

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

ARBITRATION PETITION NO.792 OF 2018
WITH
NOTICE OF MOTION NO.2459 OF 2018 IN ARBP NO.792 / 2018

Hasina Mohamad Shafik Laljee and others ... Petitioners
Vs.
Fatima Correa Nee Fatima Yakub Ali ... Respondent

Mr. Chirag Modi i/b. HK Law Associates for Petitioners.
Mr. Suraj Iyer a/w. Mr. Akshay Patil and Ms Debshree Mandpe i/b. Ganesh
& Co. for Respondent.

CORAM : R. G. KETKAR, J.
Reserved on : JUNE 24, 2019
Pronounced on : JULY 11, 2019

P.C. :

Heard Mr. Modi, learned Counsel for the petitioners and Mr. Iyer,
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 petitioners-

- i. Hasina Mohamad Shafik Laljee
- ii. Heena Mohamad Shafik Laljee (since deceased)
- iii. Shabina Mohamad Shafik Laljee
- iv. Mohamad Mushtaq Ali Mohamad Shafik Laljee

(for short, hereinafter referred to as 'Laljees') have challenged the
Award dated 23.03.2018. By that Award, the sole Arbitrator (Hon'ble Dr.
Justice F. I. Rebello, Former Chief Justice, High Court of Allahabad)
declared that,

a. Respondent-claimant, Fatima Correa Nee Fatima Yakub Ali
(for short, hereinafter referred to as 'Fatima') is entitled to 51% share in
the profits of the Dharavi property as co-owner and will continue to
receive her share in the profits till winding up in terms of clauses 13 and
14 of the Deed of Partnership;

b. Laljees shall pay to Fatima 51% of the profit from the

Dharavi property from 1982 till the date of the Award and thereafter till winding up without interest till the date of the Award;

c. From the date of the Award, Laljees shall pay to Fatima interest @ 9% p.a. on their share of profits till final payment;

d. Laljees shall pay costs quantified at Rs.20,00,000/- to Fatima.

3. The facts and circumstances giving rise to filing of the present Petition, briefly stated, are as under:

4. One Mohamadali Ismail was carrying on business of tanners, exporters and importers, etc. under the name and style of M/s. Mohamadali Ismail, a proprietary concern. M/s. Mohamadali Ismail was assisted by Yakubali Mohamadali (Fatima's father), hereinafter referred to as 'Yakubali'. By a Deed of Partnership dated 09.11.1960, Mohamadali Ismail constituted a partnership with Yakubali on 21.10.1960 for carrying on the same business in the name and style of M/s. Mohamadali Ismail. By an agreement dated 19.01.1961, M/s. Mohamadali Ismail, the partnership firm acquired all the assets and liabilities of the sole proprietary concern.

5. On 25.04.1965, Mohamadali Ismail expired. Yakubali invited his nephew Mohamad Shafik to join him as a partner to carry on similar business. Yakubali and Mohamad Shafik vide a Deed of Partnership dated 01.06.1965 constituted a registered partnership firm in the name and style of M/s. Mohamadali Ismail bearing No.BOM/404/1978, firm No.B-14628 (for short 'the firm'). The firm carried on business of import and export of hides and skin, raw wool, chemicals, tanning materials and leather goods. It is the case of Fatima that Yakubali solely contributed to the capital of the said firm including money, name, client base, goodwill of the previous firm, etc. Yakubali and Mohamad Shafik shared the

profit and losses in ratio 51%:49% respectfully. The partnership was a partnership at will and carried out its business from 703, Stock Exchange Tower, Dalal Street, Mumbai 400 001. Fatima contended that Yakubali owned the said premises and allowed the firm for carrying on the business. On 16.01.1974, Fatima got married and shifted permanently to Kuwait with her husband. She lived in Kuwait for almost 4 decades and occasionally visited her parents in Mumbai.

6. Vide an Indenture Deed dated 28.02.1978, the firm purchased a property (i) being a Government land situate in Registration District of Sub-Registrar of Bombay City and Bombay Suburban at Dharavi, Mahim and now bearing C.S.No.342 (part) admeasuring 3029 sq.yards approximately equivalent to 3042.74 sq.mtrs. or thereabout together with tenements and dwelling houses, and (ii) leasehold land situate in the Registration District of Sub-Registrar of Bombay City and Bombay Suburban Dharavi, now bearing C.S.No.1/342 admeasuring approximately 4369 sq.yards equivalent to 3993.26 sq.mtrs. or thereabouts together with all rights thereon for a consideration of Rs.1,25,000/- and on the terms and conditions set out in the indenture. In pursuance thereof, all the revenue records, assessment bills and all other documents relating to the said lands were transferred in the name of the firm. The said lands and the premises shall hereinafter be referred to as the 'said property'.

