

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

**APPEAL NO. 28 OF 2020
IN
ARBITRATION PETITION NO. 792 OF 2018
WITH
INTERIM APPLICATION (L) NO. 9905 OF 2020
IN
APPEAL NO. 28 OF 2020**

1. Hasina Mohamed Shafik Laljee
2. Shabina Mohamed Shafik Laljee
3. Mohamed Mushtaq Ali Mohamed Shafik Laljee
All adult Indian Inhabitants, residing
at 1903-04, Sheffield Towers,
Lokhandwala Complex, 2nd Cross Lane,
Andheri (West), Mumbai – 400 063.

... Appellants/
Applicants

Versus

Fatima Correa Nee Fatima Yakubali,
Permanently residing at Lords, 1st Floor,
Almedia Park, Bandra (West),
Mumbai – 400 050.

... Respondent

Mr. Shiraz Rustomjee, Senior Advocate a/w Ms. Shreya Parikh,
Mr.Chirag Mody, Mr. Hridhay Khurana, Ms. Garishma Dalvi i/by
M/s.Link India Law Services for the Appellants/Applicants.
Mr. Akshay Patil a/w Mr. Suraj Iyer a/w Ms. Kavita Sharma and
Mr.Mani Thevar i/by M/s. Ganesh and Company for the Respondents.

**CORAM : R. D. DHANUKA &
V. G. BISHT, JJ.**

**RESERVED DATE : 4th MAY, 2021
PRONOUNCED DATE: 22nd JUNE 2021**

JUDGMENT (*Per R. D. Dhanuka, J.*) :-

. By this Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'Arbitration Act'), the appellants have impugned the order dated 11th July, 2019 passed by the learned Single Judge dismissing the Arbitration Petition filed by the appellants under Section 34 of the Arbitration Act. By consent of parties, appeal was heard finally.

Some of the relevant facts for the purpose of deciding this Appeal are as under :-

2. The appellants were the original petitioners in the Arbitration Petition filed under Section 34 of the Arbitration Act and the respondent was the original respondent in the Arbitral proceedings. Before October 1960, Mr. Mahomedali Esmail, the grand father-in-law of the respondent no.1 and great grand father of the appellant nos. 2 to 4 were carrying on the business of tanners, export and import and were dealers in hides and skin, shares and other allied lines under the name and style of M/s. Mohamedali Esmail, a sole proprietary concern. Vide a Deed of Partnership dated 9th November, 1960, Mr. Mohamedali Esmail constituted a partnership firm with Mr. Yakubali Mohamedali Sewjee (hereinafter referred to as 'Yakubali') w.e.f. 21st October, 1960 for carrying out the same business in the same name.

3. On 17th January, 1961, M/s. Mahomedali Esmail entered into an agreement and acquired all the assets and liabilities of the said sole

proprietary concern. After the death of Mr. Mahomedali Esmail on 26th April, 1965, Yakubali invited his nephew, one Mr. Mohamed Shafik Habib Hajibhoy Laljee to join him as a partner to carry out similar business. Vide a Deed of Partnership dated 1st June, 1965, Yakubali and Mohamed Shafik constituted a registered partnership firm in the name and style of M/s.Mohamedali Esmail. The said firm carried out the business of import and exports of hides & skin and various other items.

4. It is the case of the respondent that the Yakubali solely contributed to the capital of the said firm including money, name, client base, goodwill of the previous firm etc. Yakubali and Mohamed Shafik shared the profits and losses in ratio of 51% - 49% respectively. The said partnership was a partnership at will. It is the case of the respondent that the business of the said firm was carried out from 703, Stock Exchange Tower, Dalal Street, Mumbai – 400 001. The said premises were owned by the Yakubali and he allowed the said partnership firm to use the same for carrying out its business.

5. The respondent (original claimant) is the grand daughter and the appellant nos.2 and 3 are great grand children of one late Mr. Mohamedali Esmail. The appellant no.1 is the respondent's deceased cousin's wife. The appellant nos. 2 and 3 are the daughters of the appellant no.1. It is the case of the respondent that after her marriage on 16th January, 1974, she shifted permanently to Kuwait with her husband. The respondent lived in Kuwait for almost four decades and occasionally visited her parents in Mumbai.

6. It is the case of the respondent that vide Indenture dated 28th February, 1978, (i) Salmabai Abdullamia, (ii) Amin Bibi Shaik Ahmed, (iii) Hafsabibi Abdul Hafiz, (iv) Fatmabibi Shaik Mahmud, (v) Rukiya Bibi Shaik Mohamed and (vi) Rashidabibi Abubakar styled as 'the Vendors' granted, sold, assigned, released and conveyed into the said partnership firm styled as 'the Purchaser' (i) Government land situate in the Registration District of Sub-Registrar of Bombay City and Bombay Suburban at Dharavi, Mahim bearing Collector's Old Nos. 4, 16 and 27 New Nos. 16493, A/16493, 1505, B/16505 and 16517, New Survey Nos. 1-A/3743, 1-2/3743, 1/3742, 4/3741, 2-3/3741 and 1/3742 and bearing C.S. No. 342 (part) admeasuring approximately 3329 sq. yards equivalent to 3042.7 sq. mtrs. or thereabouts together with tenements and dwelling houses standing thereon; and (ii) Leasehold land situate in the Registration District of Sub-Registrar of Bombay City and Bombay Suburban at Dharavi, Mahim bearing Collector's Old Nos. 1856 (part), New Survey No. 1/3743 (part) and bearing C.S. No. 1/342 admeasuring approximately 4369 sq. yards equivalent to 3993.26 sq. mtrs. or thereabouts together with hereditaments and premises standing thereon, more particularly described in the said Indenture for a consideration of Rs.1,25,000/-. It is the case of the respondent that pursuant to the said Deed of Indenture, all the revenue records, assessment bills and all other such documents relating to the said lands were transferred in the name of the suit firm.

7. On 27th June, 1982, Yakubali expired leaving behind his wife Mrs. Zarina Yakubali and the respondent herein who was the daughter of Yakubali as the only legal heirs. It is the case of the respondent that

around 1982 prior to the death of Yakubali, the firm had stopped its business of tanners etc. The firm however had given the various properties on rent to various tenants. After the death of Yakubali, the said partnership firm was not reconstituted and stood dissolved. It is the case of the respondent that to best of knowledge and belief of the respondent, the said partnership firm did not have any liability. The legal heirs of Yakubali and Mohamed Shafik became entitled to the assets of the firm as the co-owners.

8. It is the case of the respondent that the said Mohamed Shafik however continued to collect rent and in the name of the said firm from the tenants and utilized the said properties and said premises etc. He neither disclosed the accounts nor shared the profits derived from the assets of the firm with the respondent or her late mother in her life time. It was the case of the respondent that the said Mohamed Shafik held the profit derived 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 the respondent was residing abroad and her mother was old and unable to look into the matter, neither the respondent nor her mother insisted for their share from Mohamed Shafik. The respondent and the Mohamed Shafik had formal relations and therefore the respondent had full faith that Mohamed Shafik would manage the assets of the dissolved firm honestly.

9. On 26th July, 2004, Mrs. Zarina Yakubali expired leaving behind the respondent as the only legal heir. It is the case of the respondent that vide her last Will and Testament dated 7th February, 20020 Mrs.

Zarina Yakubali bequeathed her entire estate including the said property in favour of the respondent and accordingly the respondent being the only legal heir of Yakubali and Mrs.Zarina Yakubali becomes entitled to the said share of Yakubali in the suit property. On 22nd August, 2004, Mohamed Shafik expired leaving behind the appellants and Ms. Heena Mohamed Shafik Laljee as his only legal heirs. It is the case of the respondent that after the death of Mr. Mohamed Shafik, the appellants and the said Heena Mohamed Shafik Laljee continued to collect the rents from the properties/lands in the name of the said firm.

10. It is the case of the respondent that it appears that the appellants especially appellant no.3 continued representing themselves as the partners of the firm before various statutory authorities and the public at large, until 2012. The appellants however neither furnished any accounts nor shared the profits earned out of the firm business or the said property with the respondent. According to the respondent, the appellant no.3 vide his letter dated 29th December, 2005 falsely represented to the Additional Collector and C.A., Mumbai that he was a partner of the said partnership firm and issued the said letter in the capacity as a partner.

11. It is the case of the respondent that when the respondent visited India in the month of September/October 2012 through tenants i.e. Mr. Vijay Dharma Pol, Mr. Aspi Darab Pader and Mr. Kanayalal Maurya came to know that the appellants were making misrepresentations to the world at large in relation to the said property with malafide intentions to defeat the vested right, title and interest in the said

property of the respondent. The respondent returned to India on 19th December, 2012 and decided to stay in Mumbai and made various efforts to find out the status of the properties of the said firm.

12. It is the case of the respondent that the enquiries under RTI Act revealed that the appellants had made a purported Declaration-Cum-Indemnity and an affidavit both dated 13th October, 2010 and various other documents with a view to defeat the right, title and interest of the properties of the said firm. The appellants alleged in those documents that after the death of Yakubali, the said firm was converted into a sole proprietorship of Mohamed Shafik and after the death of Mohamed Shafik the said property devolved upon the appellants as they were the only legal heirs of Yakubali and Mohamed Shafik. Yakubali after his death had left behind Mrs. Zarina Yakubali. The appellants were entitled to the said property. It is also the case of the respondent that the appellants made various attempts to transfer the said property in their name and made various applications to various authorities in that regard. On 15th February, 2012, the respondent through her advocate addressed a notice to the appellant and called upon them to desist from making any illegal claims regarding the ownership of the property and also invoked the arbitration clause comprised in the said Partnership Deed. It is the case of the respondent that the appellants were negotiating with few tenants for transfer fees for consenting to transfer the respective tenanted premises and may receive transfer fees upto Rs.5 crores for the transfer of the tenanted premises.

13. Sometime in the year 2013, the respondent filed Arbitration

Petition bearing No. 503 of 2013 in this Court under Section 9 of the Arbitration Act for certain interim measures. By an order dated 19th September, 2013, a learned Single Judge of this Court dismissed the said Arbitration Petition. The respondent filed an Appeal bearing Lodging No. 444 of 2013 before a Division Bench of this Court. By an order dated 4th December, 2013, a Division Bench of this Court disposed of the said Appeal. The Division Bench recorded that the parties had decided to refer all their disputes and differences to the Arbitral Tribunal. The respondent agreed that the appellants may continue the firm business. The appellants were also entitled to prosecute the suits filed against the tenants. The Division Bench passed an order of injunction restraining the appellants from selling, disposing of, encumbering, parting with possession, or creating any third party rights in respect of the said property without giving two weeks notice to the respondent. This Court granted liberty to the respondent to make an application for interim reliefs in respect thereof under Section 9 or 17 of the Arbitration Act. On 28th February, 2014, the respondent filed statement of claim before the Arbitral Tribunal for various reliefs. The said statement of claim was resisted by the appellants by filing written statement on 7th July, 2014.

14. The respondent filed her affidavit in lieu of examination in chief before the Arbitral Tribunal affirmed on 26th May, 2015. She was cross examined by the learned counsel for the appellants. The appellant no.3 filed affidavit in lieu of examination in chief affirmed on 9th July, 2015. He was cross examined by the learned counsel for the respondent. Both the parties also filed written submissions before the Arbitral Tribunal

and also the notes distinguishing the judgments cited by each other. The Arbitral Tribunal made an award declaring that the respondent (original claimant) 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 in the Deed of Partnership.

15. The Arbitral Tribunal also directed the appellants to pay to the respondent 51% of the profits from the Dharavi property from 1982 till the date of the award and thereafter till the winding up. The Arbitral Tribunal did not grant any interest in favour of the respondent till the date of the award. The Arbitral Tribunal however granted interest at the rate of 9% per annum in favour of the respondent on the share of the profits till final payment and also awarded the cost quantified at Rs.20 lacs in favour of the respondent. Being aggrieved by the said Arbitral award dated 23rd March, 2018, the appellants filed arbitration petition bearing no. 792 of 2018 before this Court. On 11th July, 2019, the learned Single Judge dismissed the said arbitration petition filed by the appellants. Being aggrieved by the said judgment dated 11th July, 2019, the appellants preferred this appeal under section 37 of the Arbitration Act.

16. Mr. Shiraz Rustomjee, learned senior counsel for the appellants, invited our attention to various paragraphs from the pleadings filed by the parties, various documents forming part of the record before the Arbitral Tribunal, the issues framed by the Arbitral Tribunal and various findings of the Arbitral Tribunal in the impugned award. He

also invited our attention to various judgments in support of his submissions and also made an attempt to distinguish the judgments relied upon by the respondent.

17. Learned senior counsel invited our attention to prayer clause (a) to the statement of claim and would submit that the respondent had prayed for winding up of the partnership firm and for an order and direction against the appellants to furnish true and correct accounts of the total income derived, expenses incurred and the profit earned out of the partnership firm and the said property from 1982 till the accounts of the partnership firm were settled. He invited our attention to the findings recorded by the Arbitral Tribunal in paragraph (7)(ah)(xxv) of the impugned award and would submit that the Arbitral Tribunal has clearly rejected the reliefs prayed by the respondent in the prayer clause (a) of the statement of claim. He submits that the Arbitral Tribunal though had held that the prayer for accounts cannot be granted on the ground that the same was not maintainable in view of the provisions to section 48 of the Partnership Act, the Arbitral Tribunal has declared that the respondent was entitled to 51% share in the profits in the Dharavi property from 1982 till the date of the award and thereafter till the winding up of the partnership firm. He submits that this part of the award discloses the patent illegality and contradictions in terms of the reliefs that are rejected and in terms of the reliefs that are granted.

