

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.166 OF 2018

Sucheeta Kedarnath Sethi ... Petitioner
Vs.
Surinderkumar Banga ... Respondent

Mr. Pradeep Sancheti, Senior Advocate a/w. Mr. Simil Purohit, Mr. S. K. Jain and Ms Achala Hatode i/b. S. K. Jain & Associates for Petitioner.
Mr. Kirti Munshi a/w. Mr. Prabhakar Jadhav and Ms Priyanka Ved i/b. Mr. Prabhakar M. Jadhav for Respondent.

CORAM : R. G. KETKAR, J.
Reserved on : JULY 23, 2019
Pronounced on : AUGUST 19, 2019

P.C. :

Heard Mr. Sancheti, learned Senior Counsel and Mr. Purohit, learned Counsel for the petitioner and Mr. Munshi, learned Counsel for the respondent at length.

2. By this Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'Act'), the petitioner- Sucheeta Kedarnath Sethi, hereinafter referred to as 'respondent', has challenged the award dated 09.08.2017 made by the learned Sole Arbitrator - Hon'ble Dr. Justice F. I. Rebello, Former Chief Justice, High Court of Allahabad. By that Award, the Tribunal declared that the partnership firm M/s. Hotel Windsor stands dissolved as on 31.01.2012. The Tribunal declared that the share of the respondent, hereinafter referred to as 'claimant', and the petitioner / respondent in partnership assets is 40:60. The claimant is allotted Rs.54,82,874/- and respondent is allotted Rs.56,60,541/-. Other movable and immovable assets on realization by sale or otherwise are ordered to be distributed in the ratio of 40:60. Partnership firm's banker Dena Bank was directed to issue cheques in a

sum of Rs.54,82,874/- in favour of the claimant and Rs.56,60,541/- in favour of the respondent on a copy of this Award being served on them.

3. Flat No.33A and flat No.34 A along with the respective parking spaces are allotted to the claimant and the respondent respectively. The facts and circumstances giving rise to filing of the present Petition, briefly stated, are as under:

4. The respondent claimant contended that he was at all material times and is a partner in the registered partnership firm M/s. Hotel Windsor. One Haveliram Devidayal Sethi (for short 'Haveliram') and one Kedarnath Haveliram Sethi (for short 'Kedarnath') constituted a registered partnership firm M/s. Hotel Windsor on 01.01.1969 and carried on business in the name and style of Hotel Windsor at 10, Kumpa Street, Ballard Estate, Fort, Mumbai 400 038. They executed a Deed of Partnership on 17.01.1969 and carried on business having equal shares in the profits and losses of the firm.

5. Haveliram died on 03.11.1971. Kedarnath reconstituted the firm by admitting the claimant as a partner in the firm with 25% share in the profits and losses of the firm. The said reconstitution was effected by a Deed of Partnership dated 07.12.1971 entered into by and between Kedarnath (since deceased) and the claimant. Kedarnath had given instructions to Dena Bank by his letter dated 31.08.1987 to permit the account of Hotel Windsor to be operated jointly by himself and the claimant. The partnership firm came to be reconstituted by a Deed of Partnership dated 31.12.1987 whereby Kedarnath and the claimant admitted one Ms Sudarshan Kedarnath Sethi (for short 'Ms Sudarshan') as a partner in the firm. The partnership was at will and contained an arbitration clause. The claimant and the respondent (petitioner herein) are related being first cousins. Kedarnath was the claimant's maternal

uncle (mother's brother) and Ms Sudarshan was his maternal aunt (mother's brother's wife). Kedarnath was the lessee in respect of plot of land bearing Survey No.RR1378 situate at 10, Kumpta Street, Ballard Estate, Fort, Mumbai 400 001. On this plot, a building, by name 'Gyan Bhavan' was erected. It was earlier known as 'Dubash Chambers'. Hotel Windsor is occupying the first floor, the second floor and room No.62 on the third floor of Gyan Bhavan (for short 'suit premises'). The firm was a tenant of the late Kedarnath till his death on 12.02.1992. After his death, firm was tenant of Ms Sudarshan till her death and since then to the other heirs of Kedarnath, which include the respondent Sucheeta.

