second appeal was admitted, the Hon'ble Supreme Court firstly referred to the principle that onus to prove title of the property undoubtedly is on the person asserting title to it. Then, after referring to this principle and considering the nature of the documents placed on record, the Hon'ble Supreme Court turned its attention to section 34 of the Indian Evidence Act, 1872. Admittedly, the decree was passed in a suit by the trial court. That decree was challenged in appeal before the first appellate court and consequently a second appeal was brought before the High Court of Madras. There was never any dispute with regard to applicability of the Indian Evidence Act, 1872 and the provisions relating to secondary evidence therein. The Hon'ble Supreme Court was only required to consider whether the question of admissibility in evidence of the two material pieces of documentary evidence, which were admitted without any objection, when they were tendered in evidence and taken into consideration by the two courts while evaluating and recording finding of fact, could have been then gone into by the High Court in its jurisdiction under section 100 of the Civil Procedure Code, 1908. Pertinently, this was a case of exercise of jurisdiction under section 100 of the Civil Procedure Code, 1908. It is in that

backdrop and context that from para 20, the Hon'ble Supreme Court referred to the judgments, which make a distinction as to when the objection to the admitting of a document in evidence can be raised. The objections brought in the two classes, namely, to the admissibility of the document as evidence and secondly, there is no dispute about the admissibility, but the dispute is towards the mode of proof. The Hon'ble Supreme Court held that the High Court seriously erred in coming to the conclusion that the documentary evidence was inadmissible. There was no perversity in the finding of the courts below, which required interference of the High Court while deciding the second appeal.

15. Mr. Sasidharan only relies upon the principle that the issue is with regard to the admissibility of documents and the secondary evidence, in the form of a photocopy, that too of a supplementary partnership deed, which could not have been led at all. Then, he relied upon the principles emerging from the judgment of the Hon'ble Supreme Court in the case of *K. B. Saha and Sons Private Limited vs. Development Consultant Limited*³. We are assuming, without admitting, in this case that the photocopy could have been tendered in evidence, but it being a unregistered document, it was inadmissible. There as well, the principle relied upon is too well settled. The Hon'ble Supreme

3 (2008) 8 SCC 564

Court concluded that save and except what is permissible by section 49 of the Registration Act, 1908, the courts cannot, if a document is required to be registered, but not registered/unregistered, take it into consideration as it is not admissible in evidence. Once again, the legal principles, as discussed in this judgment and particularly para 34 have application to a case of the nature referred in the Hon'ble Supreme Court judgment.

16. Section 65 of the Indian Evidence Act, 1872 has also been referred by Mr. Sasidharan to submit that once the original documents are now found to be in possession of the respondents themselves and they have moved a motion in this appeal to tender them as additional evidence, then, the appellant-petitioner is fortified in her challenge to the Award. This is a clear case where the respondents having failed to produce the original documents, could not have then relied upon any photocopy and that too not of a primary, but of a supplementary deed.

17. We have referred to the judgments and the principles laid down therein in order to find out whether they have any application to the facts and circumstances of the present case. The Award in this case was rendered in a dispute between two partners. The petitioner herself, in her petition, admits that

undisputedly, there was a business of canteen carried out by her husband. Her husband expired in the year 1979. Undisputedly, the claimants-respondents before us and the appellant-petitioner are partners of a partnership firm, namely, M/s. Hotel Sagar. That was having its office at Baitul Aman, corner of Bellasis Road and Maulana Azad Road, Mumbai 400 008. The firm has several movable and immovable properties, but we are concerned with the title to the land beneath and it is conceded before us by the respondents that admittedly the firm had no such right, title and interest. However, there was a structure on this land and which was capable of being used as a hotel. The learned Arbitrator referred to the fact that respondents-claimants together have 76% share, the appellant before us has 7% share and the others have 17% share in the firm. Pertinently, respondent nos. 2 and 3 to the statement of claim before the learned Arbitrator, namely, Sayed Othman Abdul Rehman and Sayed Zubeda Abdul Rehman do not dispute the documents placed on record. The partnership deed states the duration as well. After reproducing the relevant clauses of the deed of partnership in para 1.3 of the Award, it is stated that initially, the claimants-respondents before us and their family members managed the business of partnership. Then, the first respondent made certain allegations on 14th July, 2008 vide a letter addressed to original claimant nos. 5, 7, 8 and

11. After receipt of this letter, there was a meeting between the appellant-original respondent no. 1, wherein, all the allegations in the letter were explained and the explanation was accepted by the appellant before us is the case in the statement of claim. Then, it is stated that it is the appellant, who sought to interfere in the business through her five sons. That is how there are allegations made against each other and eventually, there was a dispute. In the light of this, there was a notice given of dissolution and in view of this, what transpires is that there was a arbitration petition filed being Arbitration Petition No. 1276 of 2010 invoking section 9 of the Arbitration and Conciliation Act, 1996. There was an interim order passed therein on 18th June, 2012. This court, with consent of parties, referred all disputes to arbitration. The firm came to be dissolved in terms of notices of dissolution dated 20th February, 2009 and 13th May, 2009. It is, therefore, a dispute with regard to rendering accounts of the firm and thereafter distributing the assets in accordance with the shares.