18. It is submitted by the learned senior counsel that under section 37 of the Partnership Act, only a right to a outgoing partner or the

representative of the deceased partner is to make a claim for the subsequent profit earned on carrying on the business of the partnership firm by the other partners is provided. The case of the respondent would not fall under section 37 of the Partnership Act since neither the business of the partnership firm was carried on by Mohamed Shafik nor section 37 of the Partnership Act gives right to the respondent to make a claim in respect of the assets of the partnership firm. At the most, the respondent could only make a claim for the share in the subsequent profit which according to the respondent had not been paid by the predecessor of the appellants. The respondent had failed to prove her case before the Arbitral Tribunal.

19. It is submitted by the learned senior counsel that under section 37 of the Partnership Act, the respondent who claimed to be a representative of the deceased partner Yakubali could not make any claim in respect of the property of the partnership firm. The respondent could claim only the shares in the profit of the partnership firm or an interest at the rate of 6% per annum on the amount of its share of the property of the partnership firm. The claim in respect of the assets of the dissolved firm was *ex-facie* barred by law of limitation under Article 5 of the Limitation Act. He submits that in any event no such claim could be maintained under section 37 of the Partnership Act.

20. It is submitted by the learned senior counsel that the Arbitral Tribunal had committed patent illegality in holding that Mohamed Shafik had continued the business of the partnership firm. The partnership firm had already stood dissolved upon the death of

Yakubali. The name of Yakubali had been deleted from the Registrar of Firms. The appellants had denied the claim of the respondent in the assets of the partnership firm specifically in the statement of defence. Learned senior counsel placed reliance on clause 14 of the Partnership Deed and would submit that the said clause clearly provided that any legal heir of the deceased partner cannot as a matter of right claim to be a partner and it is depending upon the surviving partners if he/she desires such legal heir to be made a partner.

21. It is submitted that neither the respondent nor her mother could as a matter of right claim to be a partner of the partnership firm. The respondent or her mother had never claimed or had applied to become the partners of the partnership firm upon the death of Yakubali. Under clause 14 of the Partnership Deed, the respondent could not claim any right to receive any share in the profits of the Dharavi property. Various findings rendered by the Arbitral Tribunal suffers from non-application of mind and are perverse.

22. It is submitted by the learned senior counsel that there was no final settlement of the accounts between Mohamed Shafik and the legal representative of the Yakubali. Section 48 of the Indian Partnership Act was thus applicable which provides for modes of settlement of the account of the partners upon dissolution of the partnership firm. The claim made by the respondent was *ex-facie* barred by law of limitation. No evidence was produced by the respondent to prove that Mohamed Shafik was carrying on any business by using the alleged partnership assets upon dissolution of the partnership firm. The finding rendered

by the Arbitral Tribunal on this issue is contrary to the documents and evidence on record and shows perversity.

23. It is submitted by the learned senior counsel that section 37 of the Partnership Act was not at all applicable in view of contract to the contrary found in clause 14 of the Partnership Deed which provided for the consequence that follows the death of the partner and failure of the deceased partner's heirs to be inducted as a partner. The Arbitral Tribunal had committed jurisdictional error. The impugned award is in conflict with the public policy. It is submitted that section 10 of the Limitation Act strongly relied upon by the respondent and applied by the Arbitral Tribunal was not at all applicable to the claims made by the respondent. He also invited our attention to sections 37, 46, 48 and 50 of the Partnership Act. He submits that section 88 of the Indian Trusts Act relied upon by the respondent and the Arbitral Tribunal in the impugned award was also not at all attracted to the facts of this case. The appellants were not acting as trustees on behalf of the respondent or her mother as sought to be canvassed by the respondent before the Arbitral Tribunal.

24. Learned senior counsel invited our attention to the averments made by the appellants in paragraph (13) of the statement of defence filed by the appellants and would submit that it was a specific case of the appellants before the Arbitral Tribunal that there was an oral understanding between the mother of the respondent and Mohamed Shafik that she or any one from the family of the Yakubali would not have any right or interest in the partnership business and assets and it

was for that reason that neither the mother of the respondent nor the respondent or any person from the family of the Yakubali made claim over the partnership business and the assets. Consequently Mohamed Shafik continued to carry out the partnership firm and assets and asserted rights over the partnership assets as the sole owner thereof in his capacity as a sole proprietor of 'Mahomedali Esmail'.

25. Learned senior counsel invited our attention to various paragraphs from the impugned award recording the submissions made by both the parties and the findings rendered on the issue of limitation. He strongly placed reliance on the observations made by the Arbitral Tribunal in paragraph (y) on page 76 of the appeal paper book and would submit that the Arbitral Tribunal has clearly recorded that the present claim made by the respondent was not one for share of the properties of the dissolved partnership firm. The respondent herein does not claim any share in the profits of the suit firm that arose prior to the dissolution. The main relief claimed in the present proceedings pertains to the period after the dissolution of the partnership firm. The only asset of the partnership at the time of the dissolution was Dharavi property which was tenanted and the rent was received therefrom.

26. It is submitted that there was no reference in the alleged Will executed by the mother of the respondent to any of the assets of the partnership firm as her own asset or did not even reflect any such claim in any of the assets of the said partnership firm. The respondent had not explained the delay of 30 years in making the claim against the appellants. He submits that no partners of the partnership firm has

share in specie. The partner has only right to the residuary property left, if any, after determination of accounts under section 48 of the Partnership Act. Under Article 5 of the Limitation Act, the claim ought to have been made within three years from the date of dissolution of the partnership firm. The claim made by the respondent was much beyond the period of three years and was *ex-facie* barred by law of limitation.

27. It is submitted by the learned senior counsel that the Arbitral Tribunal led emphasis on the letter dated 29th December, 2015 addressed by one of the appellants to the Collector and some of the averments made in the suit filed by the appellants in the Small Causes Court, Mumbai to hold that the appellants had admitted the continuation of the partnership firm even beyond the date of death of Yakubali. He submits that merely on the basis of such averments in the plaint filed in the Small Causes Court after demise of Yakubali against some of the tenants or in such letter dated 29th December, 2015 to the Collector would not conclusively prove that the partnership firm had continued. He submits that Article 5 of the Schedule to the Limitation Act would apply to the claim for accounts under section 48 of the Partnership Act. Section 37 of the Partnership Act cannot supplement section 48 of the Partnership Act.

28. Learned senior counsel invited our attention to clause 14 of the Partnership Deed referred by the Arbitral Tribunal at page 66 of the paper-book and would submit that the then partners had mutually agreed that the value of goodwill quota right, tenancy rights and other

rights was fixed at Rs.2,501/-. No claim was made by the respondent for any share in the assets of the partnership firm. The entire case was under section 37 of the Partnership Act for share in the profits. Section 37 of the Partnership Act cannot take place of section 48 even if a partner dies. The findings in paragraph (xxv) are inconsistent with paragraph (E) i.e. the findings rendered in respect of the issue no.5 at page 105 of the paper-book.

29. Learned senior counsel for the appellants tendered a joint compilation of the judgments which are sought to be relied upon by both the parties before this Court. He submits that out of 27 judgments in the joint compilation, the judgments at serial nos. 1 to 10 are relied upon by the appellants. He relied upon following judgments :-

- i. ***Hajee Siddeek Summar Sait vs. Mohamed Husshum Sait, IV 1916 LW 521*** and in particular paragraph 9.
- ii. ***K Gopala Chetty vs. T.G.Vijayurughavachariar, XXVI 1922 Calcutta Weekly Notes 977*** and in particular Pages 16 to 18.
- iii. ***Kashi Ram vs. Kundan Lal & Ors., AIR 1956 ALL 660*** and in particular paragraphs 23 and 24.
- iv. ***M.M.Valliammai Achi vs. KNPL V Ramanath Chettiar, AIR 1969 MAD 257*** and in particular paragraphs 19 to 24.
- v. ***N.Rajan Nair vs. M.T.Balakrishnan, (2003) 1 KLJ 485***, and in particular paragraphs 5 to 7.
- vi. ***Peeran Sahib vs. Pedda Jamaluddin Sahib, AIR 1958 AP 48*** and in particular paragraphs 27 to 39.
- vii. ***Pradeep Arora vs. Samatha Kochar, 2016 SCC OnLine Del 6268*** and in particular paragraphs 11 to 26.

- viii. ***Shanti Bai Agarwal vs. Uma Bai Agarwal, 2015 SCC OnLine Chh 29*** and in particular paragraphs 12 to 21.
- ix. ***Yashvant Chunilal Mody vs. Yusuf Karmali Kerwala, 2014(3) MhLJ.111*** and in particular paragraphs 40 to 49.
- x. ***Seemaben Shankar Patel vs. Motibhai K. Patel, 2015 SCC OnLine Bom 337*** and in particular paragraphs 29, 31, 32 and 73.

30. It is submitted by the learned senior counsel that even otherwise there was gross delay in claiming share in profit in the partnership firm. The respondent could not have been awarded any share in the assets of the partnership firm. He submits that period of limitation applies for making claim for winding up and also claim share in the assets. The claim was made for the first time in the year 2013 though the firm stood dissolved in the year 1982 upon demise of Yakubali. Even if the case of the oral understanding as pleaded by the appellants was accepted, the respondent could not have made claim beyond the period of three years from the date of dissolution. The Arbitral Tribunal had already rejected the prayer clause (a) on the ground of limitation and thus could not grant any relief of 51% share in the partnership assets which claims were also *ex-facie* barred by law of limitation.

31. Learned senior counsel invited our attention to the chart submitted by the learned senior counsel showing the issues framed by the Arbitral Tribunal, the conclusion drawn by the Arbitral Tribunal, the corresponding paragraph numbers and the relevant pages and the prayers sought in the statement of claim. He submits that though the

Arbitral Tribunal has rendered the findings that the claim for winding up made by the respondent was barred, at the same time has held that the respondent could call for winding up. The award shows patent illegality and contradiction which goes to the root of the matter.

32. Mr.Akshay Patil, learned counsel for the respondent, on the other hand, invited our attention to various averments from the pleadings filed by the parties, various documents, findings recorded by the Arbitral Tribunal and by the learned Single Judge, grounds raised in the appeal memo filed by the appellants and various judgments. He also distinguished the judgments relied upon by the appellant.

33. At the outset, it is submitted by the learned counsel that scope of Section 37 of the Arbitration Act to interfere with the order passed by the learned Single Judge under Section 34 of the Arbitration Act upholding the award is very narrow. No review on merit is contemplated under Section 37 of the Arbitration Act. He submits that even otherwise on merits, no case is made out by the appellants for interfering with the Arbitral award or the judgment rendered by the learned Single Judge. He tendered additional compilation of the judgments and relied upon those judgments.

34. Learned counsel placed reliance on the judgment of **MMTC Limited Vs. Vendanta Limited, (2019) 4 SCC 163** and in particular paragraphs 10, 11 and 14 on the scope of Section 37 of the Arbitration Act. He also relied upon the judgment of the Supreme Court in the

case of ***Dyna Technologies Private Limited Vs. Crompton Greaves Limited, (2019) 20 SCC 1*** and in particular paragraphs 24 and 25 in support of the submission that even under Section 34 of the Arbitration Act, scope to interfere with the Arbitral award on factual aspects is very limited. The scope of Section 37 is more limited than the scope of Section 34 of the Arbitration Act. On the factual aspects, the findings rendered by the Arbitral Tribunal cannot be interfered with by the Court either under Section 34 or under Section 37 of the Arbitration Act.

35. It is submitted by the learned counsel that it is an admitted position that there were two partners in the said partnership firm including Yakubali. There was no capital contribution made by Mohamed Shafik. In the year 1978, the said Dharavi property was acquired by the said partnership firm. Upon demise of one of the partners out of two, i.e. Yakubali in the year 1982, the said partnership was dissolved by operation of law. The said Dharavi property was jointly held by the partners of the said firm and thereafter upon dissolution of the partnership firm by operation of law, by legal heirs of two partners i.e. the appellants and the respondent. Mother of the respondent expired.

36. It is submitted that during the period of 1982 to 2004, Mohamed Shafik continued to manage the said Dharavi property. Ms. Zarina and her daughter did not pay any attention. They had trust and full faith on Mohamed Shafik. After demise of Mohamed Shafik in the year 2004, the said Dharavi property continued to be in the

name of the firm. Some of the tenants approached the respondent in the year 2012 and informed that the said Mohamed Shafik was claiming an exclusive rights in the said property and after his demise, the appellants started claiming exclusive right in the property. The appellants have failed to produce any document showing that the respondent would not claim any rights in the partnership property. The respondent thus invoked the arbitration agreement recorded in the said partnership deed and also led evidence before the Arbitral Tribunal. The Arbitral Tribunal has rendered a finding that the respondent and Ms.Zarina had become co-owners of the said Dharavi property after the death of Yakubali and Mohamed Shafik who were the partners of the said partnership firm. The respondent had thus 51% share in the said Dharavi property.