7. Yakubali expired on 27.06.1982 leaving behind his wife Zarina Yakubali and Fatima as his only legal heirs. Around 1982, prior to the death of Yakubali, the firm had stopped the business of tanners, etc. The firm has, however, given the properties on rent to various tenants. The names of commercial and residential tenants of the firm are annexed at Exhibit C-6.

8. After the death of Yakubali, the firm was not reconstituted and stood dissolved. It is the case of Fatima that the firm did not have any liability. The legal heirs of Yakubali and Mohamad Shafik became entitled to the assets of the firm as the co-owners.

9. It is the case of Fatima that Mohamad Shafik continued to collect rent in the name of the said firm from the tenants and utilized the said properties and premises, etc. Mohamad Shafik neither disclosed the accounts nor shared the profits derived from the assets of the said firm. In any event, Mohamad Shafik held the profits from the assets of the firm in trust for the heirs of Yakubali. As the income from the assets of the dissolved firm was not substantial and Fatima was residing abroad and her mother Zarina was old and unable to look into the matter, neither Fatima nor her mother Zarina insisted for their share from Mohamad Shafik more so in view of the family relations.

10. On 26.07.2004, Zarina expired leaving behind Fatima as the only legal heir. By her last Will and Testament, Zarina bequeathed her entire estate including the said property in favour of Fatima. After the death of Zarina, the said property devolved upon and vested unto Fatima being the only legal heir of Yakubali and Zarina. On 22.08.2004, Mohamad Shafik expired leaving behind Laljees as heirs. Hasina is widow of Mohamad Shafik. Heena, Shabina and Mohamad Mushtaq are children of Hasina and Mohamad Shafik. After the death of Mohamad Shafik, Laljees continued to collect rent from the said properties. Mohamad Mushtaq Ali Mohamad Shafik Laljee (for short 'Mohamad Mushtaq') continued to make representation as a partner of the said firm before various statutory authorities and the public at large until 2012. By letter dated 29.12.2005, Mohamad Mushtaq represented to the Additional Collector and Competent Authority, Mumbai that he was a partner of the firm and issued the letter in the capacity as a partner. After returning to

India in 2012, Fatima made various efforts to find out the status of the property of the firm by making inquiries under the Right to Information Act, 2005. The inquiry revealed that Laljees had made a purported, delcaration-cum-indemnity and affidavit, both, dated 13.10.2010 with a view to defeating or illegally usurping Fatima's right, title and interest in the properties of the said firm.

11. Fatima also realized that Laljees had initiated Suits in the year 2012 against some of the tenants in the Small Causes Court falsely alleging that, (i) the properties were owned by Yakubali and Mohamad Shafik; (ii) Yakubali after his death left behind Zarina as his only legal heir; (iii) after the death of Yakubali and Zarina, they were entitled to the property.

12. On 15.02.2013, Fatima through her Advocates issued a notice to Laljees calling upon them to desist from making illegal claims regarding the ownership of the property. Fatima invoked the arbitration clause in the Partnership Deed dated 01.06.1965. She filed Arbitration Petition No.503 of 2013 in this Court, which was dismissed by an order dated 19.09.2013. Aggrieved by this decision, she preferred Appeal being Appeal (L) No.444 of 2013. By order dated 04.12.2013, various directions were issued. It is the case of Fatima that she is entitled to 51% right, title and interest in the land and 100% right, title and interest in the premises. It is Fatima's case that Laljees for the first time purported to deny her right, title and interest in the property vide a declaration-cum-indemnity and affidavit, both, dated 13.10.2010. By letter dated 15.02.2012, Fatima invoked the arbitration clause. She came with the case that Laljees are bound under the Indian Partnership Act, 1932 (for short 'Partnership Act') and the Indian Trusts Act, 1882 (for short 'Trusts Act') to account to Fatima for the profits arising from the use of Yakubali's share of the capital in the firm. This is a continuing obligation

and is not barred by the law of limitation. Fatima, therefore, claimed various reliefs in the Statement of Claim.