18. Insofar as the appellant before us is concerned, her first response to the statement of claim was that the claim is barred by law of limitation. Then, in the written statement, there is an admission that her husband used to carry on the business of a canteen on a part of the property. His livelihood came from the

income which he earned from the business of this canteen. He died on 29th May, 1979. The entire case in the arbitration petition is based on the written statement. However, the written statement itself refers to the business of hotel in the name and style of Hotel Sagar.. If indeed there was a hotel business and that was carried on from this structure/building, then, it is too late in the day for the appellant-petitioner to urge that there was never any agreement between the parties in relation to allowing such business to be conducted from this building or the structure. It is, therefore, apparent that the dispute between the parties was narrowed down to only the point crystalised in para 4.1 of the Award. It is very clear that before the Arbitrator, a meeting was held on 3rd April, 2014. The meeting and the minutes thereof are undisputed. They have been referred in para 5.1 of the Award. It is thus apparent that this meeting and the further meeting of 23rd September, 2014 resulted in certain points already framed for determination, not necessary to be decided. The only point was whether the claim is barred by the law of limitation and whether there was indeed a right in the building or the land and building together with the basement. Thus, whether the land and building, along with basement described in the statement of claim or any part thereof is an asset of the firm-Hotel Sagar and whether the appellant-petitioner through her sons took over the management

of the business on 5th February, 2009 and whether she is liable to give accounts from that date was an issue not necessary to be considered. What survived for consideration was issue nos 1 and 3 and the Award was made in furtherance thereof. Therefore, it is futile to urge before us that there was an error in admitting certain document, which was a photocopy of the supplementary agreement. That was relevant, germane and material to the business of the firm and has been thus allowed to be referred and relied upon by the appellant-petitioner herself. If she agreed before the Arbitrator in the two meetings that the controversy or the dispute should be restricted to only two points, then, it is too late in the day to urge that the document, which was inadmissible in evidence, has been heavily relied upon. Nothing, therefore, turned on that document for the simple reason that the existence of the firm and its business, the shares and the date till which the firm carried on business and the date from which the affairs were taken over by the appellant-petitioner are undisputed. The learned Arbitrator, therefore, rendered his finding on the point of limitation. He concluded that the claim is not barred by limitation.

19. Insofar as this point is concerned, no arguments have been canvassed before us by Mr. Sasidharan. The only point raised

before us is with regard to the land and building along with the basement or any part thereof being asset of the firm-Hotel Sagar. Para 10 of the Award is the relevant paragraph. It is stated that there is a photocopy of a supplementary agreement dated 30th July, 1977 and that records that Elite Enterprises was constructing the western wing of a building on a plot of land situate at the corner of Duncan Road and Bellasis Road. The agreement records that the firm had agreed to acquire from Elite Enterprise part of ground floor, the entire first floor, second floor and third floor together with terrace attached thereto and above the third floor and the car parking spaces on the ground floor. The firm shall prepare the plans for making alterations and additions in the premises for use of the same as a lodging house and a guest house and that after having the same sanctioned from the Municipal Corporation, Elite Enterprises would complete the construction in accordance with the plans sanctioned by the Municipal Corporation. Thereafter, the firm shall be entitled to use the premises for running a lodging house and a guest house and that the firm shall be exclusively entitled to use the said premises for themselves and for all the persons using the said premises as lodgers, boarders, paying guests and servants and agents of the firm. This, together with a copy of an agreement dated 1st August, 1979 between M/s. Elite Enterprises and Hotel

Sagar was taken on record. There are three photocopies, which are taken on record. The oral evidence of the claimant has been referred in para 10.2 of the Award. Thereafter, what has been held in para 10.3 is that two other parties to the claim before the Arbitrator admitted these documents and it is only the appellant, who disputed it. However, on the basis of the depositions, these documents were marked in evidence. There was an extensive cross-examination. Pertinently, the cross-examination was of one Karim Maredia, who was a party to the two documents, photocopies of which were tendered. In his cross-examination, the appellant petitioner could not elicit anything. Rather, the line of her questioning in the cross-examination completely demolishes and destroys her case now pleaded. Question No. 52 to Karim Maredia is, whether the photocopies are taken from original document and he answers in the positive. Pertinently, to the question, from where the photocopies were made, the answer is they have been made from a shop in Dadar (West) Mumbai. Thereafter, there is further questioning, but it is evident that there was never any dispute with regard to the existence of the originals. There was never any dispute with regard to the limited right that the firm had in the immovable property. It is futile to urge that the parties have a right, title and interest in the business of the firm, but not in the property at all. There was,

admittedly a structure on the land and none of the claimants state that they have any right, title and interest in the land, but limited their case to the structure. It is in these circumstances that the Arbitrator holds that there is no merit in the objection to the admissibility of the document.