37. Learned counsel for the respondent invited our attention to some of the grounds impugning the Arbitral award by the appellants in the petition under Section 34 of the Arbitration Act before the learned Single Judge. He submits that learned Single Judge considered all the arguments advanced by the parties and rightly dismissed the arbitration petition filed by the appellant. The Arbitral Tribunal has rightly declared the respondent no.1 as co-owner to the extent of 51% of the said Dharavi property.

38. Learned counsel placed reliance on Section 2(b) of Indian Partnership Act, 1932 i.e. definition of "business" which includes every trade, occupation and profession. He relied upon the definition of "Partnership", "Partner", "Firm" and "firm name" under Section 4 of

the Partnership Act and would submit that “firm” is merely a compendious of the partners. He relied upon Section 9 of the Partnership Act and would submit that the partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

39. Learned counsel relied upon Section 14 of the said Partnership Act and would submit that the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of business of the firm, and includes also the goodwill of the business subject to contract between the partners. He submits that admittedly the said Dharavi property was purchased by the suit firm. The Partnership Act distinguishes the business of the firm and property of the firm of all the partners. The partnership deed nowhere provides that after demise of one of the partners, other partner would become entitle to the property of the partnership firm exclusively.

40. Learned counsel for the respondent placed reliance on Section 15, 16(a) and 16(b) of the Partnership Act and would submit that it is clear that the property of the firm has to be held and used by the partners exclusively for the purposes of the business of the firm subject to the contract between the partners. There is no contract to the contrary what is provided in Section 15. He submits that under

Section 16(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. Under Section 16(b) if a partner carries on any business of the same nature as such and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business. Both these provisions were applicable to the facts of this case and were invoked by the respondent in the Arbitral proceedings.

41. Learned counsel for the respondent placed reliance on Section 37 of the Partnership Act and would submit that the claims made by the respondent also fall under Section 37 of the Partnership Act as one of the legal heirs of the partners who died and in view of surviving partner, during his lifetime and thereafter upon his demise, his family members, continued to 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 of his estate. He relied upon Section 50 of the Partnership Act and would submit that since the said Mohamed Shafik during his lifetime and the appellants after his demise continued the business of the firm by use of the property of the suit firm and have not completely wound up the affairs of the said firm, the said Mohamed Shafik during his lifetime and upon his demise, the appellants became liable to give account of the profit derived from any transaction from the firm or from use of the property or business connection in accordance with Section 16(a) of the Partnership Act.

42. Learned counsel submits that dissolution of the partnership firm and an exit of the partner are two different factors and cannot be mixed up. He placed reliance on Section 53 of the Partnership Act and would submit that under the said provision, the respondent being a legal representative of the erstwhile partner, is entitled to restrain the surviving partner from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up. No provision in the partnership deed permitted the said Mohamed Shafik during his life time and to the appellants after demise of the said Mohamed Shafik to carry on a similar business by using the property of the partnership firm for their own benefits. Each and every partners are the co-owners of the property of the firm during his life time and upon his demise, his share in such property would devolve upon the legal heirs of the said deceased partner. Legal heirs of the two partners continued to enjoy the said Dharavi property as the co-owners.

43. Learned counsel for the respondent invited our attention to paragraphs (h), (o) and (p) of the impugned award and would submit that it was a specific case of the respondent in the statement of claim that after death of Yakubali, the suit firm stood dissolved. The suit firm to the best of knowledge and belief of the respondent herein did not have any liability. Legal heirs of Yakubali and Mohamed Shafik became entitle to the assets of the firm as co-owners. The respondent had claimed 51% right, title and interest in the land and 100% right, title and interest in the premises. The appellants for the first time purported to deny the right, title and interest of the

respondent in the property vide a Declaration-Cum-Indemnity and affidavit both dated 13th October 2010. The respondent came to know of malafide and illegal acts of the appellants through some tenants of the suit firm relying on the Declaration-Cum-Indemnity and affidavit to suggest that they were exclusive owners of the property.

44. Learned counsel for the respondent invited our attention to the Declaration-Cum-Indemnity dated 12th October 2010 signed by the appellants and Ms.Shabina Mohamed Shafik Laljee who was also one of the party to the Arbitral proceedings and in particular clauses 2 to 5 of the said document and would submit that the appellants have admitted that the suit firm was consisting of Mohamed Shafik and Yakub Ali and on 27th June 1982 upon death of Yakubali, suit firm was automatically dissolved. In clause 3 of the said document, it was alleged that upon demise of Yakubali, Mohamed Shafik became the sole proprietor of the suit firm. Name of the Yakubali had been deleted from the said partnership firm. The effect thereof was given on the Record of Registration of Firms. In paragraph 4 of the said document, the appellants declared that Mohamed Shafik Habib Laljee died intestate on 22nd August 2004 leaving behind the appellants and Ms.Shabina Mohamed Shafik Laljee as the only legal heirs and representatives.

45. In paragraph 5 of the said document, the appellants declared that since 2004, they were managing the said properties and paying all the taxes as required by law to the Government Municipal Corporation and all other concerned authorities. In the schedule to

the said document, there was reference to the said Dharavi property. The respondent was neither consulted nor her consent was obtained by the appellants before executing such Declaration-Cum-Indemnity.

46. Learned counsel for the respondent invited our attention to the affidavit affirmed on 12th October 2010 filed by the appellants and Ms.Shabina Mohamed Shafik Laljee admitting that the said Dharavi property was purchased by the suit firm consisting of two partners i.e. Mohamed Shafik and Yakubali. In paragraph 4 of the said affidavit, the appellants declared that to the best of their knowledge, Yakubali and Mohamed Shafik had not published any Will prior to their death and besides the appellants and the said Ms.Shabina Mohamed Shafik Laljee, they left no other heirs in respect of their estate effects, properties and credits thereof. He submits that the said affidavit was filed for the purposes of recording the names of the appellants and the said Ms.Shabina Mohamed Shafik Laljee in the revenue records in respect of the said Dharavi property.

47. Learned counsel for the respondent invited our attention to the averments made by the appellants and the said Ms.Shabina Mohamed Shafik Laljee in RAE suit filed by the appellants and the said Ms.Shabina Mohamed Shafik Laljee and in particular paragraphs 2 and 3 and would submit that in the said paragraphs, the appellants admitted that the said Mohamed Shafik and Yakubali were partners in the suit firm who were the original owners and the landlords in respect of the suit premises. Mohamed Shafik was the father of Mohamed Mushtaq Ali Laljee, Ms. Hasina Mohamed Shafik Laljee

and Ms. Shabina Mohamed Shafik Laljee (plaintiff nos.2 and 3), husband of the plaintiff no.2 i.e. Ms.Hasina Mohamed Shafik Laljee. Yakubali died on 27th June 1982 leaving behind his wife as the only heir. Wife of Yakubali also expired on 26th July 2004. The said Yakubali was the uncle of Mohamed Mushtaq Ali Lalji, Ms.Heena Mohamed Shafik Laljee and Ms.Shabina Mohamed Shafik Laljee.

48. In paragraph 3 of the plaint, the appellants alleged that after death of both the partners, the appellants and the said Ms.Shabina Mohamed Shafik Laljee became the owners and landlords in respect of the entire Dharavi property and started recovery rent from the tenants occupying various tenements including the defendant therein. The respondent was not impleaded as party-respondent in the said suit. It is submitted that the appellants fraudulently claimed to be the exclusive owners of the said Dharavi property in the said suit.

49. Learned counsel for the respondent invited our attention to paragraphs (d) and (e) of the impugned award and would submit that the Arbitral Tribunal has summarised the case of the appellants in the said paragraph 4. He submits that the appellants had falsely alleged that upon demise of Yakubali and Mohamed Shafik, the appellants had been openly and continuously enjoying the possession of the Dharavi property and exercising rights as owners of the Dharavi property to the exclusion of the said Zarina Yakubali and the respondent herein. There was a complete ouster of Zarina Yakubali and the respondent from the Dharavi property and other properties of the firm.

50. The appellants alleged oral understanding between the parties by which according to the appellants, the said Zarina Yakubali had not claimed any right, title and interest in the suit property or any share in the account of the property of the firm. It is submitted that the Arbitral Tribunal had rejected this plea of alleged oral understanding between the parties and recorded a finding of fact. Learned Single Judge rightly did not interfere with the facts rendered by the Arbitral Tribunal.

51. Learned counsel for the respondent invited our attention to the issues framed by the Arbitral Tribunal in paragraph 6 of the impugned award and would submit that all the findings rendered by the Arbitral Tribunal are based on the evidence led by the parties and also after considering the pleadings. The finding on issue no.2 i.e. “whether the claimant proves that the legal heirs of Yakubali and Mohamed Shafik became co-owner of the Assets of the Partnership Firm after the death of Yakubali and consequent to dissolution of the Partnership Firm?” was not even challenged by the appellants in the arbitration petition filed under Section 34. Such findings of facts rendered by the Arbitral Tribunal in the impugned award has attained finality. He also invited our attention to the findings rendered by the learned Single Judge in paragraph 25 on this issue.

52. Learned counsel for the respondent placed reliance on the judgment of the Supreme Court in the case of ***Malabar Fisheries Co. Vs. Commissioner of Income Tax, (1979) 4 SCC 766*** and in particular paragraphs 14 to 18 in support of the submission that the rights of the partnership firm and its partners in the property of the

firm are not extinguished after dissolution of the firm. He submits that the suit firm did not have any liability. The suit property thus would devolve in the partners or their estate in their profit sharing ratio in the suit firm as partners. Learned counsel for the respondent placed reliance on the judgment of the Supreme Court in the case of **V.Subramaniam Vs. R.R. Rao, (2009) 5 SCC 608** and in particular paragraph 11. He also relied upon the judgment of the Supreme Court in the case of **N. Kaderavalli Saheb Vs. N. Gundu Sahib, (2003) 3 SCC 229** and in particular paragraph 3 in support of the submission that the partners are the real co-owners of the property acquired by the partnership firm. Even if the partnership firm is dissolved, partners continued to be the co-owners of the property during the life time and after demise of the partners, legal heirs of such partners continued to be the owners of such property.

53. Learned counsel for the respondent placed reliance on the judgment of the Gujarat High Court in the case of **Parmanand Vasani Vs. State of Gujarat, AIR 1994 Guj 206** and in particular paragraph 3 in support of the submission that assets of the partnership firm after dissolution devolves in the partners or their representatives. He submits that the findings rendered by the Arbitral Tribunal that the respondent would be entitled to 51% share in the Dharavi property does not disclose any error warranting any interference under Section 34 or Section 37 of the Arbitration Act.

54. Learned counsel for the respondent submits that after demise of Yakubali, Mohamed Shafik had been holding suit property in trust.

After death of Yakubali, the said Mohamed Shafik continued to use the said property and had been recovering rent from the said property without any settlement of the account with the estate of the said Yakubali. He relied upon Sections 37 and 50 of the Partnership Act and would submit that all the ingredients of the said provision prescribing the rights of the estate of the said deceased to share the subsequent profits earned by the surviving partner by carrying on business of the firm without settlement of account between them are satisfied.

55. Learned counsel for the respondent placed reliance on the Partnership deed executed between the said Yakubali and Mohamed Shafik and would submit that admittedly the Yakubali was entitled to 51% share in the net profits of the suit firm or 6% interest. He submits that the said Yakub Ali was also entitled to 51% in the assets of the suit firm. He relied upon clause 6 of the Partnership Deed at page 137 of the appeal. The said Yakubali had chosen to 51% share in the suit firm and not 6% interest. The respondent claimed the share in the profit and the assets accordingly. It is submitted that the entitlement of the surviving partner or his estate in the share of the profit and assets of the partnership firm would continue till the affairs of the partnership firm are wound up.

56. Learned counsel for the respondent placed reliance on Section 88 of the Indian Trusts Act, 1882 and also illustration (f) thereto. He submits that the said Mohamed Shafik who was the sole surviving partner upon the death of Yakubali continued to use the name of the

suit firm and the assets, did not wind up the suit firm and continued to gain advantage. The said Mohamed Shafik was holding the suit property for the benefit of the estate of the said deceased Yakub Ali. Upon demise of the said Mohamed Shafik, the appellants and the said Ms.Shabina Mohamed Shafik Laljee continued the use of the name of the firm and the assets and derived the profit and out of such use and were holding the said property and the benefit as trustees for the estate of the said Yakubali.

57. It is submitted that the said Mohamed Shafik during his life time and the appellants and the said Ms.Shabina Mohamed Shafik Laljee retained all the assets of the suit firm in the business exclusively instead of winding-up the affairs of the partnership firm. The obligation of surviving partner or the appellants being his legal heirs to pay the share in profit and assets of the said Yakubali to his legal heirs or estate continued and would continue till the affairs of the suit firm are finally wound up. Such benefits are held by the said appellants and the said Ms.Shabina Mohamed Shafik Laljee after demise of Mohamed Shafik and during the life time of Mohamed Shafik by himself held in a fiduciary capacity. Fiduciary relationship between the parties thus continued. No period of limitation for recovery of the claim made by the respondent thus was applicable.