13. Laljees filed Statement of Defence. They also raised a preliminary objection on the ground that the claims made by Fatima in respect of the property of partnership firm M/s. Mohamadali Ismail suffers from gross delay and laches. The claim is barred by law of limitation. As per Article 5 of the Limitation Act, 1963 (for short 'Limitation Act'), the claims made by Fatima in respect of the partnership firm M/s. Mohamadali Ismail is barred by law of limitation. As per Article 5, any claim for an account or a share of the profits of a dissolved partnership is required to be made within three years from the date of dissolution of the partnership firm. The partnership firm stood dissolved on 27.06.1982 when Yakubali died and the partnership firm stood dissolved even as per Fatima's case. As the claim is not made within three years from the date of death of Yakubali and / or date of dissolution of the partnership firm, it is clearly barred by limitation.

14. After the death of Yakubali, neither Fatima nor her mother Zarina raised any claim in respect of the assets and her properties of the partnership nor sought for any share in the account of the partnership firm. Zarina was a housewife and old lady and therefore, did not show any interest in joining the partnership firm. Neither Fatima nor Zarina addressed any letters or any other writings from the date of dissolution of the partnership firm raising any claim in respect of the assets of the firm or accounts of the firm by a period of more than 30 years.

15. After the death of Yakubali, Mohamad Shafik and after his demise, Laljees are openly and continuously enjoying the possession of the Dharavi property as owners of Dharavi property to the exclusion of Zarina and Fatima. They are openly and continuously managing the Dharavi property by collecting rent, paying taxes, issuing receipts and

looking after the day to day affairs and managing the Dharavi property to the complete exclusion of Zarina and Fatima. There is a complete ouster of Zarina and Fatima from the Dharavi property and other properties of the firm.

16. In the alternative to Article 5 and without prejudice, Laljees contended that under Article 65 of the Limitation Act, any claim or interest in any immovable property of a partnership firm based on being the legal heir of the deceased partner (that is based on title) is required to be made within 12 years from the date of the death of the partner concerned and / or dissolution of the partnership firm.

17. Laljees also denied that Yakubali solely contributed to the capital of the firm namely, money, name, client base, good will of the previous firm, etc., and that, Yakubali owned premises at 703, Stock Exchange Tower, Dalal Street, Mumbai. In the Partnership Deed dated 09.11.1960 between Mohamadali Ismail and Yakubali, the address of the partnership firm is shown as Stock Exchange Building, Apollo Street, Mumbai-1, which is the same as the said premises. In clause 10 of the partnership deed dated 01.06.1965, it is recorded that Mohamad Shafik is carrying on business as sole proprietor under the name and style of M/s. Gulmohar Gul Traders at Stock Exchange Building, Apollo Street, Mumbai - 1, which is the same address as the said premises. It was, therefore, contended that Mohamad Shafik was using the said premises for the purposes of carrying out his business prior to him entering into partnership with M/s. Mohamadali Ismail. The Statement of Claim is submitted in collusion with the tenants residing on the land at Dharavi.

18. Fatima got married to a person professing Christianity and permanently shifted to Kuwait with her husband. Under the provisions of Mohammedan Law applicable to Shia Sect to which Fatima belonged

prior to her marriage, a Muslim woman cannot contract a valid marriage except with a Muslim. The marriage of Fatima to a non-muslim disentitled her to claim any right over the property of her father, who was a Muslim till the time of his death. Laljees also denied that the lands at Dharavi were purchased by the firm with the funds of Yakubali. It was also contended that lands at Dharavi were acquired on 28.02.1978 after a period of 13 years of Mohamad Shafik becoming a partner of the partnership firm M/s. Mohamadali Ismail. It was also set out that after the death of Yakubali, it was agreed between Fatima, her mother Zarina and Mohamad Shafik that Fatima's mother Zarina or any one from Yakubali's family would not have any right or interest in the partnership business and the assets. It is because of this reason, neither Fatima, her mother Zarina nor any person from Yakubali's family has made any claim over the partnership business. As per clause 14 of the Partnership Deed, any legal heir of a deceased partner cannot claim to be partner and it depended upon the surviving partner, if he desires to be such legal heir to be made a partner. Fatima and her mother Zarina, as a matter of right, cannot claim to be a partner of the firm.

19. After the death of Yakubali, the firm stood dissolved. Mohamad Shafik was carrying on business as sole proprietor in the name and style of M/s. Mohamadali Ismail. Fatima and her mother Zarina did not raise any objections. It is further contended that in the Will, Dharavi property is not included. Fatima, therefore, cannot claim Dharavi property based on the Will of Zarina.

20. On the basis of the pleadings of the parties, the Arbitral Tribunal framed the necessary issues. The parties adduced evidence. After considering the evidence on record, the Arbitral Tribunal made the Award, as indicated earlier. It is against this Award, the present Petition is instituted under Section 34 of the Act.