20. In para 10.8, the Arbitrator refers to the deposition of the appellant before us. In her examination-in-chief, she claims that she is illiterate and she can only sign the documents. Pertinently, she says that her husband contemplated and intended to do lodging and boarding business in the part of the canteen. She used to cook and prepare for canteen customers and get the premises cleaned regularly. She also refers to a conversation between Karim Maredia and her husband and says that a proposal was given to her deceased husband for conducting a lodging and boarding business and in partnership. Then, she says that after the death of her husband, Karim Maredia made her sign various documents without explaining the contents to her. It is very clear from her cross-examination and the answers to questions referred to in para 10.9 of the Award that the appellant gave evasive replies. When she was asked as to who constructed Hotel Sagar, she said “my husband constructed it”. Then, she answers in the positive to a question as to whether it would be

correct to say that her sons are looking after the Hotel Sagar. At the same time, she feign ignorance as to who are the partners of the partnership firm. Her every answer is, she is not aware, but to a very pertinent question, namely, why she has only 7% share, she answered that her share was negotiated by her husband. Her deposition was found to be unreliable. In preference to this, the claimants' evidence and the above undisputed facts, are found to be consistent with their pleadings. It is in these circumstances that the learned Arbitrator concluded that the documents may be only photocopies, but in the light of the oral evidence tendered, the same stand proved.

21. As far as the objection to the photocopies being unregistered is concerned, the learned Arbitrator has, in paras 10.16 and 10.17 assigned reasons and which we do not think are vitiated by any perversity, much less error of law apparent on the face of the record. Once in para 10.20 the oral and documentary evidence has been referred and thereafter appreciated and appraised, then, this was not a case where inapplicable legal principle was invoked or any legal principle contrary to the provisions of law in India has been relied upon. A reading of the Award enables us to hold that the Arbitrator has not ignored or brushed aside any binding statutory principle or legal provision. On the other hand,

this is a clear case where a Award is rendered on a dispute between two partners, regarding the business carried on in partnership for years together. Once the business and shares were undisputed and it was carried on for number of years, then, the limited dispute has been referred to arbitration and to our mind, the Award has satisfactorily resolved the same.

22. We do not see any merit in Appeal No. 32 of 2017. It is accordingly dismissed, but without any order as to costs.

23. Appeal No. 442 of 2016 is only in relation to the basement portion. In relation to this appeal, which challenges the Award and the order of the learned Single Judge with regard to the basement portion, Mr. Balsara concedes that the factual assertions and the pleadings have all been referred to in the detailed judgment delivered in the companion appeal being Appeal No. 32 of 2017. However, Mr. Balsara would submit that both, the Award and the order of the learned Single Judge are vitiated, inasmuch as the basement was also a part and parcel of the building, from which the hotel business was carried on. We are unable to agree with Mr. Balsara for more than one reason. Firstly, the basement may be a part of the building or structure, but even with regard to this claim of the appellants, oral and documentary evidence was tendered. That has been appreciated

by applying the correct legal principles. The appellants in Appeal No. 442 of 2016, original claimants could not establish and prove that the basement was a portion, in relation to which any right, title and interest could have been claimed by them. In these circumstances, the Award satisfactorily decides even that issue. Once we do not find that the Award is vitiated on a larger issue, then, equally, on this count as well, we are not inclined to interfere therewith. The learned Single Judge rightly dismissed the arbitration petition. There is no merit in this appeal. It is dismissed, but without any order as to costs.

24. At this stage, Mr. Sasidharan prays that the order of status-quo passed by this court in Appeal No. 32 of 2017 be continued for a period of three months to enable the appellant to challenge this order in a higher court. This request is opposed by Mr. Balsara. We find that the Award has already been put in execution. The properties have been put up for sale. The appellant in this appeal has been given an opportunity to participate in it, but she refrained from doing so on the ground that this appeal is pending.

25. When the matter has progressed this far and finding that the appellant is a lady, who will suffer in the event her limited share, in the partnership firm and assets and the proceeds from the sale, is not derived by her, all the more we are not agreeable to

continue the status quo. More so, when her challenge to the Award has failed before the learned Single Judge as also before us. The request is, therefore, refused.

(B. P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)