58. Learned counsel for the respondent placed reliance on Section 95 of the Indian Trusts Act, 1882 and would submit that the said Mohamed Shafik during his life time and the appellants and the said Ms.Shabina Mohamed Shafik Laljee upon demise of the said

Mohamed Shafik are subjected to the same liabilities and disabilities as if they were trustees of the property for the person for whose benefit they held it, i.e. estate of the said deceased person Yakubali. He also placed reliance on Section 88 read with Section 95 of the said Act. Obligation and the legal duties cast on trustees under Section 88 read with Section 95 of the said Indian Trusts Act are continued. Cause of action also thus continued till the use of name of the partnership firm and the assets continues by the surviving partner or his legal heirs till the affairs of the firm are finally wound up.

59. Learned counsel for the respondent invited our attention to section 10 of the Limitation Act and would submit that prior to 1932, Indian Contract Act was governing the provisions relating to partnership. In view of section 10 of the Limitation Act, 1963 read with other provisions, share in the profit of the partnership firm can be claimed irrespective of the period involved. He invited our attention to paragraph (XXVI) of the impugned award and would submit that after referring to various judgments relied upon by both the parties the Arbitral Tribunal has held that once a finding is recorded that the surviving partner carries on the business with the property of the firm without any final statement of account, the outgoing partner and/or his estate is entitled to such share of profits made since he ceased to be a partner as may be attributable to use of his share of assets or interest @ 6% p.a. The Arbitral Tribunal after considering clause 14 of the partnership deed was of the view that Mohamed Shafik was bound to act as trustee for the estate of the deceased partner.

60. The Arbitral Tribunal also placed reliance on section 88, illustration (f) of the Indian Trust Act and held that Mohamed Shafik during his life time and subsequent to his death, the appellants herein as his heirs were acting as the trustees for the legal representatives of Yakubali. In paragraph XXVII however, the Arbitral Tribunal held that the relief for share in the profits subsequent to the death of Yakubali is maintainable and is neither barred under Article 5 or 65 of the Limitation Act and accordingly answered the said issue no.2 against the appellants herein.

61. Insofar as clause 14 of the partnership deed providing for valuation of goodwill quota rights, tenancy rights and other rights fixed at Ra.2501/- is concerned, it is submitted by the learned counsel for the respondent that the rights in Dharavi property is not to be valued at Rs.2501/- since the said Dharavi property was intangible asset and was thus not covered under the said valuation of Rs.2501/-.

62. It is submitted by the learned counsel for the respondent that the findings in paragraph 7(y) of the impugned award strongly relied upon by the appellants that the person claimed is not one for share of the profits of the dissolved partnership firm is an obvious typing error. It was not the case of the appellants that the respondent did not claim any share of the respondent in the assets of the partnership firm. The submission of the appellants in respect of the share in the assets has been recorded by the Arbitral Tribunal in several paragraphs of the impugned award. The Arbitral Tribunal after considering the pleadings, documents and evidence has rightly held that the respondent herein

was entitled to 51% share in the Dharavi property. The entire award has to be read in toto and not few lines allegedly containing the typing mistake. The special circumstances existed on the date of death of Yakubali.

63. Learned counsel for the respondent placed reliance on the judgment of the Calcutta High Court in case of ***Tilokram Ghosh and Ors. v/s. Smt. Gita Rani Sadhukhan and Ors., AIR 1989 Calcutta 254***, the judgment of the Punjab High Court in ***P.S. Nagarunjan vs. Robert Hotz, AIR 1954, Punjab 278*** in support of the submission that the cause of action under section 37 of the Partnership Act arose after the death of Yakubali, who was one of the partner of the said firm but the cause of action continued till the business of the firm continued by the surviving partner during his life time and thereafter by the appellants and Ms. Shabina thereafter till the affairs of the suit firm are not wound up.

64. Learned counsel for the respondent placed reliance on various judgments which were referred to and relied upon by the respondent before the Arbitral Tribunal during the course of hearing which are referred to and relied upon by the Arbitral Tribunal in various paragraphs of the impugned award in support of his submissions. He submits that the appellants could not distinguish any of those judgments before the Arbitral Tribunal or before this Court.

65. Mr. Patil, learned counsel for the respondent placed reliance on the following judgments :-

- i. ***Mohamed Laiquiddin and Anr. vs. Kamala Devi Misra, (2010) 2 SCC 407*** and in particular paragraphs 23 to 25.
- ii. ***Commissioner of Income Tax M.P., Nagpur and Bhandara, Nagpur vs. Seth Govindram Sugar Mills, AIR 1966 SC 24*** and in particular paragraphs 7 and 8.
- iii. ***Y. Venkanna Chowdhary and Anr. vs. G. Lakshmiddevamma and Ors., AIR 1994 MAD 140*** and in particular paragraphs 40 to 42.
- iv. ***Prem Ballabh Khulbe vs. Mathura Datt Bhatt, (1967) 2 SCR 298*** and in particular pages 144 and 145.
- v. ***Mansha Ram vs. Tej Bhan, AIR 1958 P&H 5*** and in particular pages 157 and 158.
- vi. ***Barclays Bank Trust Co. Ltd. vs. Bluff, (1981) 3 ALL ER 232*** and in particular pages 181(F) to 182 (H).
- vii. ***Nilmadhab Nandi and Ors. vs. Srimati Nirada Sundabi Dadi, 1941 SCC OnLine Cal 119*** and in particular page 187.
- viii. ***Mr. P. S. Nagarunjan vs. Mr. Robert Hotz, AIR 1954 Punj 278*** and in particular page 197.
- ix. ***Shreedhar Govind Kamerkar vs. Yesahwant Govind Kamerkar and Anr., (2006) 13 SCC 481.***
- x. ***M/s. Malabar Fisheries Co., Calicut vs. Commissioner of Income Tax, Kerala, (1979) 4 SCC 766*** and in particular pages 228 and 229.
- xi. ***Addanki Narayanappa and Anr. vs. Bhaskara Krishtappa and Ors., (1966) 3 SCR 400.***
- xii. ***V. Subramaniam vs. Rajesh Raghuvandra Rao, (2009) 5 SCC 608*** and in particular paragraph 11.

- xiii. ***N. Khadervali Saheb and Anr. vs. N. Gudu Sahib and Ors., (2003) 3 SCC 229*** and in particular page 249.
- xiv. ***Parmanand Vadilal Vasant and Anr. vs. State of Gujarat and Anr., AIR 1994 Guj 206*** and in particular pages 252 and 253.
- xv. ***Md. Mohamed Ali vs. Jagadish Kalita and Ors., (2004) 1 SCC 271*** and in particular pages 261 and 262.
- xvi. ***Ramnarayan and Ors. vs. Kashinath Jagnarain and Anr., 1953 SCC OnLine Pat 154*** and in particular page 267.
- xvii. ***Babu alias Govindoss Krishnadoss vs. Official Assignee of Madras and Ors., 1934 SCC OnLine PC 22*** and in particular page 278.

66. Learned counsel for the respondent placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Shreedhar Govind Kamerkar*** (supra) and in particular paragraphs 9, 22, 36 to 38 and would submit that till the said firm is completely wound up, the rights of the legal heirs of a partner continues in the profits and assets of the said firm. He submits that since the appellants have not pressed the plea of adverse possession, the respondent is not required to deal with the said plea. The respondent also placed reliance on the judgment of the Patna High Court in case of ***Mansha Ram vs. Tej Bham AIR 1958 Patna 854*** in support the submission that the partners stand in fiduciary relation to one another and in such a case equity will never permit the surviving partner to trade, or to utilize the property of the other for his exclusive personal profit. If he makes a profit, it must be paid over to the owner of the property, the use of which produced the profit.

67. Learned counsel for the respondent placed reliance on the judgment of the Privy Council in case of **Ahmed Musaji Saleji & Ors. vs. Hashim Ebrahim Saleji & Ors., AIR 1915 P.C. 116 (D)** in support of the submission that since the appellants and the said Shabina had retained the assets of the suit firm without disclosing any statement of accounts and had been using the name of the suit firm and the assets for their personal benefit, the appellants were liable to be ordered to give the accounts for those assets with interest thereon to the respondent. He submits that all the judgments cited by the appellants have been rightly distinguished by the Arbitral Tribunal in the impugned award. No interference with the impugned award is thus warranted on the ground that none of the judgments cited by the appellants have not been dealt with properly by the Arbitral Tribunal.

68. Learned counsel for the respondent distinguished the judgment of the Privy Council in **K.Gopala Chetty** (supra) on the ground that the said judgment was admittedly delivered prior to enactment of the Partnership Act, 1932. Section 37 of the Partnership Act, thus was not considered in the said judgment and thus would not assist the case of the appellants. There was no immovable property involved in that case.

69. Learned counsel for the respondent distinguished the judgment of the Madras High Court in case of **M.M. Valliammai Achi** (supra) and would submit that the said judgment was also not dealing with the case under section 37 of the Partnership Act. There was no claim made by the plaintiff in the assets of the partnership firm in that case. Learned counsel for the respondent distinguished the judgment of the

Andhra Pradesh High Court in case of ***Peeran Sahib and others*** (supra) relied upon by the appellants on the ground that even the said judgment was not dealing with section 37 of the Partnership Act. He invited our attention to paragraph 29 of the said judgment. He distinguished the judgment of this Court in case of ***Seemaben Shankar Patel*** (supra) on the ground that in that matter the dissolution of the firm had already taken place. The assets of the partnership firm were already partitioned. No claim was made by the legal heirs of the deceased partner for dissolution of the assets of the firm. He submits that the appellants have not cited any judgment holding that the period of limitation under section 37 of the Partnership Act would be three years from the date of death of the deceased partner.

70. Learned counsel for the respondent distinguished the judgment of Chattishgarh High Court in case of ***Shanti Bai Agrawal & Ors.*** (supra) on the ground that even the said judgment had not considered section 37 of the Partnership Act. The suit property involved in that matter was only movable property for distribution amongst the partners. Learned counsel for the respondent invited our attention to paragraph 7 (xxv) of the impugned award and would submit that the Arbitral Tribunal has rejected the prayer for accounts considering section 48 of the Partnership Act from 1982 till the accounts are settled. He submits that the Arbitral Tribunal has not rejected the claim made by the respondent under section 37 of the Partnership Act on the ground of limitation. He submits that there is thus no inconsistency or contradiction in the impugned award as sought to be canvassed by the learned senior counsel for the appellants.

71. Insofar as prayer clause (b) of the statement of claim is concerned, learned counsel for the respondent invited our attention to the discussion on the said prayer in paragraph 7 (xxv) of the impugned award. He submits that the Arbitral Tribunal has rightly relied upon the letter addressed by the appellants to the Collector on 29th December, 2005 in respect of the notification issued under the provisions of the Land Ceiling Act as a partner of the suit firm M/s. Mohamed Ali Ismail and rightly rejected the explanation sought to be given by the appellants in respect of the said letter. He submits that reliance is also rightly made on the averments made in the suit filed by the appellants before the Small Causes Court in the year 2012 and more particularly the averments that the appellants had become owners of the said Dharavi property on the death of the mother of the respondent which even happened on 26th July, 2004.

72. It is submitted that the Arbitral Tribunal has rightly rendered a finding of fact that these admissions on the part of the appellants were clear to the effect that the assets of the suit firm were being used by Mohamed Shafik and thereafter by the appellants and Ms. Shabina. The Arbitral Tribunal also noticed that there was no denial to the averments made by the respondent in her statement of claim in paragraph 2 (g) and 2(h) that were replied in paragraph 13 of the statement of defence. It was specifically pleaded by the respondent that the partnership before 1983 had stopped all other business except letting out of the properties on rent to various tenants.

73. Learned counsel for the respondent invited our attention to the

findings rendered by the Arbitral Tribunal in paragraph 7 (xxvi) of the impugned award that once a finding is recorded that the surviving partner carries on the business with the profit of the firm without any final statement of accounts, the outgoing partner and/or his estate is entitled to such share of profits made since he ceased to be the partner as may be attributed to use of his share of assets or interest by 6% p.a. He submits that the Arbitral Tribunal has rightly recorded the finding that Mohamed Shafik was bound to act as a trustee of the deceased Yakubali. The Arbitral Tribunal rightly placed reliance on section 88, illustration (f) of the Indian Trust Act. He invited our attention to various findings rendered by the Arbitral Tribunal in paragraph 7 (xxviii) of the impugned award and would submit that the Arbitral Tribunal has rightly rendered the finding of fact on the aspect of assets and the profits subsequent to the death of Yakubali is maintainable and is neither barred by Article 5 nor Article 65 of the Limitation Act and rightly answered the said issue in favour of the respondent herein and against the appellants.

74. It is submitted that the Arbitral Tribunal while recording such finding has dealt with the pleadings, documents and oral evidence led by the parties. He invited our attention to the conclusions drawn by the Arbitral Tribunal in respect of each of issues framed in paragraph 8 of the impugned award at page 105. He submits that there is no inconsistency in paragraph 8 (E) with any portion of the impugned award including the findings in paragraph 7 (xxv) of the impugned award. He invited our attention to the final reliefs granted by the Arbitral Tribunal at pages 206 and 107 of the petition. He submits that

the Arbitral Tribunal has not awarded any interest in favour of the respondent till the date of award and has restricted the award of interest at the rate of 9% p.a. on the share of profits of the respondent herein till final payment from the date of award. The cost of Rs.20,00,000/- awarded by the Arbitral Tribunal in favour of the respondent is also reasonable. He submits that even otherwise no argument was advanced by the appellants in respect of the claim of interest and the arbitration cost awarded by the Arbitral Tribunal.