21. In support of this Petition, Mr. Modi submitted that the Arbitral Tribunal committed serious error in not considering the case of Laljees that under Article 5 of the Limitation Act, claim made by Fatima for an account and a share of the profits of the dissolved partnership firm is hopelessly barred by limitation. He submitted that Yakub Ali and Mohamad Shafik vide a Deed of Partnership dated 01.06.1965 constituted a registered partnership firm in the name and style of M/s. Mohamad Ali Ismail (for short 'the Firm'). Admittedly, Yakub Ali died on 27.06.1982. The Firm stood dissolved on 27.06.1982 in view of the death of Yakubali. Therefore, any claim in respect of the firm was required to be made by Fatima within three years from the date of death of Yakubali. Fatima invoked arbitration clause on 15.02.2013. The claim made by Fatima suffers from gross delay and laches and on this count alone, claim set up by Fatima before the Arbitral Tribunal was liable to be rejected.

22. He submitted that the Arbitral Tribunal erroneously held that Section 37 of the Partnership Act and Section 88 of the Trusts Act are applicable to the facts of the present case. He submitted that while arriving at the conclusion that the surviving or intending partners carried on the business of the Firm with the property of the firm, the Arbitral Tribunal ignored documents relied by Laljees. For example, copies of the income tax documents produced by Laljees at exhibit R-4 clearly shows that Mohamad Shafik after the death of Yakubali was filing Income Tax Returns as a sole proprietor of the Firm.

23. He submitted that Zarina, mother of Fatima executed Will on 07.02.2002. In this Will, there is no reference to Dharavi properties forming the subject matter of the Arbitration. On the contrary, there is a specific reference to two of the immovable properties at Bandra,

Mumbai. It is, therefore, clear and evident that Zarina never treated herself to have any right or interest in the partnership assets as a legal heir. He submitted that in any case, and in the alternative, under Article 65 of the Limitation Act, for possession of immovable property or any interest therein based on title, any claim has to be made within 12 years from the date of the death of a partner concerned and / or dissolution of the partnership firm. The present claim is even otherwise barred under Article 65 of the Limitation Act.

24. Mr. Modi invited my attention to the finding recorded by the Arbitral Tribunal against issue No.5. Issue No.5 was whether the claimant (Fatima) proves that they are entitled to an Award directing the winding up of the firm and directing the respondents (Laljees) to furnish true and correct accounts of the total income derived, expenses incurred and profit earned out of the said firm and the said property for the period from 1982 till the accounts for the said firm are settled. The Arbitral Tribunal held that relief for accounts cannot be granted as being barred by limitation. The Tribunal however held that Fatima is entitled to call upon Laljees to wind up the firm. He submitted that the answer given to issue No.5 is contrary to prayers made in the arbitration petition.

25. He submitted that by prayer clause (b1) of the Statement of Claim, Fatima claimed for declaration that she is the co-owner having 51% share in the assets of the said firm including the said property as more particularly described in paragraph 2(f) and indenture dated 28.02.1978. The Arbitral Tribunal has not specifically granted prayer clause (b1). The Arbitral Tribunal also has not declared Fatima as co-owner of the assets of the partnership firm and only held that she is entitled to 51% share in the profits of the Dharavi property. He submitted that the Arbitral Tribunal has committed patent illegality by

ordering that Fatima is entitled to 51% of the profits as her share from the Dharavi property when that relief is declined. He submitted that the Arbitral Tribunal has also committed patent illegality in holding that Mohamad Shafik and subsequently Laljees have continued to do the partnership business using the assets of the partnership firm. This finding is clearly contrary to the documents on record and testimony of the witness examined by Laljees. The Tribunal failed to consider the documents on record such as Returns of Income Tax for the Assessment Year 1981-82 and 1983-84, which clearly show that partnership business was not carried on and that Mohamad Shafik was carrying on his own business as a sole proprietor and after his death, Laljees continued to carry on business of Mohamad Shafik and not of the firm. Thus, the business of partnership was not at all continued and that being so, Section 37 of the Partnership Act is wholly inapplicable.

26. Mr. Modi submitted that Award is liable to be set aside under Section 34(2-A) on the ground that the Award made by the Arbitral Tribunal is vitiated by patent illegality apparent on the face of the Award. The case is covered under Section 34(2)(b)(ii) as the Arbitral Award is in conflict with public policy of India.