6. After the death of Kedarnath on 12.02.1992, the firm was reconstituted. Ms Sudarshan, since deceased and the claimant, who were the then surviving partners, admitted respondent Sucheeta as a partner. A Deed of Partnership dated 24.03.1993 was entered into by and between Ms Sudarshan (since deceased), the claimant and the respondent. Ms Sudarshan had 50% share. The claimant had 40% share and respondent had 10% share in the profits and losses of the partnership business. Clause 23 of the Partnership Deed contains an arbitration clause. On 08.03.2008, Ms Sudarshan died. It is the case of the claimant that six months prior to her death, Sudarshan had informed the claimant and the respondent that she wanted her 50% share in the profits and losses of the firm to be divided equally between the claimant and the respondent.

7. The claimant specifically came with the case that Hotel Windsor is the tenant in respect of the suit premises. The rent in respect of the hotel premises has been paid from 16.01.1981 to November 2011 first to late Kedarnath and after his death, to the late Ms Sudarshan and after the death of Ms Sudarshan to the respondent as one of the heirs of late Kedarnath. The claimant further contended that procedure for collecting and paying the rent in respect of the suit premises shows that the

respondent, at the beginning of each quarter, used to send separate rent bills cum receipts for rent payable by the firm to her each month. The claimant further contended that respondent under Advocate's letter dated 12.12.2011 addressed to the claimant's Advocate returned three cheques which were sent by the claimant's Advocate along with letter dated 03.12.2011. By that letter, the claimant was called upon to issue fresh cheques from his personal account, and then only, they will be accepted.

8. The claimant contended that the disputes and differences arose between the parties. By letter dated 29.12.2011, claimant informed the respondent (petitioner herein) that he has invoked arbitration for the resolution of the disputes. The respondent gave reply on 06.01.2012. The claimant, therefore, filed Arbitration Petition (L) No.89 of 2012 under Section 9 of the Act. The respondent sought adjournment. The respondent thereafter did not appear in the Court. This Court appointed the Commissioner to visit the hotel premises and to make the report. On 27.01.2012, the Commissioner visited the hotel premises. By order dated 27.02.2012, disputes arising out of partnership agreement were referred to the Arbitral Tribunal. The said order was communicated to the Arbitral Tribunal by the Registry of this Court on 12.03.2012.

9. The Tribunal issued preliminary directions for filing pleadings. The claimant filed Statement of Claim. The respondent filed written statement-cum-counter claim dated 31.07.2012 opposing the claim made by the claimant. The respondent denied that her mother Sudarshan before dying had expressed orally that she wanted her 50% share in the profit and loss of the firm to be divided equally between the claimant and the respondent. Being the heir of deceased Sudarshan, respondent is entitled to her estate including her share in the partnership firm. While dealing with paragraph 3(p) of the statement of claim, respondent denied that some of Rs.21,00,000/- has been paid by the firm to Sudarshan to

pay the arrears of BPT lease rent in respect of the property where Hotel Windsor is situate. The respondent submitted that as the landlady of the firm M/s. Hotel Windsor, she is entitled to terminate the tenancy of the firm. The respondent denied that she intends to transfer the tenanted premises being the suit premises in the name of fictitious person or effect, transfer the property or alienate in some other manner. The respondent generally denied the assertions made in the statement of claim.

10. The respondent in her counter-claim inter alia prayed for winding up of the business and affairs of the firm and for realising the assets by and under the orders and directions of the Tribunal; for ordering the claimant to render a true and faithful account of the assets, affairs and business of the firm on the basis of wilful default; for ascertaining, declaring and awarding the share in favour of the respondent and against the claimant with interest thereon @ 24% per annum from the date of the arbitration till payment, on accounts of the firm being taken.