75. Learned counsel for the respondent placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Associated Builders*** (supra) and in case of ***Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India (2019) 15 SCC 131*** and would submit that even if there is any contradiction of law on the part of the Arbitral Tribunal, it would not amount to patent illegality. No such ground is available under section 34 of the Arbitration Act. He also relied upon explanation to section 34(2)(b) of the Arbitration Act. He submits that the financial policy of the Indian Law principles would not apply in this type of dispute between the parties. He relied on paragraphs 34, 35, 37 and 38 of the judgment of the Hon'ble Supreme Court in case of ***Ssangyong Engineering and Construction Company Limited*** (supra).

76. Learned counsel for the respondent placed reliance on an unreported judgment of this Court in ***Fermenta Biotech Limited vs. K.R. Patel*** delivered on 11th October, 2018 and in particular paragraph 10 and would submit that even if the view taken by the Arbitral

Tribunal is plausible view, such view cannot be interfered by this Court under section 34 of the Arbitration Act. The Arbitral Tribunal has done justice to both the parties. Learned single Judge has also rightly not interfered with the impugned award. Learned counsel invited our attention to the judgment of the Hon'ble Supreme Court in case of ***Vijay Kariya & Ors. Prysmian Cavi E Sistemi SRL & Ors. (2020) 11 SCC 1*** and more particularly paragraph 88. He submits that even in case of FEMA violation by one of the parties, the Hon'ble Supreme Court has held that the arbitral award does not become void on that ground. He submits that the learned senior counsel for the appellants could not point out any flaw in the impugned judgment of the learned single Judge upholding the arbitral award in toto.

77. Insofar as the alleged contradiction in the impugned award pointed out by the learned senior counsel for the appellants is concerned, it is submitted by the learned counsel for the respondent that no such arguments were advanced by the appellants before the learned single Judge and more particularly the alleged contradiction or inconsistency in the findings recorded in paragraph 7 (xxv) and the conclusion drawn in paragraph 8 (E) of the impugned award. He submits that even otherwise there is no inconsistency in any part of the award. The entire award has to be read in toto.

78. Learned counsel for the respondent relied upon section 56 and 48 of the Partnership act and would submit that under section 46 of the said Act, right is created in the partners to have winding up after dissolution. Under section 48 of the Partnership Act, provides for the

mode and manner of the settlement of accounts between the partners after dissolution of the partnership firm. The Arbitral Tribunal has recorded a finding that the Arbitral Tribunal has dealt with the deposition of the affidavit of evidence filed by the respondent that the said firm did not have any liability and that the legal heirs of Yakubali became entitled to the assets of the said firm. The Arbitral Tribunal also dealt with the deposition of the respondent that Mohamed Safik carried out the business of the firm, utilized the assets of the firm and all material times, acknowledged the rights of the legal heirs of Yakubali and never disputed the rights with respect to the profits, assets of the firm as well as accrued therefrom.

79. Mr. Shiraz Rustomjee, learned senior counsel for the appellants in rejoinder submits that the appellants had referred to the order passed by the learned single Judge dismissing the arbitration petition filed by the appellants but did not go in detail in respect of the said order since the learned single Judge has fully accepted the findings recorded by the Arbitral Tribunal without any exception. He submits that since the arbitral award was liable to be set aside under section 34 of the Arbitration Act by the learned single Judge and since the learned single Judge has not set aside the impugned award, the arbitral award as well as the order passed by the learned single Judge deserve to be set aside.

80. Learned senior counsel invited our attention to the findings rendered by the learned single Judge in paragraphs 31 and 44 of the impugned order and would submit that the learned single Judge failed to appreciate the distinction between the share in assets and the share in

the profits. He submits that section 37 of the Partnership Act also applies if the partner ceases to be a partner and not only in case of death of any partner. Learned senior counsel distinguished the judgment of the Madras High Court in case of **M.M. Valliammai Achi** (supra). He relied upon paragraphs 10, 11 and 14 of the said judgment and would submit that in the facts of this case, the appellants had made out the case for interference with the impugned Arbitral award under section 34 of the Arbitration Act and in this appeal filed under section 37 of the Arbitration Act.

81. Learned senior counsel distinguished the judgment of the Hon'ble Supreme Court in case of **Dyna Technologies Private Limited vs. Crompton Greaves Limited (2019) 20 SCC 1** and would submit that the appellants had made out a case for interference with the Arbitral award under section 34 of the Arbitration Act. He submits that since all the judgments relied upon by the appellants have been distinguished without recording any reasons, the impugned arbitral award was susceptible to section 34 of the Arbitration Act and was liable to be set aside. Since the learned single Judge failed to set aside the impugned award, the Appeal Court is empowered to set aside the impugned award rendered by the Arbitral Tribunal and the judgment of the learned single Judge by exercising powers under section 37 of the Arbitration Act.

82. Learned senior counsel for the appellants invited our attention to paragraph 3 of the affidavit filed by the appellants and Ms. Shabina disputing that the respondent was not a legal heir of Yakubali and

would submit that this position has been given by the respondent in the arbitration proceeding. He submits that the averments made in paragraphs 2 and 3 of the said affidavit filed against the tenant before the Small Causes Court is consistent with the case of the appellants. A plea of oral agreement pleaded by the appellants before the Arbitral Tribunal is also not inconsistent with the documents produced by the appellants.

83. Learned senior counsel for the appellants invited our attention to the findings recorded by the Arbitral Tribunal in paragraph 8 (B) in respect of issue no.2 holding that the respondent herein is entitled to 51% of the profits as her share from Dharavi property and would submit that issue no.2 as framed by the Arbitral Tribunal and the findings recorded on the said issue no.2 are totally different. The issue whether the claimant proves that the legal heirs of Yakubali and Mohamed Shafik became co-owners of the assets of the partnership firm after the death of Yakubali and consequent to the dissolution of the partnership firm has not been answered by the Arbitral Tribunal in the entire arbitral award. The Arbitral Tribunal has directly granted final relief declaring that the respondent herein is entitled to 51% share of the profits on Dharavi property as the co-owner and will continue to receive her share in the profits till winding up under clauses 34 and 14 of the Deed of Partnership. Arbitral Tribunal has further directed the appellants to pay 51% of the share in the profits from Dharavi property from 1982 till the date of award and therefore, till winding up. The Arbitral Tribunal only made a passing reference in paragraph 7 (k) of the award to the effect that the assets of the

partnership firm would continue to be the assets of the dissolving partnership firm with the existing partner and the legal heirs of the deceased partner as co-owners of the profit until winding up and distribution of the profits in the members as provided in clause 14 of the Deed of Partnership in the context of issue of limitation.

84. Learned senior counsel invited our attention to paragraphs 8, 10 and 13 and the ground (t), (u) and (ee) and would submit that various findings of fact rendered by the Arbitral Tribunal in the impugned award had been challenged by the appellants in the arbitration petition filed under section 34 of the Arbitration Act before the learned single Judge. These findings are also challenged on various grounds raised in the memorandum of appeal and more particularly on the issue whether the partners became co-owners of the assets and the profit of the firm or not. He submits that no partner has a right to any specific part of the immovable property. He only has a right of profit upon winding up of the partnership firm under section 48 of the Partnership Act. In support of this submission, learned senior counsel invited our attention to paragraphs 14 and 17 of the judgment of the Hon'ble Supreme Court in case of **Malabar Fisheries Co.** supra) cited by the learned counsel for the respondent and would submit that even in the said judgment relied upon by the respondent, it is clearly held that no partner has any right over any particular portion of the asset and right of partner or his estate is obtained surplus of the profit upon determination of the accounts of the partnership firm under section 48 of the Partnership Act.

85. Learned senior counsel for the appellants invited our attention to

paragraphs 29 and 30 of the judgment of the Madras High Court in case of **M.M. Valliammai Achi** (supra) and would submit that the impugned award is totally contrary to the principles of law laid down by the Madras High Court in the said judgment and by the Hon'ble Supreme Court and this Court in various judgments already referred to and relied upon by the appellants.

86. It is submitted by the learned senior counsel that the mother of the respondent herein and the respondent also had given up their alleged rights in the immovable property or in the accounts of the said firm by accepting the oral understanding between the parties. The impugned award however does not mention that the mother of the respondent had not mentioned about her alleged entitlement in respect of Dharavi property in her will about and in respect of the said accounts of the suit firm. Neither the mother of the respondent nor the respondent herself had made any claim for accounts of the partnership firm or in any immovable. The Arbitral Tribunal has not answered issue no.2 in affirmative but had only rendered a cryptic finding that the respondent holds 51% share in the profit of the said firm. The said claim was *ex-facie* barred in view of Article 5 of Schedule to the Limitation Act.

87. It is submitted that the Arbitral Tribunal has not issued any directions in the impugned award as to how the deductions towards expenses incurred by the appellants on maintaining the said property were required to be done out of the rental income from the Dharavi property without any accounts under section 48 of the Partnership Act.

He submits that Article 5 of the Limitation Act has to be given a meaning which the Arbitral Tribunal failed completely. The argument of the respondent in support of the claim for 51% of the partnership firm was under section 37 of the Partnership Act read with section 88 of the Indian Trust Act and section 10 of the Limitation Act.

88. Learned senior counsel submits that there is no dispute that section 37 of the Partnership Act came into effect only on the enactment of Partnership Act, 1932. However, prior to 1932, section 42 of the English Act, 1890 was applicable which was in pari-materia to section 37 of the Partnership Act. He submits that the law under section 37 of the Partnership Act was the same all through out. The judgments thus cited by the appellants though delivered prior to 1932 dealing with the provisions which are in pari-materia to section 37 of the Partnership Act thus could not have been distinguished by the Arbitral Tribunal. The judgment in case of **Gopala Chetty** (supra) and other judgments which were though delivered prior to 1932 were binding upon the Arbitral Tribunal even after 1932.

89. Learned senior counsel for the appellants submits that there was no typing error in paragraph 7 (y) of the impugned award holding that the respondent's claim was not one for share of the assets of the dissolved partnership firm. The respondent did not make any attempt to correct the alleged typographical error in the said paragraph at any point of time. Prayer clauses (a) and (b) of the statement of claim were for share in the profit and not in the Dharavi property or any other assets of the partnership firm.

90. Insofar as the findings rendered by the Arbitral Tribunal in paragraph 7 (xxv) is concerned, it is submitted that the Arbitral Tribunal has only held that the issue for accounts cannot be considered in view of section 48 of the Partnership Act as the relief would not be maintainable. He submits that in prayer clauses (a) and (b) of the statement of claim, there was prayer for share in the partnership firm prior to 1982 and thus there was nothing to reject any claim for share in the profit of the partnership firm prior to 1982. The findings recorded in paragraph 7 (xxv) are thus perverse.

91. Learned senior counsel once again led emphasis on the findings recorded in paragraph 7 (xxv) at page 94 and the conclusion drawn in paragraph 8 (E) and would submit that there is clear contradiction in those findings and conclusion which goes to the root of the matter. Once the Arbitral Tribunal had rejected the claim for seeking accounts, there was no question of any right in the respondent to seek winding up of affairs of the said firm. Once the prayer for seeking accounts has been rejected, issue of winding up of the affairs of the suit firm cannot be determined. Drawing up of the accounts under section 48 of the Partnership Act was mandatory which fact has been totally over looked by the Arbitral Tribunal.

92. It is submitted that without drawing up of accounts under section 48 of the Partnership Act, the impugned award cannot be given effect at all. The expenses incurred by the appellants during all these years have to be deducted from the rental income, if any, which could be done only upon determination of accounts under section 48 of the

Partnership Act. Learned senior counsel for the appellants once again distinguished the judgments cited by the respondent and referred to and relied upon by the Arbitral Tribunal in the impugned award and would submit that the judgment of this Court in case of ***Seemaben Shankar Patel*** (supra) has not been distinguished by the Arbitral Tribunal in proper manner. He submits that since the respondent had not made any claim for about 30 years, the Arbitral Tribunal on that ground did not grant claim for interest upto the date of award. The view of the Arbitral Tribunal is not plausible view and thus the impugned award was liable to be interfered with under section 34 of the Arbitration Act. The Arbitral Tribunal has not discussed the evidence led by the appellants in the impugned award at all.

REASONS AND CONCLUSION :-

93. We have heard the learned counsel for the parties at length and have given our anxious consideration to the rival submissions made. Learned counsel for the respondent vehemently urged that scope of powers of the Appellate Court under Section 37 of the Arbitration Act are very limited. It is submitted by the learned counsel that learned Single Judge has rightly not interfered with the impugned award which was rendered after considering the pleadings, documents, evidence and various judgments relied upon by both the parties. In support of this submission, various judgments are relied upon by the learned counsel for the appellants.