27. In support of his submissions, Mr. Modi relied upon the following decisions:

- a. ***Peeran Sahib Vs. Pedda Jamaluddin Sahib*, AIR 1958 AP 48** and in particular paragraphs 12, 13, 16 and 19.
- b. ***S. V. Chandra Pandian Vs. S. V. Sivalinga Nadar*, (1993) 1 SCC 589**, and in particular paragraphs 11 and 16.
- c. ***Gopala Chetty Vs. Yijayaraghavachariar*, AIR 1922 Privy Council 115**.
- d. ***Seemaben @ Shamuben Shankar Patel Vs. Motibhai K. Patel*, 2015 (3) Bom.C.R.288**, and in particular paragraph 71.
- e. ***Pradeep Arora Vs. Samantha Kochhar*, 2016 SCC OnLine Del**

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28. For all these reasons, he submitted that Petition requires consideration.

29. On the other hand, Mr. Iyer supported the impugned Award. He submitted that after considering the case made out by Fatima in the Settlement of Claim, case made out by Laljees in their Statement of Defence, clauses of the Deed of Partnership dated 01.06.1965 as also evidence on record, the Arbitral Tribunal held that Mohamad Shafik continued to carry on the partnership business and assert rights over the partnership assets as a sole owner thereof in his capacity as a sole proprietor of the Firm. After the death of Mohamad Shafik, Laljees are carrying on the partnership business as trustees. The Arbitral Tribunal has considered Articles 5 and 65 of the Limitation Act as also Sections 16(a), 37, 48 and 50 of the Partnership Act and Sections 50, 88 and 95 of the Trusts Act. The Arbitral Tribunal has also dealt with various judgments referred by the parties. After considering the material on record, the Arbitral Tribunal recorded a categorical finding of fact that Laljees were asserting that the Dharavi property was the partnership asset and were taking the profits of the the said partnership assets for themselves without sharing the profits with Fatima.

30. Mr. Iyer submitted that the Arbitral Tribunal has also considered Rent Receipt at exhibit R-3 and Income Tax Returns for the Assessment years 1981-82 and 1983-84 produced at exhibit R-4 and discarded the contention of Laljees that Mohamad Shafak was carrying on his own business as a sole proprietor and not the business of partnership firm. He submitted that the Award made by the Arbitral Tribunal is not vitiated by patent illegality apparent on the face of the Award as contemplated by Section 34(2-A) of the Act as claimed by Laljees. The Award is also not

in conflict public policy of India as claimed by Laljees under Section 34(2)(b)(ii) of the Act. He, therefore, submitted that no case is made out for interfering with the impugned Award.

31. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Mr. Modi submitted that the partnership firm M/s. Mohamadali Ismail had two partners, namely, Yakubali and Mohamad Shafik. On 27.06.1982, Yakubali died. Thus, the partnership firm stood dissolved on account of death of Yakubali. Fatima had invoked arbitration clause on 15.02.2013. The claim of Fatima is, therefore, clearly barred under Article 5 of the Limitation Act. The claim of Fatima for possession of immovable property or any interest therein based on title is barred under Article 65 of the Limitation Act. In fact the Arbitral Tribunal also held that the prayer for furnishing true and correct accounts from 1982 till the accounts are settled is barred by limitation considering Section 48 of the Partnership Act. Once that relief is held to be barred by limitation, relief in terms of prayer clauses (b) and (b-1) could not have been granted.

32. In order to deal with these contentions, it is necessary to consider whether after the death of Yakubali on 27.06.1982, the surviving partner Mohamad Shafik continued to carry on business of the partnership firm. It is further necessary to find out whether after the death of Mohamad Shafik on 22.08.2004, Laljees continued to carry on business of partnership firm.

33. In paragraph 2(h) of the Statement of Claim, Fatima contended that after dissolution of the partnership firm on 27.06.1982, Mohamad Shafik continued to collect the rent in the name of partnership firm from the tenants and utilized the said properties and the premises. In

paragraph 8 of the Statement of Claim, Fatima asserted that Mohamad Shafik carried out the partnership business without settling the accounts inter alia using the capital of the firm, properties of the firm's name, goodwill, client, etc. Fatima also contended that around 1982, prior to the death of Yakubali, the firm stopped the business of tanners, etc. but had given the properties on rent to various tenants. These properties were the only asset of the partnership firm.

34. In paragraph 10 of affidavit of evidence of Fatima, she deposed that the firm did not have any liability and the legal heirs of Yakubali became entitled to the assets of the firm. In paragraph 11, she deposed that Mohamad Shafik carried out the business of the firm, utilised the assets of the firm, and at all material times, acknowledged the rights of the legal heirs of Yakubali and never disputed the rights with respect to the properties, assets of the firm as well as accrued therefrom.