11. The Arbitral Tribunal issued procedural directions and thereafter passed procedural orders on different dates. On the basis of pleadings of the parties, the Tribunal framed the necessary issues. The parties adduced evidence in support of their respective case. After considering the evidence on record, the Arbitral Tribunal made the award, as indicated hereinabove. It is against this award, the respondent has preferred the present Petition under Section 34 of the Act.

12. In support of this Petition, Mr. Sancheti and Mr. Purohit raised following contentions:

- a. The Arbitral Tribunal had no jurisdiction to decide who is a tenant. The exclusive jurisdiction vests in the Court of Small

Causes at Mumbai. The issue in rem cannot be determined by the Arbitral Tribunal;

- b. Whether the partnership firm M/s. Hotel Windsor is a tenant or not cannot be decided by the Arbitral Tribunal;
- c. Merely because rent is paid by the partnership firm by itself, does not confer tenancy rights on the firm;
- d. Can there be estoppel against the Statute. If a person is ineligible to become a tenant, the Arbitral Tribunal cannot confer status on the person so ineligible;
- e. If a partnership firm is dissolved and accounts are drawn up, can a tenancy be valued as a going concern. As the firm came to an end. It has no goodwill;
- f. Whether without the consent of the landlord, tenancy rights can be sold if the partnership firm stood dissolved.

13. Mr. Sancheti and Mr. Purohit submitted that they are not challenging clauses (a), (b) and (f) of the operative part of the award. They are restricting their challenge to clauses (c), (d) and (e) of the operative part of the award.

14. It was contended on behalf of the respondent that undisputed position is that tenancy was created prior to claimant joining as a partner. It was submitted that Dubash Brothers had constructed the building in the year 1937 on the plot leased out by B.P.T. On or about 1937, the suit premises was let out to Haveliram, grandfather of the respondent. Haveliram got the rent receipts issued in the name of the firm M/s. Hotel Windsor and paid rent to the landlord as proprietor of M/s. Hotel Windsor. On 01.01.1969, Haveliram took his son Kedarnath as partner in the firm M/s. Hotel Windsor under a Deed of Partnership dated 17.01.1969 with equal shares. On 03.11.1971, Haveliram died. To

continue the business, Kedarnath took claimant as a partner with 60% share in Kedarnath and 40% share to the claimant. Under a Lease Transfer Deed dated 25.09.1984, lease hold property of Dubash Mansion came to be acquired by Kedarnath, his wife Sudarshan and the respondent Sucheeta.

15. It was contended that the award made by the Arbitral Tribunal is totally vague and uncertain and so also the direction of sale of premises is otherwise unexecutable and even unenforceable in law. Thus, this part of the award is liable to be set aside. It was contended that the award on the face of it is contrary to the material and voluminous record produced before the Arbitral Tribunal who has failed to take into consideration material documents and the award is, therefore, illegal and invalid. Clause (d) of the operative part of the award made by the learned Arbitral Tribunal on the face of it is perverse and contrary to material and voluminous record produced.

16. Learned Counsel for the respondent invited my attention to the questions No.202 to 209 in the cross-examination of the claimant and the answers given by the claimant. They also invited my attention to paragraph 17 of the arbitral award dealing with issues No.6 and 7 as also paragraph 19(a). My attention was invited to valuation made by Harshad S. Maniar to contend that valuation is made on the basis of that business of the firm is a going concern. My attention was invited to the cross-examination of claimant's witness No.2-Dr. Roshanali Hasanali Namavati who had prepared the valuation report and in particular questions 68 to 73 and answers given by him. It was contended that valuation arrived at by the Valuer is fundamentally erroneous. The Arbitral Tribunal has however not dealt with this submission at all. My attention was invited to the report on financial accounts by N. B. Shah