94. We shall first deal with the scope of powers of the Appellate Court under Section 37 of the Arbitration Act. Supreme Court in the case of ***MMTC Limited Vs. Vendanta Limited (supra)*** and in case of ***Dyna Technologies Private Limited Vs. Crompton Greaves Limited (supra)*** has dealt with powers of an Appellate Court for interfering with the Arbitral award under Section 37 of the Arbitration Act. It is held by the Supreme Court that the powers of the Appellate Court under Section 37 are very limited. It is held that there is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. In our view, powers of the Appellate Court under Section 37 are more limited than the limited powers of the Court under Section 34 of the Arbitration Act. We will now deal with rival contentions of both the parties to determine whether the appellants have made out a case for exercise of such limited powers of this Court under Section 37 of the Arbitration Act or not.

95. The respondent was the original claimant before the Arbitral Tribunal whereas the appellants were the original respondents. In the statement of claim dated 28th February 2014, the respondent had prayed for winding up of the suit firm and an order or direction to furnish true and correct accounts of the total income derived, expenses incurred and the profit earned out of the said firm and the said property for the period from 1982 till the Accounts of the said firm are settled. The respondent had also applied for an order against the appellants to pay an ascertained amount equivalent to 51% of the profit earned by the respondent including Mr. Mohamed Shafik along

with interest @ 18% p.a. thereon for the period from 1982 till date.

96. The respondent applied for declaration that the respondent was the co-owner having 51% share in the assets of the said firm including the said Dharavi property and also for a declaration that the original Declaration-Cum-Indemnity and affidavit both dated 13th October 2010 annexed at Exhibits- “G1” and “G2” respectively are null and void and of no effect whatsoever. The statement of claim was resisted by the appellants by filing written statement. Both the parties led oral as well as documentary evidence.

97. In the impugned award, the Arbitral Tribunal declared that the respondent (original claimant) 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 Deed of Partnership. The appellants are directed to pay the respondent 51% of the profit from the Dharavi property from 1982 till the date of the award and thereafter till winding up. The Arbitral Tribunal did not award any interest till the date of award however directed the appellants to pay interest @ 9% p.a. on their share of profits till final payment from the date of the award and awarded costs quantified at Rs.20 lacs.

98. Learned Single Judge recorded detailed reasons and after dealing with the submission advanced by both the parties and record, dismissed this arbitration petition filed by the appellants under Section 34 of the Arbitration Act.

99. It is an admitted position that by a Deed of Partnership dated 9th November 1960, Mr. Mohamed Ismail constituted a Partnership with Mr. Yakubali Mohamedali w.e.f. 21st October 1960 for carrying on the same business which was started prior to 1960 as proprietary concern by Mohamed Ismail. The said Mohamed Ismail expired on 25th April 1965. Mr. Yakubali who is predecessor and the father of the respondent invited his nephew Mr. Mohamed Shafik to join him as a partner to carry on the said business. Mr. Yakubali and Mohamed Shafik executed Partnership Firm in the name and style of M/s. Mohamedali Ismail duly registered. Mr. Yakubali and Mohamed Shafik are entitled to share profit and losses in the ratio 51% : 49% respectively. The Dharavi property was purchased by the suit firm vide an Indenture Deed dated 28th February 1978 duly registered, admeasuring 3029 sq. yards equivalent to 3042.74 sq.mtrs or thereabout together with tenements and dwelling houses and leasehold land admeasuring approx. 4369 sq. yards equivalent to 3993.26 sq.mtrs for consideration of Rs.1,25,000/-.

100. There is also no dispute that Yakubali expired on 27th June 1982 leaving behind his wife Mrs. Zarina Yakubali and the respondent herein as his only legal heirs. The suit firm had stopped the business of tanners etc. around 1982 prior to the death of Yakubali. The said Dharavi property was given on rent to various tenants by the suit firm. In view of demise of Yakubali on 27th June 1982, the said suit firm came to be dissolved by operation of law. There was no change of constitution of suit firm after death of Yakubali.

101. It was a specific case of the respondent in the statement of claim that after demise of Yakubali, the said Mohamed Shafik during his lifetime and the appellants after demise of Mohamed Shafik continued the business of the suit firm by use of the assets of the suit firm and did not give any account or share in the profit of the suit firm to the respondent. The respondent issued a notice for referring the dispute to the arbitration and for dissolution of the suit firm to the appellants on 15th February 2013.

102. The appellants in their statement of defence raised a preliminary issue of limitation in respect of the claim made by the respondent. The appellants relied upon Article 5 of the Limitation Act, 1963 and contended that any claim for account or share in the profit of a dissolved partnership firm is required to be made within 3 years from the date of the dissolution of the partnership firm. Any claim in respect of any particular property or asset of the a dissolved partnership firm is also required to be made within 3 years from the date of the dissolution of the partnership firm. It was the case of the appellants that upon death of Yakubali, neither the respondent nor her mother Zarina Yakubali raised any claim in respect of the assets and/or properties of the partnership firm nor sought for any share in the accounts of the partnership firm. No letters were addressed by the respondent or by her mother to the appellants making any claim in respect of the assets of the partnership firm or for accounts of the partnership firm for a period of more than 30 years.

103. It was also the case of the appellants that after the death of

Yakubali, Mohamed Shafik and after his demise, the appellants had been openly and continuously enjoying the possession of the said Dharavi property and have been exercising rights as owner of the said Dharavi property to the exclusion of the said Zarina Yakubali and the respondent herein. They have been also collecting rent, issuing rent receipts, paying taxes, looking after the day to day affairs and managing the said Dharavi property to the complete exclusion of the said Zarina Yakubali and the respondent herein. The respondent and her mother are completely ousted from Dharavi property and other properties of the suit firm.

104. In the alternate submission, the appellants also relied upon Article 65 of the Limitation Act and contended that any claim or any interest in an immovable property of a partnership firm based on being a legal heir of a deceased partner (i.e. based on title) is required to be made within 12 years from the date of the death of partner concerned and/or dissolution of the partnership firm. The appellants also contended that legal heirs of Yakubali was not entitled to the assets of the partnership firm as prayed by the respondent.

105. In paragraph 15 of the written statement, the appellants contended that the mother of the respondent was at all times aware of Mohamed Shafik becoming the sole proprietor and carrying on business as M/s. Mohomedali Ismail and did not raise any objections of any nature whatsoever. Mohamed Shafik was openly and continuously enjoying the possession of the assets of the partnership firm including the said Dharavi property as sole owner thereof to the

exclusion of the said Zarina Yakubali and the respondent herein. The appellants also pleaded that it was agreed between the mother of the respondent and Mohamed Shafik that the mother of the respondent or any one from the family of the Yakubali would not have any right or interest in the said partnership business and assets and it is for this reason that neither the mother of the respondent nor the respondent or any person from the family of Yakubali made any claim over the said partnership business and assets. The appellants however did not rely upon any rights in support of this contention in the written statement.

106. The Arbitral Tribunal in the impugned award framed 10 issues and recorded various findings of facts on those issues framed. The Arbitral Tribunal also relied upon clauses 13 and 14 of the Deed of Partnership in the impugned award. In so far as Issue no.5 in respect of prayer for winding up and for furnishing true and correct accounts for the period of 1982 is concerned, learned senior counsel for the appellants vehemently relied upon the findings recorded by the Arbitral Tribunal in paragraph (xxv) (internal page 45 of the award) and vehemently urged that in the said paragraph, though the Arbitral Tribunal held that in so far the prayer for accounts is concerned, considering Section 48 of the Partnership Act, relief would not be maintainable and on the other hand, while dealing with the issue no.5 (internal page 56 of the award), the Arbitral Tribunal held that relief for account cannot be granted by the Arbitral Tribunal and consequently answered that the said claim was barred by limitation. The respondent was however entitled to call the appellants to wind up the firm.

107. It is vehemently urged that both the findings are inconsistent with each other and are perverse. He invited our attention to paragraph 1 of the final relief (internal page 57 of the award) and would submit that the relief that the respondent herein would be continued to receive her share in the profit till winding up in terms of clauses 13 and 14 of the Deed of Partnership is contrary to the findings rendered in paragraph (xxv) at internal page 45 of the award.

108. Learned counsel for the respondent could not dispute that the award rendered by the Arbitral Tribunal which was the subject matter of the petition under Section 34 was a final award. In our view, there is substance in the submission of the learned senior counsel for the appellants that in view of the findings of the Arbitral Tribunal that the respondent would not be entitled to prayer for accounts have not been impugned by the respondent and has attained finality. In our view, the final reliefs that respondent herein would continue to receive her share in the profit till winding up is not executable in view of the Arbitral Tribunal itself not determining the accounts under Section 48 of the Partnership Act. This part of the declaration in the award simplicitor is not executable in view of there being a final award.

109. The next arguments which is vehemently urged by the learned senior counsel for the appellants is that the respondent could not have been awarded 51% share or any other share in the Dharavi property of the partnership firm is concerned, there is no merit in this submission of the learned senior counsel. The submission that Section

37 of the Partnership Act would not be applicable to the claims made by the respondent on the ground that neither the business of the partnership firm was carried on by Mr. Mohamed Shafik after the demise of Yakubali nor Section 37 of the Partnership Act gives rights to the respondent to make a claim in respect of the assets of the Partnership Firm has no merit. The Arbitral Tribunal has rightly relied upon the clauses 13 and 14 of the Partnership Deed.

110. In our view, clause 14 of the Partnership Deed read with Section 14 of the Partnership Act is rightly invoked by the respondent which provides that subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of business of the firm, and includes also the goodwill of the business. Mr. Rustomjee, learned counsel for the appellants did not point out any clause of the Partnership Deed providing that no partner will have any share in the assets of the Partnership Firm or providing that the sole surviving partner upon demise of the other partner would exclusively become owner of the property acquired by the suit firm.

111. The Arbitral Tribunal has recorded a finding that the case of the respondent was that the respondent had no knowledge that Mohamed Shafik or the appellants continued to collect rent in the name of the firm. The Arbitral Tribunal had recorded the finding that documentary evidence shows that Dharavi property was an asset of

the partnership firm and income was received from the Dharavi property. It is also rightly held by the Arbitral Tribunal that the assertion of the appellants in the Declaration-Cum-Indemnity that after the death of Yakubali, Mohamed Shafik acted as a sole proprietor would only demonstrate that business of firm was now being carried on by Mohamed Shafik as a sole proprietor by using the assets of the firm. The appellants also did not produce any documentary evidence to show that Mohamed Shafik apart from the Dharavi property was carrying on any other business.

112. A perusal of the averments made in the written statement and more particularly in paragraph 13 clearly indicates that it was the case of the appellants themselves that Mohamed Shafik continued to carry on partnership business and asserted the rights over the partnership assets as the sole owner thereof in his capacity as a sole proprietor in M/s.Mohamedali Ismail. The arguments thus advanced by the learned senior counsel that there was no finding recorded by the Arbitral Tribunal that after dissolution of the partnership firm upon demise of Yakubali, the partnership business continued by Mohamed Shafik by use of the assets of the partnership firm is contrary to the case pleaded by the appellants themselves in the written statement.

113. The Arbitral Tribunal also recorded a finding that the appellants had made all attempts to get all the properties mutated in their names before the Revenue Authorities which was rejected by the Revenue Authorities. The appellants continued to make a representation as a partner of the suit firm before various statutory authorities and the

public at large until 2002. The appellants had addressed a letter dated 29th December 2005 to the Additional Collector and represented that the appellant no.3 was the partner of the suit firm and had issued the said letter in the capacity as a partner of the suit firm. The appellants had also initiated various suits in the year 2012 against some of the tenants in Small Causes Court. It was averred by the appellants in the said suit that properties were owned by Yakubali and Mohamed Shafik. Yakubali left behind Mrs. Zarina Yakubali as his only legal heir. It was however pleaded by the appellants that after the death of Yakubali and Zarina Yakubali, the appellants were entitled to the said property.

114. In the said suit also, it was averred by the appellants that Mohamed Shafik and Yakubali were the partners in the name and style of M/s.Mohamedali Ismail who were the original owners and landlords in respect of the suit premises. However in paragraph 3 of the plaint, it was averred that after the death of Mohamed Shafik and Yakubali and his wife Zarina, the appellants have become owners and landlords in respect of the entire piece and parcel of the land. It is thus clear that the said Dharavi property was the partnership asset. The said Mohamed Shafik and Yakubali were the original owners and the landlords of the suit premises. The rights of the ownership claim in respect of the said property after the death of Mohamed Shafik and Yakubali devolved on their legal heirs. Even according to the appellants, the suit property continued to be owned by Mohamed Shafik and Yakubali and only after demise of wife of Yakubali, the appellants started claiming ownership.

115. Mr. Rustomjee, learned senior counsel for the appellants could not dispute these averments made by the appellants themselves in the written statement filed before the Arbitral Tribunal. There is no dispute about such averments made before the Small Causes Court and the representation made by the appellants before various authorities admitting that the said Dharavi property was an asset of the suit partnership firm. These findings of facts rendered by the Arbitral Tribunal are after appreciating the oral and documentary evidence led by the parties and after considering the admissions on the part of the appellants in the averments made in the statement of defence and in the plaint filed by the appellants before the Small Causes Court.