35. In paragraph 13 of the Statement of Defence, Laljees contended that after the death of Yakubali, it was agreed between Zarina and Mohamad Shafik that Zarina or any one from Yakubali's family would not have any right or interest in the partnership business and assets and it is for this reason, no claim was made over the partnership business and assets. Mohamad Shafik continued to carry on partnership business and assert rights over the partnership assets as a sole owners in his capacity as a sole proprietor of M/s. Mohamadali Ismail. Laljees also contended that Mohamad Shafik was openly and continuously enjoying the possession of the Dharavi property as owners of Dharavi property to the exclusion of Zarina and Fatima.

36. The Arbitral Tribunal, after appreciating the evidence on record, held that the case set up by Laljees is completely false and untenable

and contrary to the material on record. Such an oral agreement never existed. Laljees admitted co-ownership of Zarina in the partnership properties including Dharavi property. Such admissions are contained in the letter dated 29.12.2005 (exhibit C-9) addressed by Mohamad Shafik to the Additional Collector and Competent Authority for withdrawal of the notification issued under the Urban Land (Ceiling and Regulation) Act, 1976 describing himself as a partner of M/s. Mohamadali Ismail. He also signed the said letter as a partner of the said firm. Laljees also admitted co-ownership of Zarina in the Statement of Defence. In paragraphs 2(h) and 2(j) of the Statement of Claim, Fatima asserted that on the death of Yakubali on 27.06.1982, the surviving partner Mohamad Shafik and thereafter his heirs carried on business with the property of the firm. Laljees however did not deny these assertions in the Statement of Defence. The averments made by Fatima have been supported by her evidence in paragraphs 10 and 14 of the examination-in-chief. The fact that Mohamad Shafik was carrying on the business of the firm with the property of the firm is established from the averments in paragraph 14 of the Statement of Defence.

37. The Arbitral Tribunal also considered the averments made by Laljees in Suits (exhibit C-11) filed against tenants Aspi D. Pader and Veera Tanneries. In these Suits, Laljees inter alia contended that Yakubali died on 27.06.1982 leaving behind Zarina as his only legal heir. After the death of Zarina on 26.07.2004 and after the death of Mohamad Shafik on 22.08.2004, Laljees became owners and landlords in respect of the entire piece and parcel of land at Dharavi. The Arbitral Tribunal considered Declaration-cum-Indemnity dated 01.10.2010 and in particular paragraph 3, paragraph 3 of the affidavit dated 12.10.2010 (exhibi C-10), paragraph 3(viii) of the Statement of Defence as also paragraph 7 of the examination-in-chief from where it is evident that

Laljees came with the case that Mohamad Shafik continued to use, occupy and enjoy the assets of the firm after the death of Yakublai. The Arbitral Tribunal referred to clause 14 of the Deed of Partnership, which reads thus,

“14. In the event of the death of any partner, the firm shall not stand dissolved but the legal heir or representative of the deceased partner may be admitted into partnership by the surviving partners if he so desires. But the said legal heir or representative cannot as a matter of right claim to join as a partner. If the surviving partner decided not to take the legal heir or representative as a partner, the share of the deceased partner shall be valued and determined at his death and the same shall be paid to the said legal heir or representative. In order that no dispute may arise in respect of goodwill, quota rights, tenancy rights and other rights relating to the partnership business, it has been mutually agreed that the value of goodwill, quota rights, tenancy rights and other rights is fixed at Rs.2,501/-.”

38. The Arbitral Tribunal noted that in view of clause 14 of the Deed of Partnership, the accounts were not made up and share paid to the legal representative of Yakubali and partnership wound up. In view thereof, the assets would continue to be the assets of the dissolved partnership with the existing partners and legal heirs of the deceased partner as co-owners of the property until winding up and distribution of profits among the members as provided in the Deed of Partnership. The Arbitral Tribunal also dealt with rent receipts at exhibit R-3 produced by Laljees and Income Tax Returns for the Assessment Years 1981-82 and 1983-84 at exhibit R-4. In so far as the rent receipts at exhibit R-3 are concerned, the Arbitral Tribunal held that they are in respect of Dharavi property, which was the asset of partnership firm. The Arbitral Tribunal also considered the contention of Laljees that in the last Will of Zarina dated 07.02.2002, there is no reference of Dharavi properties forming the subject matter of the arbitration.

39. The Arbitral Tribunal also noted that it is an admitted position that there was no final settlement of accounts between Mohamad Shafik and legal representatives of Yakubali. The Arbitral Tribunal noted that the only asset of the firm at the time of death of Yakubali was the Dharavi property. After considering the documentary evidence on record, the Arbitral Tribunal held that Laljees were asserting that the Dharavi property was a partnership asset and were taking the profits of the firm's assets without sharing the profits with Fatima. The Arbitral Tribunal also held that Laljees have not produced any documentary evidence to show that Mohamad Shafik apart from the Dharavi property was carrying on any other business. The Arbitral Tribunal ultimately concluded that Fatima was able to establish that business of the partnership firm was continued by Mohamad Shafik and then by Laljees by continuing to collect income from the Dharavi property.

40. The findings recorded by the Arbitral Tribunal are based upon appreciation of evidence on record. It cannot be said that the findings recorded by the Arbitral Tribunal are either contrary to evidence on record or that they are based upon no evidence. In short, it cannot be said that the finding recorded by the Arbitral Tribunal as regards continuation of business of the partnership firm by Mohamad Shafik and after his death, by Laljees is a perverse finding. Now, it is necessary to consider whether the claim made by Fatima for an account and a share of profits of the dissolved partnership firm is barred by law of limitation, and in particular Article 5 of the Limitation Act. It is also necessary to consider whether claim for possession of immovable property or any interest therein based on title is barred by law of limitation, and more particularly, Article 65 of the Limitation Act. In order to consider the contentions based upon Articles 5 and 65 of the Limitation Act, it is necessary to consider -

- a. Section 10, Articles 5 and 65 of the Limitation Act;

- b. Provisions of the Partnership Act, and more particularly, Sections 37, 48, 50 read with Section 16(a) thereof; and
- c. Section 88 Illustration (f) and Section 95 of the Trusts Act.

41. Relying upon clause 14 of the Partnership Deed dated 01.06.1965, it was submitted that any legal heir of the deceased partner cannot, as a matter of right, claim to be a partner and is dependent upon the surviving partner if he desires to be made a partner. It was contended that neither Fatima nor her mother Zarina could as a matter of right claim to be a partner of the firm. Fatima does not have any right in the land at Dharavi or the premises. It was contended that Section 37 of the Partnership Act provides that outgoing partner or a representative of the deceased partner would be entitled to make a claim to share of subsequent profits only in the absence of a contract to the contrary.

42. Sections 37, 48, 50 and Section 16(a) of the Partnership Act read thus,

“37. Right of outgoing partner in certain cases to share subsequent profits.- Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm:

Provided that whereby contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to

account under the foregoing provisions of this section.

48. Mode of settlement of accounts between partners.-

In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

- (a) losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;
- (b) the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:-
 - (i) in paying the debts of the firm to third parties;
 - (ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
 - (iii) in paying to each partner rateably what is due to him on account of capital; and
 - (iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

50. Personal profits earned after dissolution.-Subject to contract between the partners, the provisions of clause (a) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up:

Provided that where any partner or his representative has brought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

16. Personal profits earned by partners.- Subject to contract between the partners,-

- (a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;”

43. Section 88, Illustration (f) and Section 95 of the Trusts Act read thus,

“88. Advantage gained by fiduciary - Where a trustee, executor, partner, agent, director of a company, legal advisor,

or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations

(f) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profit arising from A's share of the capital.

95. Obligor's duties, liabilities and disabilities.—The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (b) where he holds the property by virtue of a contract with the person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof."

44. The Partnership Act treats the dissolution of the partnership firm on account of death of a partners on a totally distinct and different manner from the dissolution due to the causes other than death of a partner. The conjoint reading of Section 37, 50, 16(a) of the Partnership Act read with Section 88 of the Trusts Act and more particularly Illustration (f) thereof clearly stipulates a set of rights in favour of a legal heir or representatives of the deceased partners and sets up a fiduciary obligation or the obligation by which the trustee is bound to the surviving partners. The surviving partner after the death of the deceased partner holds the share of the deceased as his share in the partnership

business and the property in trust and for the benefit of legal heir and / or legal representatives of the deceased partner. In law, the surviving partner is bound to apply for the profits of the firm in payment of debts and liabilities, if any, and to distribute the surplus among the partner and the representative of the deceased partner. The winding up of the firm is complete only upon the dissolution of certain assets. When a surviving partner carries on the business of the partnership with the property of the firm without final settlement of accounts, the estate of the deceased partner is entitled to share of profits or to the interest @ 6% on the amount of the share. In the present case, the surviving partner did not wind up the firm or settle the accounts.

45. Section 88 of the Trusts Act gives the fiduciary charter to the surviving partner and mandates the surviving partner to protect the interest of the deceased partner. In the present case, neither the accounts were made up nor did the surviving partner pay to the heirs of the deceased partner his share. On dissolution, winding up is to take place only after the assets have been shared. Section 95 of the Trusts Act requires a surviving partner, who is holding the assets of the firm without winding up of the firm after the death of the other partner to perform same duties and subject to the surviving partners to the same liabilities and disabilities as if the surviving partner is a trustee of the property of the deceased partner for the benefit of legal representatives or the estate of the surviving partner. The Arbitral Tribunal found that as Mohamad Shafik retained the assets, he was holding the shares of Yakubali and the properties of the firm as a trustee or for the benefit of Zarina and Fatima. After the death of Mohamad Shafik, Laljees are holding the shares as a trustee.

46. Section 10 of the Limitation Act reads thus,

“10. Suits against trustees and their representatives.-

Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

Explanation.—For the purposes of this section any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of the property shall be deemed to be the trustee thereof.”

47. A perusal of Section 10, extracted hereinabove, shows that notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. The Arbitral Tribunal thereafter proceeded to consider whether Fatima has satisfied the ingredients of Section 37 and is therefore, entitled to share of the profits made since the death of Yakubali as may be attributable to the use of the share of the properties of the firm. The Arbitral Tribunal considered the following decision:

- a. ***Barkley's Bank Trust Co. Vs. Bluff*, (1981) 3 ALL ER 3232;**
- b. ***Prem Ballabh Khulbe Vs. Mathura Datta Bhatta*, AIR 1967 SC 1342, and in particular paragraphs 3 and 4;**
- c. ***Tilokram Ghosh Vs. Gita Rani Sadhukhan*, AIR 1989 Cal. 254;**
- d. ***P. S. Nagaranjan Vs. Robert Hotz*, AIR 1954 Punjab 278;**
- e. ***Nilmadhab Nandi Vs. Srimati Nirada Sundari Dasi*, 45 CWN 1065;**
- f. ***Babu @ Govindoss Krishnadoss Vs. Official Assignee of Madras*, Vol. LXI Indian Appeals 257;**
- g. ***Shreedhar Govind Kamerkar Vs. Yeshwant Govind Kamerkar*,**

- (2006) 13 SCC 481;
- h. **S. V. Chandra Pandian** (*supra*);
 - i. **Mohammad Laiquiddin Vs. Kamala Devi Misra**, (2010) 2 SCC 407;
 - j. **V. Subramaniam Vs. Rajesh Raghuvandra Rao**, (2009) 5 SCC 608;
 - k. **Ramnarayan Vs. Kashinath Jagnarain**, AIR 1954 Patna 53;
 - l. **Mansha Ram Vs. Tej Bham**, AIR 1958 Patna 845;
 - m. **Karbalai Begum Vs. Mohd. Sayyed**, (1980) 4 SCC 396;
 - n. **Ahmed Musaji Vs. Hashim Kabrahim**, AIR 1915 Privy Council 116;
 - o. **Gopala Chetty** (*supra*);
 - p. **M. M. Valliammai Achi Vs. KN. PL. V. Ramanathan Chettiar**, AIR 1969 Madras 257;
 - q. **Peeran Sahib** (*supra*); and
 - r. **Seemaben @ Shamuben Shankar Patel** (*supra*).

48. After considering these decisions, the Arbitral Tribunal held that the provisions of Sections 37, 50 read with Section 16(a) of the Partnership Act and Section 88, Illustration (f) and Section 95 of the Trusts Act are applicable in the facts and circumstances of the present case. Fatima has satisfied the ingredients of Section 37 and is therefore, entitled to share of the profits made since the death of Yakubali as may be attributable to the use of the share of the properties of the firm. The Arbitral Tribunal also held that in view of Section 10 of the Limitation Act, the claim of Fatima is not barred by the law of limitation. I do not find that the Arbitral Tribunal has committed any error in reaching to this conclusion. In view thereof, it cannot be said that the claim made by Fatima is either barred under Article 5 or 65 of the Limitation Act. In the light of the discussion, I do not find that the decisions relied upon by Mr.Modi advance his case.

49. In the case of **Associate Builders Vs. DDA**, (2015) 3 SCC 49, 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.

50. 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.

51. 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.

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

(R. G. KETKAR, J.)

Minal Parab