and Associates, Chartered Accountants dealing with goodwill of the company. It was submitted that direction of the Arbitral Tribunal about selling of tenancy rights is contrary to the law laid down by this Court in ***Veetrag Investments & Finance Co. Vs. Premier Brass & Metal Works Pvt. Ltd.*, 2003 (1) LJSOFT (URC) 35**. It was submitted that Sucheeta became landlady in the year 1984 and without her consent, tenancy rights cannot be sold. My attention was invited to the additional written submissions dated 17.04.2017 advanced on behalf of the respondent. The reliance was placed upon Section 26 of the Maharashtra Rent Control Act, 1999 (for short 'Rent Act'). In support of these submissions, reliance is placed on the following decisions:

- a. ***ARM Group Enterprises Ltd. vs. Waldorf Restaurant & others*, AIR 2003 SCC 4106**; and
- b. ***Sadbudhhi Brahmesh Wagh vs. Sheetal Mahabaleshwar Wagh*, (2003) 6 Bom.C.R.787**.

17. The learned Counsel for the respondent (petitioner herein), therefore, submitted that Petition requires consideration.

18. On the other hand, Mr. Munshi supported the impugned award. He submitted that dispute is not between landlord and tenant. The dispute is between the partners of the partnership firm. He invited my attention to paragraphs 1, 2, 3(a), 3(d), 3(i), 3(p), 3(p)(iv), 3(y), 3(aa) of the Statement of Claim. He submitted that tenancy rights were brought in the stock of the partnership firm. Mr. Munshi has invited my attention to the -

- a. letter dated 11.11.2011 addressed by Advocate Navin R. Patel on behalf of respondent - Sucheeta to Advocate Satish S. Pendharkar, Advocate for the claimant. In paragraph 2, it is stated that Hotel Windsor are the tenants of the suit

premises and above floors, the tenants are occupying their respective premises for the purpose of residence. In paragraph 3, it is stated that none of the tenants including Windsor Hotel have any right, title and interest in the tube well water. ... because the Bombay Municipal Corporation separate water line is already in existence and the said water has been enjoyed by all the tenants including Windsor Hotel;

- b. letter dated 12.12.2011 addressed by Advocate Navin R. Patel on behalf of respondent - Sucheta to V. V. Shinde, Advocate for the claimant. In paragraph 3, reference is made to the returning of cheques by the respondent which were issued by the claimant from Dena Bank Account, which was frozen by the Bank on 08.12.2011. The claimant was advised to issue fresh cheques from his personal account and then only cheques were to be accepted.
- c. Procedural Order Sheet No.2 dated 29.03.2012 dealing with two issues. One of them was protecting the assets of the partnership (tenancy rights) during the pendency of the arbitral proceedings. The respondent, through her Counsel, stated that they will not dispose of or alienate the premises till the hearing and final disposal of the arbitral proceedings. The statement made on behalf of the respondent was accepted and it was ordered accordingly;
- d. Procedural Order Sheet No.5 dated 08.05.2012 which recorded agreement of the parties that they will bid amongst themselves for running the business of Windsor Hotel pending the arbitral proceedings and that the highest bidder will act as the receiver of the property, pending the hearing and final disposal of the arbitral proceedings;
- e. Order dated 15.06.2012 passed by the Arbitral Tribunal on

the application dated 11.06.2012 moved by the respondent. The respondent claimed rent from the dissolved partnership firm. The respondent treated the partnership firm as a tenant even after dissolution of the partnership firm;