116. There was no perversity in those findings rendered by the Arbitral Tribunal. Learned Single Judge thus rightly did not interfere with those findings of facts and the reliefs granted by the Arbitral Tribunal in respect thereof in paragraph 1 of the operative part of the Arbitralaward declaring the respondent as co-owner of 51% share in the said Dharavi property. The said relief granted by the Arbitral Tribunal will have to be read with the answer to issue no.2 given in the impugned award and in paragraph (e) at page 52 of the Arbitralaward.

117. We shall now decide whether 51% share claimed by the respondent was barred by law of limitation or not ? Simultaneously, we will also deal with the issue as to whether Section 37 of the Partnership Act was at all applicable to the said claim made by the respondent or not ?

118. It was the specific plea of the respondent in the statement of claim that the respondent and the Mohamed Shafik had family relation and therefore the respondent had full faith that Mohamed Shafik would manage the assets of the dissolved firm honestly. On the other hand, it was pleaded by the appellants that it was oral understanding between the mother of the respondent and Mohamed Shafik that neither the mother of the respondent nor anyone else from the family of the Yakubali would have any right or interest in the assets or share in the profit of the suit firm and for this reason neither mother of the respondent nor any person from the family of the Yakubali made any claim over the said partnership business and assets for all these years.

119. It was the case of the appellant that there was thus no question of managing the assets of the said partnership firm in trust or for and on behalf of the respondent by the appellant or their predecessor as sought to be alleged by the respondent. This aspect has been dealt with by the Arbitral Tribunal in detail and more particularly in sub-paragraph (r) to paragraph 7 (internal pages 24 to 28 of the Arbitral award). The claim made by the respondent was under Section 37 of the Indian Partnership Act read with Section 50 read with Sections 88 and 95 of the Indian Trusts Act, 1882. Both the parties relied upon several judgments on this issue, which are discussed by the Arbitral Tribunal in the impugned award. After referring to the pleadings, evidence, various provisions of Partnership Act, Indian Trusts Act and Limitation Act, the Arbitral Tribunal held that relief for share in the profit subsequent to the death of Yakubali is maintainable and is not barred by Article 5 or 65 of the Limitation Act.

120. Arbitral Tribunal rightly held that the claim was maintainable under Section 37 of the Partnership Act. Arbitral Tribunal also rightly recorded a finding that the respondent herein had been able to establish that the business of the partnership was continued by Mohamed Shafik and then by the appellants by continuing to collect the income from the Dharavi property. It is held that a Trust is created de-hors Section 5 of the Indian Trusts Act other than by any written instrument as is clear from the judgment of the Supreme Court in case of ***Prem Bellabh Khulbe***. In the instant case, Mohamed Shafik and the respondent were closely related which fact had come on record. The Arbitral Tribunal rightly rejected the case of the appellant that the Mohamed Shafik became the sole owner on the death of Mr. Yakubali.

121. The Arbitral Tribunal rightly held that provisions of Sections 37, 50 read with Section 50(a) of the Partnership Act and Section 88 illustration (f) and Section 95 of the Indian Trusts Act are applicable in the facts and circumstances of the present case. The learned Single judge thus rightly did not interfere with the findings of the fact recorded by the Arbitral Tribunal in the impugned judgment delivered on 11th July, 2019. The respondent had satisfied the ingredients of Section 37 and therefore became entitled to share of profits. The claim made by the respondent was not barred by law of limitation even in view of Section 10 of the Limitation Act.

122. Under Section 16(a) of the Partnership Act, if a partner derives any profit for himself from any transaction of the firm, or from the use of property or business connection of the firm or the firm name, he

shall account for that profit and pay it to the firm. Under Section 16(b) of the Partnership Act, if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business. The learned senior counsel for the appellants could not point out any provision in the Partnership Deed that Mohamed Shafik upon his demise was solely entitled to derive any profit for himself from any transaction of the firm, or from the use of property or business connection of the firm or the firm name.

123. Under Section 37 of the Partnership Act, if the surviving partner continues the business of the firm with the property of the firm without any final settlement of accounts, 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 interest at the rate of 6% per annum on the amount of his share in the property of the firm. Learned senior counsel for the appellants could not point out any contract to the contrary. Though the appellants had pleaded in the written statement that there was an oral agreement between the Mohamed Shafik during his life time and mother of the respondent that neither the respondent nor any other person from her family would claim any share in the assets of the partnership or any profit, the appellants failed to prove their case before the Arbitral Tribunal.

124. The learned senior counsel for the appellants could not point out

any perversity in the impugned award on this aspect before the learned Single Judge or even before us in this Appeal. Under Section 42 of the Partnership Act, the firm stood dissolved in view of the demise of one partner out of two partners by operation of law. Under Section 46 of the Partnership Act, on the dissolution of a firm, every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed amongst the partners or their representatives according to their rights. Under Section 47 of the Partnership Act, after the dissolution of a firm, the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

125. Section 48 of the Partnership Act provides mode of settlement of accounts between the partners. Under Section 50 of the Partnership Act, subject to contract between the partners, the provision of Section 16(a) 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 the partner and before its affairs have been completely wound up. The learned senior counsel for the appellants could not point out any contract contrary to the said provision before this Court. The respondents was thus entitled to claim all the profits earned by the said Mohamed Shafik and thereafter upon his demise by the appellants by the use of the property or business

connection in the firm or the firm name as they were liable to account for that profit and to pay to the firm. It was the case of the respondent before the Arbitral Tribunal that there was no liability of the suit firm. The appellants also could not dispute that there were no liabilities of the suit firm before the Arbitral Tribunal or before this Court.

126. Under Section 10 of the Limitation Act, it is made clear that notwithstanding anything contained in the earlier provisions in the said Limitation 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 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. Section 10 of the Limitation Act has to be read with Section 88 illustration (f) of the Indian Trusts Act which makes it clear that where a trustee, executor, partner, agent, director of a company, legal adviser, 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. Illustration (f) makes it clear that if one partner out of the two dies and surviving partner instead of winding up the affairs of the partnership, retains all the assets in the business, the surviving partner must account to the legal representatives of the deceased partner for the profits arising from deceased partner's share of

the capital.

127. It is thus clear 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 Indian Trusts Act are applicable in the facts and circumstances of this case. There is no period of limitation prescribed in view of Section 10 of the Limitation Act for recovery of the assets of the partnership firm which were in the hands of the surviving partner upon dissolution of the said firm i.e. Mohamed Shafik and thereafter upon his demise in the hands of the appellants as trustees on behalf of the respondent. The Arbitral Tribunal has accordingly rightly held that the case of the claim in Dharavi property was not barred by law of limitation.

128. Learned Single Judge also after recording detail reasons rightly held that respondent had satisfied the ingredients of Section 37 of the Partnership Act. Section 88 of the Trust Act read with illustration (f) of the Indian Trusts Act clearly stipulates a set of rights in favour of the legal heir or representatives of the deceased partner against the trustees holding the property of the partnership in trust and also the benefit arising there from. The learned Single Judge has rightly held that the winding up of the firm is complete only upon the distribution of the assets.

129. We shall now deal with the judgments referred to and relied upon by both the parties before the Arbitral Tribunal, before the learned Single Judge and also in this appeal. The Arbitral Tribunal has already

dealt with all these judgments in great detail. The Supreme Court in case of ***Prem Ballabh Khulbe v/s. Mathura Datt Bhatt*** (supra) has held that partnership itself does not create a fiduciary relation between the partners or make any one of them a trustee from the other or for his representatives. The relation may however arise on the death of one of them or be created by other special circumstances. The principles laid down by the Supreme Court in the said judgment applies to the facts of this case. Upon the demise of Yakubali, Mohamed Shafik and upon demise of Mohamed Shafik, the appellants were holding the said Dharavi property and the business of the partnership firm as trustees for the respondent.

130. The Calcutta High Court in case of ***Tilokram Ghosh and Ors. v/ s. Smt. Gita Rani Sadhukhan and Ors.*** (supra) has held that Section 37 of the Partnership Act has to be read with Section 88 of the Trust Act which provides that the continuing partners are trustees for the estate of the deceased partner as would be evident from the illustration (f) set out thereunder. In our view, the principles laid down by the Calcutta High Court in the said judgment would apply to the facts of this case. We are in agreement with the views expressed by the Calcutta High Court in the said judgment.

131. The Punjab and Haryana High Court in case of ***P.S. Nagarunjan*** (supra) has held that in a case where the surviving partner carries on the business of the firm and continues to do so then though the suit for accounts may be barred, a suit for share of the profits under Section 37 of the Partnership Act is maintainable and does not fall under Article

106 of Limitation Act, 1908 corresponding to Article 5 of the Limitation Act, 1963. The Calcutta High Court in case of ***Nilmadhab Nandi and Ors.*** (supra) has held that the rights given to legal representative of a deceased partner under Section 37 of the Partnership Act is not a right to a share of profits of a dissolved partnership within the meaning of Article 106 of the Limitation Act but is a right accruing to him by the subsequent dealing with the assets belonging to the deceased partner. We are in agreement with the views expressed by the Calcutta High Court in the said judgment which applies to the facts of this case.

132. The Madras High Court in case of ***Babu alias Govindoss Krishnadoss*** (supra) has held that the rights of the representative of the deceased partner in one of the property and does not rest merely on contract, and the surviving partners, who have the right and duty to realize the partnership property, hold a fiduciary relationship towards the deceased partner's representatives as regards his interest in the partnership property. The Madras High Court in the said judgment referred to a judgment in case of ***In re Bourne*** in which it was held that when a partner dies and the partnership comes to an end, it is not only the right, but the duty, of the surviving partner to realize the assets for the purpose of winding up the partnership affairs, including the payment of the partnership debts. In our view, the said Mohamed Shafik who continued the use of the partnership assets even after the suit firm having been dissolved by operation of law as far back in the year 1982 failed in fiduciary duties toward the legal representatives and estate of the said deceased partner Yakubali. Such fiduciary duty

continued till the properties held in trust are distributed to all the partners and the estate of the deceased partner. We are in agreement with the views expressed by the Madras High Court.

133. Supreme Court in case of ***Shreedhar Govind Kamerkar*** (supra) held that the rights and liabilities of the partners in respect of the partnership property would be discharged only when the firm is finally wound up and the properties of the firm are distributed. Supreme Court in case of ***S. V. Chandra Pandian and Ors.*** (supra) held that during the subsistence of the partnership a partner would be entitled to a share in the profits and after its dissolution to a share in the residue, if any on settlement of accounts. In this case, the appellants could not prove independently or disputed the case of the respondent that there were no liabilities of the suit firm. The appellants were thus liable to pay the legitimate due share of the respondent. Both these judgments apply to the facts of this case. We are respectfully bound by these judgments.

134. Supreme Court in case of ***Mohamed Laiquiddin and Anr.*** (supra) has held that when there are only two partners constituting the partnership firm, on the death of one of them, the firm is deemed to be dissolved despite the existence of a clause which says otherwise. It is held by the Supreme Court in the said judgment that under the Partnership Act, 1932, property which is brought into the partnership by the partners when it is formed or which may be acquired in the course of the business becomes the property of the partnership and a partner is, subject to any special agreement between the partners, entitled upon dissolution to a share in the money representing the value

of the property. We are thus not inclined to accept the submission made by the learned senior counsel for the appellants that upon demise of Yakubali and thereafter upon demise of wife of Yakubali, the said property became the property of Mohamed Shafik exclusively or after his demise became the exclusive property of the appellants. The Statement of the learned senior counsel is contrary to the case of the appellants in the pleadings and contrary to law.

135. Supreme Court in case of **V. Subramaniam** (supra) has held that the partners of a firm are the co-owners of the property of the firm, unlike shareholders in a company who are not co-owners of the property of the company. The principles laid down by the Supreme Court in the said judgment applies to the facts of this case. In our view, the said Mohamed Shafik and the said Yakubali were the owners in the ratio 51:49 in the profits as well as in the assets of the said suit firm. The fiduciary relationship between the Mohamed Shafik and the said estate of Yakubali continued and after demise of Mohamed Shafik and the respondent continued. The argument of the learned senior counsel that the respondent who was the legal heir of the said Yakubali cannot make any claim in the assets of the suit property on the ground of limitation or otherwise is contrary to the principle of law laid down by the Supreme Court and various other High Courts.

136. Punjab and Harayan High Court in case of **Mansha Ram** (supra) has held that a partner is not a trustee of the other partner, but it cannot be denied that the partners stand in fiduciary relation to one another and in such a case equity will never permit the surviving partner to

trade, or to utilize the property of the other for his exclusive personal profit. If he makes a profit, it must be paid over to the owner of the property, the use of which produced the profit. The appellants have admitted in their statement of defence before the Arbitral Tribunal that after demise of Yakubali, the said Mohamed Shafik and then after his demise, the appellants continued to use the said Dharavi property, however the business was run as a sole proprietor. The appellants having admitted the use of the partnership assets after dissolution of the partnership firm by an operation of law thus acted in fiduciary capacity and trustee in respect of the share of the estate of the said deceased partner and were thus liable to return the share of the deceased partner to the estate in the profits as well as in the assets of the suit firm.