- f. Order dated 15.06.2012 recording that the assets of the partnership consists of a hotel run in a tenanted premises, etc.;
- g. Procedural Order Sheet No.8 dated 22.06.2012 which recorded that the rent due will be paid to the respondent landlady from the account of the partnership firm with Dena Bank;
- h. Order dated 26.10.2012 passed by the Arbitral Tribunal, and in particular paragraphs 1, 3 and 5 thereof. Paragraph 1 recorded that respondent moved application praying that Dena Bank, hereinafter, to debit the firms account and credit her account for the rent dues payable by the firm. In paragraph 3, reference was made to Section 11(1) of the Rent Act, which entitles the landlord to an increase of 4% p.a. in the rent of the premises. In paragraph 5, the Arbitral Tribunal held that respondent will be entitled to claim from the partnership as a tenant, the 4% increase as also any increase by BPT, which corresponding share has to be paid by the partnership;
- i. Order dated 21.11.2012 passed by the Arbitral Tribunal on an application made by the respondent for rent and dues. In the order, it was noted that respondent had prayed that direction as contained in paragraph 6(a) of order dated 26.10.2012 be clarified. Paragraph 6(a) recorded direction issued by the Tribunal to the Dena Bank to forthwith credit in favour of the respondent, rent from the month of January, 2012 till

September, 2012 @ Rs.93,121/- and Rs.1,590/- per month from the account of the Partnership which works upto an amount of Rs.8,38,089/ and Rs.14,310/- respectively. The Tribunal clarified that the monthly rent to be paid as of now and till the termination of the proceedings is Rs.93,121/- and Rs.1,530/- respectively. The rent has been paid upto August, 2012;

- j. Order dated 28.06.2014 passed by the Tribunal. The said order was passed on the application dated 26.06.2014 moved by the respondent. The respondent raised issue as to whether the Tribunal has the jurisdiction to decide the issue of tenancy in respect of the suit premises. In paragraph 4 of that order, the Arbitral Tribunal observed that there is no plea raised by the respondent specifically denying that the firm M/s. Hotel Windsor is a tenant of the premises. In paragraph 5, the Tribunal observed that specific averments made by the claimant were not denied and from the averments by the respondent in paragraph 20, it would be clear that the issue that was sought to be raised would not arise. There is no dispute in the pleadings that the Firm is not a tenant and on the contrary, it is otherwise. It was further observed in paragraph 6 that the issue whether Hotel Windsor, the partnership firm, is a tenant is a mixed question of fact and law. The claimant has contended that Hotel Windsor is a tenant of the respondent as a landlord. The averments have not been denied. The Tribunal came to the conclusion that no issue would arise as sought to be raised for consideration by the respondent.

19. Mr. Munshi submitted that respondent did not plead that tenancy

rights are not assets of the partnership firm. The respondent also did not plead that tenancy rights are not brought in the stock of the partnership firm. Relying on this material, Mr. Munshi submitted that the contentions advanced on behalf of the respondent that the Arbitral Tribunal had no jurisdiction to decide who is a tenant; the issue in rem cannot be determined by the Arbitral Tribunal; the exclusive jurisdiction vests in the Court of Small Causes at Mumbai; whether the partnership firm M/s. Hotel Windsor is a tenant or not cannot be decided by the Arbitral Tribunal; merely because rent is paid by the partnership firm by itself, does not confer tenancy rights on the firm and that there cannot be estoppel against the Statute are without any substance. He submitted that the issue of landlord and tenant did not fall for adjudication before the Tribunal. In support of these submissions, he relied upon the decisions in ***Central Warehousing Corporation Vs. Fortpoint Automotice P. Ltd., 2010 (1) Bom.C.R. 560***, and ***Gandhi Adhivitiya Combine Vs. M/s. Chandravadan Bharat Myatra, (2013) 7 Bom.C.R. 15***, and in particular paragraphs 11 and 14.

20. Mr. Munshi submitted that in so far as the contention raised on behalf of the respondent that the valuation arrived at by the valuer is fundamentally erroneous is concerned, he relied upon the decision in ***Addanki Narayanappa Vs. Bhaskara Krishanappa, AIR 1966 SC 1300***. Relevant portion of paragraph 7 of that decision reads thus,

“7. It seems to us that looking to the scheme of the Indian Act no other view can reasonably be taken. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the trading asset of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any

property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated, his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges.”