137. Though, the appellants in their statement of defence had pleaded adverse possession in the Arbitral proceedings, the learned senior counsel for the appellant did not press the said plea before us. Even otherwise, the findings of fact rendered by the Arbitral Tribunal on this issue against the appellants being not perverse was rightly not interfered by the learned Single Judge under Section 34 of the Arbitration Act. A Division bench of Privy Council in case of **Ahmed Musaji** (supra) has held that it is well settled that in certain cases, when on the dissolution of a firm one of the partners retains assets of the firm in his hands without any settlement of accounts and applies them in continuing the business for his own benefit, he may be ordered to account for these assets with interest thereon, apart from fraud or misconduct in the nature of fraud. That decree was affirmed in appeal and thereafter by judicial committee.

138. The Arbitral Tribunal has also distinguished various judgments relied upon by the appellants on the ground that none of those judgments had dealt with Section 37 of the Partnership Act and the Indian Trusts Act. Learned senior counsel for the appellants though invited out attention to each of those judgments which were referred and relied upon by the appellants before the Arbitral Tribunal could not demonstrate as to how any of those judgments are applicable to the facts of this case. The learned Single Judge has also rightly held that none of those judgments would assist the case of the appellants.

139. The Arbitral Tribunal has recorded a finding that the documentary evidence makes sure that the Dharavi property is the assets of the partnership and income was received from the Dharavi property by Mr.Mohamed Shafik and after his demise by the appellants. The assertion of the appellants in the declaration-cum-indemnity that on the death of Yakubali, Mohammed Shafik acted as a sole proprietor would demonstrate that the business of the firm was being carried on by Mohamed Shafik by using the assets of the firm. We do not find any perversity in the said findings rendered by the Arbitral Tribunal. The appellants themselves were representing before authorities that the said Dharavi property was an assets of the suit firm and that the appellant no. 3 was asserting himself to be a partner of the firm. There was a clear admission as on 2005 on the part of the appellants that the Dharavi property was the asset of the partnership firm.

140. Arbitral Tribunal rightly rejected the case of oral agreement

between Mohammed Shafik and the mother of the respondent that neither the mother of the respondent nor the respondent or anybody else from her family would make any claim in the said property or in the share or profit of the suit firm. The learned senior counsel for the appellants could not demonstrate as to how the said finding rendered by the Arbitral Tribunal is perverse.

141. Since the Arbitral Tribunal itself has not carried out that exercise for ascertainment of the profit earned by Mr. Mohamed Shafik and upon his death by the appellants by use of the assets of the suit firm, we cannot issue such directions at this stage. In our view, Mr. Rustomjee, learned Senior Counsel for the appellant is right in his submission that the exercise of ascertainment of profit not having been done by the Arbitral Tribunal, no such direction can be issued at this stage.

142. In so far as the alleged inconsistency pointed out by the learned senior counsel in the impugned award is concerned, learned senior counsel could not dispute that in the statement of claim, the respondent had prayed for 51% share in the assets and in the profits of the suit firm. The entire award has to be read in proper perspective to assign true and correct meaning and not any isolated sentence in the award. We do not find any patent illegality in that part of the impugned award. There is no substance in the submission of the learned senior counsel for the appellants that 51% claim in the assets of the suit firm is barred by law of limitation under Section 5 of the Limitation Act or under any provisions of the Limitation Act.

143. The submission of the learned senior counsel that the award discloses patent illegality while holding that Mohamed Shafik had continued the business of the partnership firm after dissolution of the suit firm by operation of law, is contrary to the pleadings of the appellants themselves. The parties were ad-idem that the suit firm stood dissolved by operation of law after demise of Yakubali. The question was whether the asset and the business of suit firm continued to be used in the name of the firm by Mohamed Shafik and upon demise of him, the appellants or not. There is no substance in the submission of the learned senior counsel of the appellants that under Clause 14 of the Partnership Deed, the respondent could not claim any right to receive any share in the profit of the Dharavi property. The submission of the learned senior counsel that Sections 10 and 37 of the Partnership Act and Section 88 of the Indian Trusts Act were not applicable to the claims made by the respondent is without any merit.

144. In so far as the observations made by the arbitral tribunal in paragraph (y) at internal page 27 that the present claim was not one for share of the properties of the dissolved Partnership firm is concerned, the said paragraph has to be read with the findings rendered by the Arbitral Tribunal that the respondent had made claim of 51% share in the asset of the suit firm and the reliefs granted. The said paragraph also has to be read with the averments made and the prayer in the statement of claim filed by the respondent. It is not the case of the appellants that the respondent had given up the claim

for the share in the said Dharavi property before the Arbitral Tribunal.

145. In our view, merely because there was no reference to the assets of Partnership firm in the alleged Will executed by the mother of the respondent would not amount to relinquishment of the share in the Partnership assets and profits of the deceased husband. The bequest made in testamentary document cannot be considered as extinguishment of any claim which otherwise in law, the testator is entitled to. The respondent had already explained delay in making claim against the appellants and had pleaded that because of the relationship between the parties and the said Mohamed Shafik during his life time and thereafter the appellants after his demise were holding the said property in trust. No period of limitation was thus applicable to the claim for share in the assets of the suit firm or for share in profit from the date of dissolution of the firm. There is no substance in the submission of the learned senior counsel for the appellants that Article 5 of the Limitation Act would have been attracted to the said claim made by the respondent under Section 37 of the Partnership Act. The said claim under Section 37 has to be read with Section 50 read with Section 16A of the Partnership Act and Section 88, illustration (f) and Section 95 of the Indian Trusts Act.

146. The arbitral tribunal has already interpreted clause 14 of the Partnership Act and has rightly held that the respondent had 51% share in the suit firm whereas Mohamed Shafik was entitled to 49% share. The interpretation of the arbitral tribunal being a possible interpretation even otherwise could not have been substituted by

another interpretation by the learned Single Judge while hearing the petition under Section 34 of the Arbitration Act or by this Court while hearing the appeal under Section 37 of the Arbitration Act. It was clearly admitted by the appellants themselves that the said Dharavi property was acquired by the suit firm of which the said Yakubali and Mohamed Shafik were the joint owners thereof.

147. There is no substance in the submission of the learned senior counsel for the appellants that the entire claim of the respondent under Section 37 of the Partnership Act was for share in the profit. Under Section 14 of the Partnership Act, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of business of the firm, and includes also the goodwill of the business subject to contract between the partners. Under Section 15 of the Partnership Act, the property of the firm shall be held and used by the partners exclusively for the purposes of the business subject to contract between the partners. Learned senior counsel for the appellants could not point out any clauses in the Partnership Deed contrary to Sections 14 and 15 which are subject to the contract between the partners.

148. A perusal of the Declaration-Cum-Indemnity dated 12th October 2010 signed by the appellants and Ms. Shabina Mohamed Shafik Laljee and in particular clauses 2 to 5 of the said document would clearly admit on the part the appellants that the Dharavi property referred in the said document was the property of the suit firm. Even in

the affidavit affirmed on 12th October 2010 filed by the appellants and Ms.Shabina Mohamed Shafik Laljee, it was admitted that the said Dharavi property was purchased by the suit firm consisting of two partners i.e. Mohamed Shafik and Yakub Ali.

149. Supreme Court in the case of ***Malabar Fisheries Co. Vs. Commissioner of Income Tax (supra)*** has held that rights of the Partnership Firm and its partners in the property of the firm are not extinguished after dissolution of the firm. Supreme Court in the cases of ***V. Subramaniam Vs. R.R. Rao (supra)*** and ***N. Kaderavalli Saheb Vs. N. Gundu Sahib (supra)*** has held that the partners are the real co-owners of the property acquired by the partnership firm. Even if the partnership firm is dissolved, partners continued to be the co-owners of the property during the life time and after demise of the partners, legal heirs of such partners continued to be the owners of such property. The principles of law laid down by the Supreme Court in the cases of ***V. Subramaniam Vs. R.R. Rao (supra)*** and ***N. Kaderavalli Saheb Vs. N. Gundu Sahib (supra)*** apply to the facts of this case.

150. Gujarat High Court in the case of ***Parmanand Vasani Vs. State of Gujarat (supra)*** has held that on dissolution of the firm, the partnership assets would devolve upon its partners or the representatives of the partners as tenants-in-common. The principles of law laid down by the Gujarat High Court in the case of ***Parmanand Vasani Vs. State of Gujarat (supra)*** applies to the facts of this case. We are in agreement with the views expressed by the Gujarat High Court

in the said judgment.

151. Under Section 95 of the Indian Trusts Act, the said Mohamed Shafik during his life time and upon his demise, the appellants and Ms. Shabina Mohamed Shafik Laljee are subjected to the same liabilities and disabilities as if they were trustees of the property for the person for whose benefit they hold it, i.e. estate of the said deceased person Yakub Ali. Section 88 of the Indian Trusts Act has to be read with Section 95 of the said Act.

152. Supreme Court in the case of ***Shreedhar Govind Karmekar Vs. Yesahwant Govind Kamerkar & Ors. (supra)*** has held that if affairs of Partnership firm are completely wound up, the right of the legal heirs of the partners is continued in the profit and the assets of the said firm. The respondent has rightly distinguished the judgment of the Privy Council in the case of ***K. Gopala Chetty (supra)*** on the ground that the said judgment was admittedly delivered prior to enactment of the Partnership Act, 1932 and also the judgment of the Madras High Court in the case of ***M.M. Valliammai Achi (supra)***, judgment of Andhra Pradesh High Court in the case of ***Peeran Sahib & Ors. (supra)*** and judgment of the Chhattisgarh High Court in the case of ***Shanti Bai Agrawal & Ors. (supra)*** on the similar ground.

153. Learned counsel for the respondent has rightly distinguished the judgment of this Court in the case of ***Seemaben Shankar Patel (supra)*** on the ground that matter of dissolution of firm had already taken place. The assets of the Partnership firm were

already partitioned. No claim was made by the deceased partner for dissolution of the assets of the said firm.

154. Learned counsel for the respondent rightly placed reliance on the judgment of the Supreme Court in the case of ***Associated Builders (supra)*** and in the case of ***Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (supra)*** in support of the submission that since the findings rendered by the arbitral tribunal were not perverse, no interference under Section 34 of the Arbitration Act is permissible. Principles of law laid down by the Supreme Court in the case of ***Associated Builders (supra)*** and in the case of ***Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (supra)*** apply to the facts of this case. This Court in the case of ***Fermenta Biotech Limited Vs. K.R. Patel (supra)*** has held that even if the view taken by the arbitral tribunal is plausible view, such view cannot be interfered with by this Court while hearing the petition under Section 34 of the Arbitration Act.

155. Learned senior counsel for the appellants could not point out any infirmity from the impugned judgment rendered by the learned Single Judge refusing to interfere with the arbitral award. Learned Single Judge also has dealt with all the arguments advanced by the parties in the said detailed judgment and has rightly refused to interfere with the impugned award. There is no substance in the submission of the learned senior counsel for the appellants that the findings recorded on the issue no.2 by the arbitral tribunal is different

than the issue as framed. It is not the case of the appellants that there was no claim made by the respondent for share in the assets of the Partnership firm or that such claim was though made in the statement of claim was given up by the appellants.

156. The appellants themselves had admitted in the statement of defence that the said Dharavi property was acquired by the Partnership Firm and that the said Yakubali and Mohamed Shafik were the co-owners of the said property. There was thus no lis between the parties in so far as the issue whether the said Dharavi property was an asset of the suit firm and that the said Yakubali and Mohamed Shafik were the owners of the said property.

157. In so far as the submission of the learned senior counsel for the appellants that even if it is considered that the said Dharavi property was an asset of the suit firm and both the partners were entitled to share in the said asset, no partner can claim any specific portion of the said property is concerned, though this submission has merit, the actual division of the said Dharavi property can be applied in the execution proceedings.

158. The scope of the powers of the Appellate Court under Section 37 of the Arbitration Act are more limited than the limited powers of the Court hearing the petition under Section 34 of the Arbitration Act. No case is made out by the appellants for exercising such limited powers by the Appellate Court in this appeal to interfere with the impugned award as well as the impugned judgment rendered

by the learned Single Judge except to the limited extent.

159. We therefore pass the following order :-

(i) Appeal No.28 of 2020 is partly allowed and is disposed of in the following terms :-

(ii) The impugned award dated 23rd March 2018 passed by the Arbitral Tribunal declaring that the respondent herein (original claimant) is entitled to 51% share in the Dharavi property as Co-owner is upheld.

(iii) The impugned direction in the arbitral award that the respondent herein would continue to receive her share in the profits till winding up in terms of clauses 13 and 14 of the Deed of Partnership and that the appellants to pay the respondent 51% of the profit from the Dharavi property from 1982 till the date of award and thereafter till winding up is set aside since the account between the partners are not settled by the Arbitral Tribunal. Consequently, the award directing the appellants to pay interest on that share of profits till final payment from the date of award is set aside.

(iv) The award in respect of costs quantified at Rs.20,00,000/- in the impugned award is upheld.

(v) The appellants to comply with the arbitral award dated 23rd March 2018 as modified by this order expeditiously and not later

than three months from today.

(vi) In view of disposal of the appeal, Interim Application No.9905 of 2020 does not survive and is accordingly disposed of.

(vii) There shall be no order as to costs.

V. G. BISHT, J.

R.D. DHANUKA, J.