21. The said decision was considered by the Full Bench of Gujarat High Court in the case of ***Velo Industries Vs. Collector Bhavnagar, 1971 (80) ITR 291***. After referring to the decision of ***Addanki Narayanappa (supra)***, Full Bench observed thus,

“It is clear that the interest of a partner in the partnership is not an interest in a specific item of the partnership property, but, as pointed out by the Supreme Court, it is a right to obtain his share of profits from time to time during the subsistence of the partnership and on dissolution of the partnership or his retirement from the partnership, to get the value of his share in the net partnership assets which remain after satisfying the liabilities set out in clause (a) and sub-clauses (i), (ii) and (iii) of clause (b) of Section 48. When, therefore, a partner retires from the partnership and the amount of his share in the net partnership assets after deduction of liabilities and prior charges is determined on taking accounts on the footing of a national sale of the partnership assets and given to him, what he receives is his share in the partnership and not any price for sale of his interest in the partnership. His share in the partnership is worked out by taking accounts in the manner prescribed by relevant provisions of the partnership law and it is this and this only, namely, his share in the partnership which he receives in terms of money. There is in this transaction no element of sale; the retiring partner does not sell his interest in the partnership to the continuing partners.”

22. Mr. Munshi also relied upon paragraphs 32 and 33 of ***Gulmali A. Babul Vs. Shabbir S. Mahimwala, 2015 SCC Online Bom. 5624*** to contend that the tenancy rights are never reflected as a fixed or current assets in the balance sheet. In the present case, issue of tenancy did not

arise. He also relied upon the decision in ***Jafferali Bhalao Vs. Standard Bank***, AIR 1928 Privy Council 135 to contend that the question whether the property has been thrown into the assets of the partnership is a pure question of fact. He submitted that in the present case, respondent did not plead that her tenancy rights are not assets of the partnership firm or that the tenancy rights were not brought in the stock of the partnership.

23. Mr. Munshi further relied upon the decisions of - (i) Gujarat High Court in ***Sanjeev S. Bordia Vs. Sunilkumar Mohansingh Bordia***, 2011 SCC Online Guj.2527, (ii) ***Associate Builders Vs. DDA***, (2015) 3 SCC 49, (iii) ***Parsa Kente Collieries Limited Vs. Rajasthan Rajya Vidyut Utpadan Nigam Limited***, 2019 SCC Online SC 741 and (iii) ***MMTC Limited Vs. Vedanta Limited***, (2019) 4 SCC 163 dealing with the scope of Section 34 of the Act. He relied upon Sections 14, 48(b) and 55 of the Indian Partnership Act, 1932 (for short 'Partnership Act'). He submitted that in fact in paragraph 20 of the written statement, respondent admitted that partnership firm is a tenant of the suit premises. He relied upon Section 58 of the Indian Evidence Act, 1872 to contend that no fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.

24. In rejoinder, Mr. Sacheti submitted that the Arbitral Tribunal while deciding issue No.3 referred to the order dated 28.06.2014 passed by it on the application moved by the respondent on 26.06.2014. The Tribunal held that there was no dispute in the pleadings that the firm was not tenant. The Tribunal further observed that no issue on that count would arise. The Tribunal however proceeded to determine that issue by

observing that as the point has been raised, the same can be decided. The Tribunal held that Hotel Windsor, the partnership firm, was tenant of the suit premises. He invited my attention to paragraph 11 of the award. As the Tribunal has dealt with the issue of landlord and tenant, which is exclusively within the jurisdiction of the Small Causes Court, the award is vitiated and liable to be set aside.

25. Mr. Sancheti further submitted that clause (d) of the operative part of the award provides for sale of other movable and immovable assets on realization or otherwise and distribution of the proceeds in the ratio of 40:60. He submitted that the direction is otherwise unexecutable and even not enforceable in law. He, therefore, submitted that Petition requires consideration.

26. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. On behalf of the respondent, it was contended that -

- a. Tribunal had no jurisdiction to decide who is a tenant. The exclusive jurisdiction vests in the Court of Small Causes at Mumbai. The issue in rem cannot be determined by the Arbitral Tribunal;
- b. Whether the partnership firm M/s. Hotel Windsor is a tenant or not cannot be decided by the Arbitral Tribunal;
- c. Merely because rent is paid by the partnership firm by itself, does not confer tenancy rights on the firm;
- d. Can there be estoppel against the Statute. If a person is ineligible to become a tenant, the Arbitral Tribunal cannot confer status on the person so ineligible.

27. I do not find any merit in these contentions. I have already

referred to the letter dated 11.11.2011 addressed by Advocate Navin R. Patel on behalf of the respondent to Mr. Satish S. Pendharkar, Advocate for the claimant. A perusal of paragraphs 2 and 3 thereof clearly shows that the respondent accepted that Hotel Windsor, a partnership firm, is a tenant of the suit premises and in fact even after dissolution of the firm, respondent accepted rent paid by the partnership firm. It is also material to note that in paragraph 1 of the statement of claim, claimant contended that he is a partner in the registered partnership firm M/s. Hotel Windsor. In paragraph 3(d), claimant contended that Hotel Windsor is occupying the suit premises. The firm was a tenant of late Kedarnath till his death, thereafter of Sudarshan Sethi till her death and since then of the other heirs of Kedarnath, which includes the respondent. In paragraph 3(p), the claimant asserted that Hotel Windsor is tenant in respect of the suit premises and rent in respect of the hotel premises has been paid from 16.01.1981 to November 2011. In paragraph 3(y), claimant dealt with procedure for collecting and paying the rent in respect of the suit premises, which is the tenanted property of the firm. In paragraph 3(aa), reference was made to the letter dated 12.12.2011 addressed by the respondent's Advocate calling upon the claimant to issue fresh cheques from his personal account and that then only they will be accepted.

28. A perusal of the written statement filed by the respondent, and in particular paragraph 3(vi) shows that respondent contended that “as per the permission granted by the Municipal Corporation, the bore-well water is to be used only for washing, gardening purposes and flushing purposes and none of the tenants including M/s. Windsor Hotel are entitled to ask for the water supply from the said bore-well”. In paragraph 20, the respondent while dealing with paragraph 3(p) of the Statement of Claim submitted that as landlady of the firm M/s. Windsor Hotel, she is entitled to terminate the tenancy of the firm. In paragraph

41 of the written statement, respondent dealt with paragraph 10 of the Statement of Claim. The respondent denied that she intended to transfer the tenanted premises being the suit premises in the name of fictitious person, etc. I, therefore, find merit in the submission of Mr. Munshi that the respondent never pleaded that Hotel Windsor, the partnership firm, is not the tenant of the suit premises. The respondent did not plead that tenancy rights were not brought in the stock of the partnership firm. A perusal of the Procedural Orders dated 29.03.2012, 15.06.2012 and 28.06.2014 shows that respondent accepted that the partnership firm M/s. Hotel Windsor is the tenant of the suit premises. The above contentions raised by the respondent are without any substance. It is also not possible to accept the contention of the respondent that if the partnership firm is dissolved and accounts are drawn up, the tenancy rights cannot be valued as a going concern and as the firm came to an end, it has no goodwill.

29. The reliance placed by the respondent on the decision of **Veetrag Investments & Finance Co.** (*supra*) also does not advance her case. In fact, the decision rendered by the learned Single Judge was held to be no good law by Full Bench in ***Tangerine Electronics Systems P. Ltd. Vs. Indian Chemicals***, AIR 2004 Bombay 198. The Full Bench dealt with Section 26 of the Rent Act and observed that the said Section forbids the voluntary transfer of interest in the premises by the tenant but does not prevent the transfer by the court. Where the transfer is by an operation of law and not by act of the parties, Section 26 shall have no application. In paragraph 38, the Full Bench observed that to the extent the observations of the learned Single Judge in paragraph 10 of **Veetrag Investments & Finance Co.** (*supra*) cannot be said to be a good law. In the present case, by virtue of the award made by the Tribunal, the property is ordered to be sold.

30. In the case of **Jafferli Bhalao** (*supra*), the Privy Council has held that the question whether certain property is thrown into the partnership assets is of fact. In the light of the aforesaid discussion, I do not find any merit in the submissions of Mr. Sancheti and Mr. Purohit that Hotel Windsor is not tenant of the suit premises as the said case was never pleaded.

31. In the light of the aforesaid discussion, I do not find any merit in the submission of Mr. Sancheti and Mr. Purohit that-

- a. the award made by the Tribunal is totally vague and uncertain, as also
- b. the direction of sale of the premises is otherwise unexecutable and even unenforceable in law.

32. The reliance placed by the respondent on the decisions referred in paragraph 16 does not advance her case.

33. A perusal of the award made by the Arbitral Tribunal shows that the Arbitral Tribunal has made award after considering the evidence on record. It cannot be said that the award made by the Arbitral Tribunal is contrary to evidence on record, or that award is based on no evidence. In short, it cannot be said that award is perverse.

34. In the case of **Associate Builders** (*supra*), the Apex Court held that when any of the heads / sub-heads of test of 'public policy' is applied to an arbitral award, court does not act as court of appeal. Interference is permissible only when findings of arbitrator are arbitrary, capricious or perverse, or when conscience of Court is shocked, or when illegality is not trivial but goes to root of the matter. Arbitrator is ultimate master of quantity and quality of evidence while drawing arbitral award. The award based on little evidence or on evidence which does not measure

up in quality to a trained legal mind cannot be held invalid. Once it is found that arbitrator's approach is neither arbitrary nor capricious, the Court cannot interfere on facts. The Apex Court further held that the award can be said to be against fundamental policy of Indian Law when it is: (i) not in compliance with statutes or judicial precedents, or (ii) violates the principle of judicial approach, or (iii) not in compliance with principles of natural justice, or (iv) violates the principle of *Wednesbury* reasonableness i.e. the award is perverse. The Apex Court also explained in detail when the award can be said to be patently illegal. The Apex Court held that the award can be said to be patently illegal when it contravenes the Act itself, contravenes terms of contract, etc.

35. In the case of ***Mcdermott International INC. Vs. Burn Standard Co. Ltd.***, (2006) 11 SCC 181, the Apex Court held that interference on the ground of patent illegality is permissible only if the same goes to the root of the matter. The public policy violation, indisputably, should be so unfair and unreasonable as to shock the conscience of the court. The construction of the contract agreement, is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot, be said to have misdirected themselves in making the award by taking into consideration the conduct of the parties. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. Once it is held that the arbitrator has the jurisdiction, no further question can be raised and the Court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award.

36. Applying the principles laid down by the Apex Court in the above decision to the facts of the present case, it cannot be said that the award made by the Arbitral Tribunal is vitiated by patent illegality on face of the award as contemplated by sub-section (2-A) of Section 34 of the Act

or that the award made by the Arbitral Tribunal is in conflict with the public policy of India as contemplated by Section 34(2)(b)(ii) read with explanation I(ii), namely, it is in contravention with the fundamental policy of the Indian Law. Hence, Arbitration Petition fails and the same is dismissed.

37. Pending Motions, if any, stand disposed of accordingly.

38. At this stage, Ms Anchal Jain orally applies for stay of this order for a period of four weeks from today. Mr. Munshi opposes the same on the ground that during the pendency of the Petition, no ad-interim order was operating. In view thereof, oral application for stay is rejected. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab