



O.P.No.546 of 2020 and Arb.O.P.(Comm.) No.87 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
22~10~2021	09-11~2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P. No.546 of 2020 and
Arb.O.P.(Comm.) No.87 of 2021

O.P.No.546 of 2020

M/s. Landmark Housing Projects Chennai Pvt. Ltd.,
Represented by its Managing Director Mr.T.Udayakumar
Office at No.27, Saravana Street,
T.Nagar, Chennai 600017.

... Petitioner / 1st Respondent

-Vs-

1.M/s. Savithri Naidu
D/o Narayanasamy Naidu
N.7, 1st Avenue, Sasthri Nagar,
Chennai 600020,TN.

2.Mr. Rajiv Naidu
S/o Savithri Naidu
N.7, 1st Avenue, Sasthri Nagar,
Chennai 600020,TN.

3.Mr. Vikram Naidu



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S/o Savithri Naidu
No.7, 1st Avenue, Sasthri Nagar,
Chennai 600020, TN.

4. M/s.Matchpoint Tennis Academy Pvt. Ltd.,
Rep.by its Managing Director Mr.Rajiv Naidu
Address: No.7, 1st Avenue, Sasthri Nagar,
Chennai 600020, TN.

...Respondents 1 to 4/Claimants

5. Mr.R. Venkatraman
Office at Old No.41/4, New No.55/3,
Vaigai Colony, 11th Avenue, Ashok Nagar
Chennai, Tamil Nadu.

... Respondent 5/Respondent 2

Arb.O.P.(Comm)No.87 of 2021

1.M/s. Savithri Naidu
D/o Narayanasamy Naidu
N.7, 1st Avenue, Sasthri Nagar,
Chennai 600020, TN.

2.Mr. Rajiv Naidu
S/o Savithri Naidu
N.7, 1st Avenue, Sasthri Nagar,
Chennai 600020, TN.

3.Mr. Vikram Naidu
S/o Savithri Naidu
No.7, 1st Avenue, Sasthri Nagar,
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4. M/s.Matchpoint Tennis Academy Pvt. Ltd.,
Rep.by its Managing Director Mr.Rajiv Naidu
Address: No.7, 1st Avenue, Sasthri Nagar,
Chennai 600020, TN.

...Petitioners/Claimants



O.P.No.546 of 2020 and Arb.O.P.(Comm.) No.87 of 2021

-VS-

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1. M/s.Landmark Housing Projects Chennai Pvt. Ltd.,
Represented by its Managing Director Mr.T.Udayakumar
Office at No.27, Saravana Street,
T.Nagar, Chennai 600017. ... Respondent1/Respondent1
2. Mr.R. Venkatraman
Office at Old No.41/4, New No.55/3,
Vaigai Colony, 11th Avenue, Ashok Nagar
Chennai, Tamil Nadu. ... Respondent2/Respondent2

Prayer in O.P.No.546 of 2020: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award No.1 of 2018 dated 14.09.2020 on the file of the Arbitral Tribunal, as being illegal and and opposed to public policy.

Prayer in Arb.O.P.(Comm)No.87 of 2021: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996,to set aside the paragraphs 233(e), 233(f), 233(h), partially set aside in paragraphs 233(a) and 233(b) of the Arbitral Award dated 23.12.2015, and enhance the reate of intrest from 9% to 24% till the date of realization.

For Petitioner : Mr.V. Lakshminarayanan for
in O.P.546/2020 M/s M.A.Gowthamani.
and 1st Respondent
in Arb.O.P.87/2021

For 1st Respondent : Mr. Nithyaesh Nataraj



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in O.P.546/2020
and Petitioner
in Arb.O.P.87/2021

for Nithyaesh & Vaibav

For 5th Respondent : Mr. Arun Anbumni for
in O.P.546/2020 M/s. Arulselvam Associates.
2nd Respondent in
Arb.O.P.87/2021

COMMON ORDER

1.Two Original Petitions are filed Challenging the Arbitral Award passed by the learned sole Arbitrator dated 14.09.2020.

1.a. O.P.No.546 of 2020 has been filed by the 1st Respondent before the Arbitral Tribunal to set aside the Award No.1 of 2018 dated 14.09.2020 on the file of the Arbitral Tribunal, as being illegal and and opposed to public policy.

1.b. O.P.No.87 of 2021 has been filed by the Claimants before the Arbitral Tribunal to set aside the Award and dismiss the claim petition preferred by the Claimant.



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1.c The parties are arrayed as per their own rankings before the Arbitral Tribunal. The Petitioner who filed O.P.No.546 of 2020 is referred as 1st Respondent and the Petitioners who filed O.P.No.87 of 2021 is referred as Claimants for the convenience sake.

1.d. Since both the Petitions are arising out of the same Award, the same are disposed by way of this Common Order.

1.e. This Court while entertaining these petitions, issued limited notice on the arbitrability of the dispute alone vide order dated 02.12.2020.

2. The brief facts leading to file these Original Petitions are as follows:

2.a. The Claimants who are Respondents in main O.P.No.546 of 2020 owned a total extent of 9.80 Acres of land in Sholinganallur Village, Kanchipuram District comprised in Survey Nos.329/aB (329/3B1B as per patta), 329/2, 329/3A, 328/3A, 328/1B (328/1B1 as per patta), 328/1B (328/1B2 as per patta) and 328/3B. The 1st Respondent company approached the Claimants and offered to



purchase the entire extent of 9.80 Acres including those 2 Acres which was agreed to be sold to M/s. Clan Laboratories. After negotiation, the Claimants have agreed to sell the entire 9.80 Acres to the 1st Respondent. Memorandum of Understanding (MOU) dated 23.07.2014 came to be executed by the parties. By the said MOU the parties fixed the total sale consideration at Rs.73.50 Crores which was to be paid in five installments. On the date of MOU Rs.2 Crores was paid by cash. By the same MOU, 2nd Respondent was appointed as an Escro Agent who shall be the custodian of the MOU and the original title deeds. The 2nd Respondent also agreed that in the event of any dispute between the Claimants and 1st Respondent, he shall act as sole Arbitrator between the parties.

2.b. Apart from Rs.2 Crores in cash, another Rs.10 Crores also paid by cash and the 1st Respondent also issued a cheque drawn on Axis Bank for a sum of Rs.30,23,34,000/- without filling the name and the date of cheque and the 2nd Respondent filled up his name and the date of cheque as 25.09.2017. However, the cheque was dishonoured and the 2nd Claimant prosecuted 1st Respondent for the offence under Section 138 of the Negotiable Instruments Act in CC.No.121 of 2018.



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2.c. It is the further case of the Claimants that the Respondents 2 and 3 have colluded with 1st Respondent and played fraud upon the Claimants and have cheated the Claimants by handing over the original title deeds and the MOUs to the 1st Respondent. Subsequent agreement dated 20.10.2014 also came into existence between the parties. It is also the case of the Claimant that in the meanwhile they executed sale deeds in favour of the 1st Respondent on 10.11.2014 and 12.11.2014 for total extent. In nutshell, it is the case of the Claimant that the Respondents are liable to pay the balance sum of Rs.34.20 Crores as per the Memorandum of Understanding entered between the parties and claimed various claims including the purchase money agreed between the parties in the Memorandum.

3.a. 1st Respondent took a defence that the Claim Petition is not maintainable and the same has been filed only to obstruct the income tax proceedings. Admitting that they have entered MOU on 23.07.2014 it is the case of the 1st Respondent that on 25.07.2014 supplemental MOU was entered into between the Claimants and the 1st Respondent, thereby altering and adding certain clauses of the MOU dated 23.07.2014. As per the MOU dated 23.07.2014 a total



sum of Rs. 32,01,66,000/- towards part of sale consideration is to be paid by the 1st Respondent by showing the same in the accounts. Out of the said sum, 1st Claimant was to receive Rs.14,70,15,000/-, the 2nd Claimant Rs.5,68,45,800/-, the 3rd Claimant Rs.8,36,70,000/- and the 4th Claimant Rs.3,26,70,000/-.

3.b. It is the further contention of the 1st Respondent that the balance sale consideration of Rs.41,48,34,000/- was agreed to be paid by way of concealed payments i.e., without showing the same in the accounts with a view to evade payment of tax. The agreement to pay Rs.41,48,34,000/- by way of concealed payment is not legally enforceable as it is opposed to public policy besides being immoral. Therefore, in order to enforce the same, neither party can raise any dispute. It is also the contention that with the above understanding the 1st Respondent made cash payment of Rs.34.50 Crores on various dates from 23.07.2014 till 10.11.2014, out of Rs.41,48,34,000/- which was agreed to be paid by way of concealed payment. It is further contended that the sale deeds were also executed by all the four claimants separately in respect of the extent of land owned by each Claimant. After receipt of the consideration as set out in the Memorandum dated 23.07.2014, the cheque issued by the 1st Respondent for



security was misused by the Claimants. Hence, it is the contention that in view of the execution of the sale deeds the Memorandum dated 23.07.2014 and 25.07.2014 become extinct and as such they have no value at all.

3.c. The 1st Respondent also denied the MOU dated 20.10.2014. Though it was drafted, it was never finalised and it is also denied that the cheque was issued as per MOU. It is also stated by the 1st Respondent that Respondents 2 and 4 are concerned they are unnecessary parties to the Arbitral Proceedings and disputed the claim mainly on the ground that the claim is unlawful.

4. The 2nd Respondent submitted that the 1st Respondent on his own, finalised the proposal to purchase the property from the Claimants and he has not involved himself in the transaction. He has received only a professional fees and Rs.10 lakhs of hand loan. He has not received any money and disputed the claim. He has also raised counter claim for Rs.5 Crores towards the damages. The Claimants have also filed reply statement.

1. Based on the pleadings the following issues were framed:



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1. *Whether any fresh Memorandum of Understanding (MOU) dated 25.07.2014, altering the terms and conditions of the MOU dated 23.07.2017 was entered into between the claimants and the 1st Respondent, as claimed by the 1st Respondent?*
2. *Whether any supplementary MOU was entered into between the Claimants and the 1st Respondent on 20.11.2014 as claimed by the Claimants?*
3. *Whether the MOUs dated 23.07.2014, 20.10.2014 and the other documents were entrusted to the Respondents 2 and 3 with a direction to keep the same as in trust as claimed by the Claimants?*
4. *Whether the documents covered in Issue No.3 are in the custody of the Respondents 2 and 3 and whether they are liable to produce the same?*
5. *Whethere the Respondents 2 and 3 had acted as Escrow Agents of the 1st Respondent or whether they acted in professional capacity as Advocates for the 1st*



Respondent as well as the Claimants?

6. *Whether the 1st Respondent and the Respondent 2 and 3 have in any manner colluded with each other as claimed by the Claimants?*
7. *Whether it is true that the 1st Respondent has paid a total sumn of Rs.32,01,66,000/- towards accounted transaction and Rs.34,50,00,000/- towards unaccounted transaction in terms of MOU dated 23.07.2014 and 25.07.2014 so far to the Claimants towards sale consideration as claimed by the 1st Respondent?*
8. *Whether the 1st Respondent is liable to pay Rs.30,23,34,000/- as claimed by the Claimants?*
9. *Whether the Claimants are entitled for interest for the principal amount at the rate of 24% with effect from 01.04.2015?*
10. *Whether the Claimants are entitled for damages to the tune of Rs.34.20 Crores with interest @ 18% towards*



damages for breach of contract, loss of profit and loss of business as claimed by the Claimants?

11. Whether the Claimants are entitled for a sum of Rs.5 Crores towards mental agony, harassment, trauma, loss of reputation and suffering from the malicious, wrongful, fraudulent and dishonest action of the Respondents as claimed by the Claimants?

12. Whether the claim made by the Claimants is barred by Section 62 of the Indian Contract Act?

13. Whether the Arbitral proceeding as against R2 and R3 is not maintainable?

14. Whether the 2nd Respondent is entitled for damages to the tune of Rs.5 Crores as claimed in the counter claim?

15. Whether the claimants are entitled for injunction and attachment as claimed by the Claimants?

6. On the side of the claimants P.W.1 to P.W.4 were examined. On the side



of the Respondent R.W.1 to R.W.6 were examined. P.W.2 and P.W.3 experts were examined on the side of the Claimants to prove the authenticity of the emails and also the audio recordings. 80 exhibits were filed on the side of the Claimants and 21 exhibits were filed on the side of the Respondents and witnesses exhibits 1 to 12 were also filed. Learned Arbitral Tribunal after analysing the entire evidence passed the following Award:

a. There shall be an award against the 1st Respondent alone for a sum of Rs.28,48,38,000/- towards the sale consideration and Rs.25 lakhs towards compensation (premium) and thus, the total award amount shall be Rs.28,73,34,000/- (Rupees Twenty Eight Crores Seventy Three Lakhs and Thirty Four Thousand only)

b. The above award amount of Rs.28,73,34,000/- shall carry interest at the rate of 9% per annum from 01.04.2015 till the date of Award and at the rate of 12% per annum from the date of Award till the date of realisation payable by the 1st Respondent.

c. There shall be an order of attachment of the properties covered under the Exs.A13 to A16 and there shall be a charge against the said property for the award amount



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with interest.

d. There shall be an order of Injunction restraining the 1st Respondent from encumbering, alienating or disposing of the properties covered under Ex.A13 to A16 until the award is fully satisfied.

e. All the other claims made by the Claimants against the 1st Respondent are dismissed as indicated above.

f. The claims against the 2nd Respondent are dismissed.

g. The counter claim made by the 2nd Respondent is dismissed

h. The Contempt Petition M.P.7/2018 stands disposed of as indicated above.

i. Miscellaneous Petition Nos.1,3,4 and 5 stand dismissed as infructuous.

j. Considering the nature of the claims, the rival contentions and all other circumstances, the parties are



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directed to bear their own cost.

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Challenging the above Award 1st Respondent has filed O.P.No.546 of 2020.

7. The main contention of the Learned Counsel Mr.V. Lakshminarayanan appearing for the 1st Respondent /Petitioner in O.P.No.546 of 2020 is that the Award is liable to be set aside as the dispute is non-arbitrable. It is his further contention that the Arbitral Tribunal has not rendered any finding on this aspect. Whereas it has mainly recorded the finding of this Court while dealing with Section 11 of the Arbitration and Conciliation Act application. Learned counsel contended that when the 1st Respondent raised the preliminary objection as to the arbitrability, learned Arbitrator ought to have framed necessary issues and decided the same. However, learned Tribunal has rejected the claims of the 1st Respondent summarily based on the findings by this Court rendered in Section 11 Application. It is his contention that the findings in Section 11 Application is only a prima facie view and all the issues ought to have decided only by the Arbitral Tribunal. Therefore his contention that without deciding the question of arbitrability, Arbitral Tribunal just referring the finding under Section 11 Application has contravened the provisions of the Arbitration and Conciliation Act 1996. Therefore, the Award



is violative of substantial provisions of law.

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8. It is his further contention that when the sale itself completed unregistered agreement cannot be enforceable, since the subsequent sale deeds novated the unregistered documents. Therefore, without framing any issue in this regard, learned Arbitrator decided the issue. It is also his contention that the Memorandum of Understanding dated 25.07.2014, Ex.B.7, which deals with cash transaction is opposed to public policy and barred under Section 23 of the Arbitration and Conciliation Act read with Section 10 of the Indian Contract Act. Hence, it is his contention that when the illegality is brought to the notice of the Court, such contract cannot be enforced in the eye of law. Hence it is his contention that when the contract itself based on the illegal transaction, the Claimant is not entitled for any relief. Therefore, it is his contention that the parties have entered into a contract to avoid tax and also proper stamp duty, which is illegal and such transaction is nothing but black money transaction, such contract cannot be enforceable in the eye of law. It is contended that the Claimant has also not come to the Court with clean hands. In fact, the Claimant himself has disputed Ex.B.7, whereas Arbitral Tribunal has relied Ex.B.7 that itself clearly shows that



the Claimant has not come to the Court with clean hands.

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9. It is his further contention that since the property has already been registered, the sale deed cannot be cancelled for non-payment of any alleged sale consideration. Only provision available is that the Claimant may seek recovery under Section 65 of the Indian Contract Act. However, it is his contention that Section 65 of the Indian Contract Act will apply only where the party seeking recovery was not aware of the nature of the transaction being void from the beginning. It is his further contention that the learned Arbitral Tribunal has given undue importance to Ex.A.75 mere print out of Ledger Statment. Merely because certain entries were made in Ex.A.75, it cannot be presumed that there is no payment made beyond what is recorded in Ex.A.75 and the learned Arbitral Tribunal has relied upon truncated admission and did not deal with the documents. Hence, the above aspect is also falls within the ambit of perversity.

10. It is also the contention of the learned counsel that under Section 55 of the Transfer of Property Act, only charge can be created over the unpaid price. The purchase money defined under Section 55 of the T.P.Act, is the purchase money



mentioned in the sale deed and it is not referable to any amount not mentioned therein. By virtue of Sections 91 and 92 of the Indian Evidence Act, the party to the document cannot plead contrary to the same, but at the best can explain the nature of the document. Therefore any amount cannot be claimed other than the amount already mentioned in the sale deeds. Hence it is his contention that the learned Arbitrator has in fact, overlooked the fundamental principles; the findings is nothing but contrary to the provisions of law and the Award falls within the ambit of perversity.

11. In the light of the above submissions he relied upon the following judgments:

1. *BSNL vs. Nortel Networks (India) (P) Ltd., [(2021) 5 SCC 738]*
2. *Vidya Drolia vs. Durga Trading Corporation [(2021) 2 SCC 1]*
3. *Mayavati Trading (P) Ltd., vs. Pradyuat Deb Burman [(2019) 8 SCC 714]*



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4. *Duro Felguera S.A. vs. Gangavaram Port Ltd.,*
[(2017) 9 SCC 729]
5. *Associate Builders vs. Delhi Development Authority*
[(2015) 3 SCC 449]
6. *Lion Engineering Consultants vs. State of M.P.****[(2018) 16 SCC 758]***
7. *Sanjeev Narang vs. Prism Buildcon Pvt. Ltd.,* ***[LIND 2008 Del 856]***
8. *State Bank of India vs. M/s. Aditya Finance and Leasing Co.* ***[AIR 1999 Del 18]***
9. *Arvindbhai Kalyanji Bhanusali* ***[(2020) 7 SCC366]***
10. *M.Manoharan Chetty & Others vs. Coomarawamy Naidu & Sons* ***[1979(2) MLJ 466]***
11. *Taylor vs. Chester* ***[Court of Queen's Bench, 1809 April 20 page 309]***



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12. *Sh. Sanjay Tandon vs. Vijay Kumar Swaika* [CS. No. 449/04, DOJ: 03/03.2011]
13. *QadriJahamBegam vs. FazalAhamed* [1928 ILR(Allahabad) page 748]
14. *Vidhyadhar vs. Manikaro and another* [(1999) 3 SCC 573]
15. *Dahiben vs. ArvindbhaiKalyanji Bhanusali (Gajra) Dead through legal Representative and others* [(2020) 7 SCC 366]
16. *Alexander vs. Rayson* [Kings Bench Division, 1934 A. 2137 page 169]
17. *Sanjay Mishra vs. Kanishka Kapoor @ Nikki* [2009 0 AIIMR(Cri) 1080]
18. *MSP Infrastructure Limited vs. Madhya Pradesh Road Development Corporation Ltd.,* [(2015) 13 SCC 713]
19. *Shri Surjeet Kumar vs. Shri Laxman Prasad Singh* [Suit No. 313 of 2003, 10thsep 2008]



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20. *Mohammadia cooperative Building Society Limited vs. Lakshmi Srinivasa cooperative Building Society Limited and another [(2008) 7 SCC 310]*

21. *Basappa vs. Basamma [2004 SCC Online Mad 14]*

22. *State of Orissa and Others vs. Gangaramchhapolia and another [1982 SCC Online Ori 47]*

23. *A.V Varadarajulu Naidu (deed) and others vs. K.V ThavasiNadar [1963 SCC OnLine Mad 4]*

12. Whereas the learned counsel Mr. Nithyaesh Natraj appearing for the Claimants/Respondents 1,3 and 4 in O.P.No.546 of 2020 and Petitioner in O.P.No.87 of 2021 mainly contended that the entire Award is based on the factual matrix after analysing various documents. The theory projected by the Petitioner in O.P.546 of 2020 is that the transaction relate to the black money is nothing but beyond the imagination. The Memorandum nowhere indicate that the parties were intended to evade tax. Whereas it is his contention that the statement given before the Income Tax Authorities by the Claimant clearly indicate that they have



prepared to pay taxes for the amount to be received from the Petitioner herein.

Therefore, it cannot be said that the transaction between the parties is black money transaction.

13. It is his further contention that even during Section 11 Application, execution of Memorandum and Sale consideration was not disputed by the Petitioner. The only contention is that out of cash transaction, he has already paid substantial amount to the tune of Rs.34.50 Crores and his stand was he is liable to pay only remaining Rs.7 Crores. That was the submissions made before this Court. Even before the Arbitral Tribunal the same stand has been taken. The Tribunal after analysing the entire evidence in this regard found that the Petitioner has not discharged his burden to show that he has paid Rs.34.50 Crores. The Tribunal has also recorded the reason that the Agreement is not opposed to the public policy and there is no black money transaction or unaccounted transaction. Hence it is his contention that having agreed to purchase the property for more than Rs.73 Crores, the Petitioner has registered the property for Rs.34.50 Crores, even after the registration he has mortgaged the property and availed Rs.23 Crores. That itself clearly indicate that the Claimants are innocents; undue advantage taken by



the Petitioner herein to make unjust enrichment. Hence it is his contention that merely the amount has been agreed to be received in cash that cannot be construed to mean that it is a black money transaction. Therefore, the entire aspect has been analysed by the learned Arbitrator and passed the Award, the same may not be interfered and there is not ground made out to interfere in the well reasoned Award.

14. It is his further contention that the learned Arbitrator ought to have granted interest 24% and also initiated contempt against other Respondents. Therefore, that portion alone has been challenged by the Claimant. Hence, prayed for dismissal of the O.P.No.546 of 2020 and allow the Arb.O.P.No.87 of 2021.

15. In support of his contention the learned Counsel appearing for the Claimants/Respondents 1,3 and 4 in O.P.No.546 of 2020 and Petitioner in O.P.No.87 of 2021 relied upon the followign judgments:

*1. SBP & Co vs Patel Engineering Ltd. and another
[(2005) 8 SCC 618]*



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2. *M/s.Karnan Ores & Specials vs. M/s.Endeka Ceramic India Pvt. Ltd. and another* **[2019 (1) CTC 148]**
3. *State of West Bengal vs. Sarkar and Sarkar* **[(2018) 12 SCC 736]**
4. *New Era Fabrics Limited vs. Bhanumati Keshrichand Jhaveri and others* **[(2020) 4 SCC 41]**
5. *Booz Allen and Hamilton Inc. vs. SBI Home Finance Limited and others* **[2011 (5) SCC 532]**
6. *Emaar MGF Land Ltd. vs. Aftab Singh* **[(2019) 12 SCC 751]**
7. *A.Ayyasamy vs. A. Paramasivam and others* **[(2016) 10 SCC 386]**
8. *Swiss Timing Ltd. vs. Commonwealth Games 2010 Organising Committee* **[(2014) 6 SCC 677]**
9. *Velugubanti Hari Babu vs. Parvathini Narasimha Rao and another* **[(2016) 14 SCC 126]**



10.Ameet Lalchand Shah and others vs. Rishabh Enterprises and another [(2018) 15 SCC 678]

11.Deccan Paper Mills Company Ltd. vs. Regency Mahavir Properties and others [2020 SCC Online SC 655]

16. It is the admitted case of the parties that the Claimant owned 9.80 Acres of land which is the subject matter of the proceedings. It is also admitted that the parties entered in a Memorandum of Understanding dated 23.07.2014, wherein the Respondents have agreed to purchase the property for a total sale consideration Rs.73.50 Crores. Ex.B.1 unregistered MOU dated 23.07.2014 was filed. Though Ex.B.7 dated 25.07.2014 also came into existence between the parties, the Claimants in fact, taken a stand that they have not executed Ex.B.7. They came to know about the same only when it was produced before the High Court during Section 11 Application filed. The Arbitrator has posed a doubt as to the existence of Ex.B.7 and on a closer scrutiny of the document and signature found in the above document, which has not been disputed by the Claimants, learned Arbitrator found that Ex.B.7 also came to be executed between the parties. In this regard the



learned Arbitrator discussed in detail in paragraph 49 of the Award and found that Ex.B.7 was executed by the parties and also found that Ex.B.1 and Ex.B.7 would go to show that there is no alteration in respect of the total sale consideration and the extent and the identity of the property. Learned Arbitrator has also recorded a categorical finding that Ex.B.7 is only supplemental to Ex.B.1 by showing the extent of land owned by each Claimant and the consideration to be paid to each Claimant out of the total sale consideration of Rs.73.50 Crores. Further, Ex.B.7 mentions about the payments to be made to the Claimants by way of cheque and by way of cash and recorded a finding that Exs.B.1 and B.7 do not contradict each other; Ex.B.7 executed only to make the above changes for the smooth completion of the proposed sale transaction as agreed under Ex.B.1.

17. Be that as it may. Whether Ex.B.7 proved or not is immaterial. It is not disputed by the parties, particularly, the Petitioner in O.P.No.546 of 2020, that the payment of Rs.41 Crores made by way of cash transaction. It is specific stand that he has paid around Rs.34.50 crores and finally in paragraph 70 the learned Arbitrator concluded that Ex.B.7 shall be in addition to Ex.B.1 and both the documents are to be read conjointly. Learned Arbitrator factually found that there



is no controversy between the parties as to the total amount of sale consideration agreed for an extent of 9.80 Acres which is the subject matter of Agreement.

18. It is specific cse of the 1st Respondent/Petitioner in O.P.No.546 of 2020 that a sum of Rs.34,50,00,000/- was paid towards unaccounted transaction. Leanred Arbtration in paragraph 78, 79 to 112 by threadbare analysis of every document has discussed in detail and found that the 1st Respondent has not discharged his burden to establish his cash payment of Rs.34.50 Crores. It is also to be noted that the learned Arbitrator not only relied upon the oral evidence of the parties but also the experts evidence and evidence of officers of Income Tax Department and afte analysing the entire evidence concluded that the contention of the 1st Respondent that he has paid Rs.34.50 Crores by cash has not been established and held that the 1st Respondent is liable to pay the amount. The audio recordings is also dealt by the learend Arbitrator. In fact the primary evidence viz.,original record has been produced, besides experts also examined and found that there is no tampering the voice etc., and recorded and finally considered the entire gamat of evidence keeping in view of the fundamental principal of evidence Act, though Evidence Act is not strictly applicable. The Arbitrator has factually



found that the amount said to have been paid in Cash has not been established and finally passed the Award.

19. On perusal of the entire Award the learned Arbitrator in fact, meticulously analysed all the evidence and every decision has taken based on the basic principle governing the proof of facts. Though the rules of evidence is not strictly applicable, the principle which require for proving the facts have been taken note of by the learned Arbitrator. All facts and every aspects have been considered by the learned Arbitrator and arrived the conclusion. When the decision of the learned Arbitrator based on the factual finding, this Court sitting in exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act cannot re-appreciate the evidence once again. As for as the appreciation of evidence and reaching the conclusion by the learned Arbitrator, this Court is not able to find any error or perversity. Learned Arbitrator by his rich experience, has analysed the entire facts and arrived a conclusion.

20. From the fact finding by the learned Arbitrator this Court is not able to find any perversity. Though the learned Arbitrator, as indicated above, initially



found doubt about Ex.B.7, after analysing the document with other documents and the evidence of P.W.1, P.W.2, as signatures have not been disputed, finally concluded that Ex.B.7 also executed by the Claimant, though they denied that they were not aware of Ex.B.7. Much has been emphasized on Ex.A.75 the document said to be the statement of accounts of the Petitioner herein. Learned Arbitrator has not just relied upon Ex.A.75. He has in fact considered the admission of the 1st Respondent about their own statement in entirety and found that all the cash transactions also entered in the above ledgers. It is to be noted that learned Arbitrator in fact has made analysis the nature of the payments were made and held that the Petitioner in O.P.No.546 of 2020 is liable to pay the Award amount.

21. It is also to be noted that though the main contention of the Petitioner that the transaction meant in the Memorandum towards the unaccounted transaction, the learned Arbitrator has in fact, recorded finding in paragraph 142 that the Claimants have not attempted to evade tax on capital gain and also found that there is no evidence on record even to prove that the Claimants had equal intention to evade tax on capital gain. Learned Arbitrator further held that there was no transaction involved in this case between the parties which are opposed to



public policy or any statutory law insofar as the Claimants are concerned. In

paragraph 146 also the learned Arbitrator recorded is finding that the agreement to pay the consideration by way of cheques in part and the rest by way of cash is also not forbidden by law and there is no evidence on record to show that the parties mutually agreed not to show the cash payments in the accounts and held that unless there is such mutual agreement between the parties, it cannot be concluded that the transaction is illegal.

22.Learned Arbitrator has also taken note of the fact that even while statement given under Income Tax Department, the Petitioner has never stated that the cash payment made only towards unaccounted transaction. Therefore, as found by the Learned Arbitrator, it cannot be said that merely some violation in receiving the amount in cash by the Claimants, the same cannot be termed to evade the tax. It is not the case of the Income Tax officers that the tax has been evaded. Though the proceedings have been initiated the Claimants have in fact, admitted in their statements to pay the taxes if the amount is received by cash. Therefore, it cannot be said that the transaction tainted with illegality. Merely because the amount has not received by way of cheque as contemplated under Income tax Act



under Section 269SS. The very object of the above provision counteract the evasion of tax. When the tax have been evaded. Though the parties have agreed to receive the cash contrary to the provision of Income Tax Act. Unless there is a clear evidence on record to show that such contract was entered only to evade tax or treat the above money as black money, it cannot be said that the amount is not recoverable. As indicated, the Claimant has already admitted before the Tax Authorities to pay the taxes. Even in the Memorandum there is no whisper to indicate that this money is only intended for evasion of tax or to treat as black money.

23. If the intention of parites were to evade the tax, there would not have been any transaction even after registering the sale deeds and certain accounts, cash transactions also brought in the Ledger Account of the 1st Respondent. E-mail correspondence between the parties also exchanged. If the intention of the parties particularly, the claimant was to evade tax, there was no necessity to exchange the e-mail correspondence. If the intention of the parties were to conceal the amount as a prudent man 1st Respondent would not have recorded the cash transaction in the Ledger Ex.A.75. All these facts clearly indicate that as held by the learned



Arbitrator the parties have never intended to evade tax. Certainly, the Claimants have no intention to evade tax. However, Respondent have taken advantage to conceal the real market value while registering the property. Merely because the true value has not reflected in the sale deed that may not be a ground to set aside the entire sale. Only for the prevention of the under valuation necessary safe guard has been made under the law in Section 47-A of the Tamil Nadu Stamp Act. If the registering authority has reason to believe that the market value of the property which is the subject matter of conveyance has not been truly set forth in the instrument he may after registering such instrument refer the same to the Collector for determination of the market value of the property and proper duty thereon. Section 47-A of the Indian Stamp Act provides for the procedure for collection of deficit stamp duty. However, in this case the registering authority has not initiated any action.

24. Be that as it may. Merely because the purchaser has not set forth true market value in the conveyance, same cannot be fitted against the claimant merely on the ground that they have agreed certain cash payments to contend that the entire contract is tainted with illegality and opposed to public policy. It is also



relevant to note that the agreement to evade stamp duty is certainly within the knowledge of the Petitioner/1st Respondent for which the Respondent may not be found fault. Though they are party to the agreement they are less guilty. As long as there is no evidence to show that they are not intended to evade tax certainly intended to recover the admitted price money for the sale of the entire 9.80 Acres originally agreed in the Memorandum.

25. Though it is the contention of the learned counsel that since the sale deed has been registered, Memorandum become extinct. It is to be noted that Section 50 of the Registration Act deals with certain registered documents related to the land to take effect against unregistered documents. Section 50 of the Registration Act makes it very clear that registered documents take effect as regards the property comprised therein, against every unregistered document relating to the same property alone. Section 50 of the Registration Act operate to the immovable property. Registered document will prevail over the unregistered document over the property. Therefore, it cannot be said that merely because the documents have been registered the original contract the price money agreed between the parties will also wiped out.



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26. Similarly Section 62 of the Contract Act deals with novations. It is to be noted that the documents has to be registered only as per the agreement entered between the parties for certain values. Therefore, mere registration of the document which culminated in the sale deed, it cannot be said that the original price money agreed between the parties is wiped out. If that was the intention of the parties there was no reason to exchange the correspondence between the parties even after the registration of the document. Further certain cash amount also proved as seen in Ex.A.75 by the learned Arbitrator. Therefore, the Petitioner cannot take undue advantage on the ground of registered document for less value.

27. It is also to be noted that as long as there is no intention on the part of the Claimant to evade tax, mere violation in certain provisions of the Income Tax, it cannot be said that such consideration is entirely tainted and illegal. Though the Petitioner has concealed the real market value while registering the sale deed, the contract cannot become *void abinitio*. At the most it is only to conceal the real market value for which effective provisions also available under law to recover the deficit stamp duty as contemplated under Section 47-A of the Stamp Act. Such



being the position when the contract is not void from the very inception. Even suppression of deficit market value would not make contract void. In fact the Petitioner has taken advantage of registering the property for lesser amount and taken advantage and also availed loan of Rs.23 Crores as per the evidence cannot now complain that the entire contract is unenforceable etc.,

28. It is not the case of the Petitioner that he never agreed to pay sale consideration, as agreed in the Memorandum. Even during the proceedings under Section 11 of the AC Act, his specific stand is that he has paid a substantial amount of cash payment and he is liable to pay only Rs.7 Crores towards the sale remaining amount. Similar stand in O.P.No.1052 of 2017. In paragraph 31 of the Order in O.P.No.1052 of 2017 this Court has held that the dispute in question is not established to be in the realm of an illegal transaction as it concerns payments which are yet to be made as between the parties and also held that the dispute is only with regard to the balance sale consideration remaining unpaid is a valid and legitimate one to be conducted through normal banking channels and duly disclosed to all statutory authorities. The above findings has not been challenged.



29. In ***BSNL vs. Nortel Networks (India) (P) Ltd.***, case (supra) and in ***Mayavati Trading (P) Ltd., vs. Pradyut Deb Burman case*** (supra) the Honourable Apex Court has held that the findings of the Section 11 Court is only a prima facie view and it leaves open all the issues to be tried by the Arbitral Tribunal, including jurisdictional issues. The learned Arbitrator in fact has considered the above fact as indicated above. Be that as it may. Learned Arbitrator in fact, has considered the above aspects as indicated above. Therefore, the judgment cited above is not applicable.

30. In ***Lion Cylinder Engineering consultants' case*** (supra) the Honourable Apex Court has held that there is no bar on raising a plea of lack of jurisdiction by way of an objection under Section 34 even if no such objection had been raised before the Arbitrator under Section 16. Absolutely there is no dispute with regard to the above decision.

31. In ***Halsbury's Laws of England, 3rd Edition, Vol.8 at p.125*** it is held as follows:

“if the illegality of a transaction is brought to the



notice of the Court, whether the contract ex facie shows illegality, or it appears in the course of the proceedings, and the person invoking the aid of the Court is himself implicated in the illegality, the court will not assist him, even if the defendant has not pleaded the illegality and does not wish to raise that objection.”

32. In ***Sanjeev Narang's case*** (supra) the Delhi High Court has held as follows:

“(9) THE case set up by the plaintiff seems to be doubtful. The document filed by the plaintiff also do not inspire confidence. It is alleged by the plaintiff that he made payment in cash, I consider that wherever the contentions are made by a party that he made such a heavy payment in cash, the court should refuse to believe such contention. As per Income Tax Act, a payment of more than Rs. 20,000/- has to be made by way of cheque or bank draft. This is in order to curb underhand transaction and to curb development of black money and a parallel economy of black money in the country. In most of the transactions where heavy cash payments are shown, the initial agreements are entered where cash payments are shown



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exchanged and later on at the time of registration, sale deeds are prepared which do not reflect the real value of the property and it reflects only part of the consideration as the value of the property. The Court by entertaining such agreements where cash payments are shown to have exchanged hands, contrary to law of the land cannot be a party in establishing and encouraging a parallel economy of black money running in the country. Recognition of illegal acts as basis of reliefs in property transaction in fact encourages such illegal acts and gives an impression that the judicial system of the country supports the parallel economy and illegal acts.”

33. The above judgment came to be passed taking note of the fact that the very suit itself said to have been filed on the basis of the cash transaction. Whereas in this case it is not recovery of money paid on cash. It is only recovery of unpaid purchase money which is not disputed. Therefore, the above judgment cannot be applied to the facts of the present case.

34. In Dahiben's case (supra) it is held as follows:

“In view of the law laid down by this Court, even if



the averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed. The Plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered Sale Deed. We find that the suit filed by the Plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order VII Rule 11 (a)”.

35. In ***M. Manoharan Chetty and Others'*** case (supra) this Court has held as follows:

“10. The law by no means regards admission as conclusive proof of the matters admitted. This is because to a Court of law admissions are but statements which do no more than suggest an inference as to some fact or facts in issue. (See [Section 31](#) and [17](#) of the Indian Evidence Act, 1872). It is, therefore, important that the Court should examine any given admission inside out to see if it suggests any clear inference on the fact in issue against the party making it. For a Court to draw an adverse inference against a party on the basis of what he is stated to have admitted, the admission must be unequivocal. It must also be



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comprehensive. It must go the whole-hog, as it were, on the point at issue. If a party's admission falls short of the totality of the requisite evidence needed for legal proof of a fact in issue, such an admission would be only a truncated admission. It follows that in such a case it cannot support a valid judicial determination, unless it be that the Court is in a position to find other evidence before it to make up for the deficiencies in the admission.”

36. However, in this case, the learned Arbitrator has discussed threadbare, various circumstances and analysed each entries and found that Ex.A.75 admitted by the Petitioner itself. It is also relevant to note that if the Applicant was able to bring the payment in his account, there was no reason as to why he has not brought into account other cash payments. These facts also created a doubt about the version about the payment of cash transaction as alleged by him. Therefore, this Court is of the view that the finding of the Arbitrator in this regard is well founded. Therefore, it cannot be called as perversity at any event.

37. Much emphasis was made in the Queen's Bench Case ***[Taylor vs. Chester – 1809 April 20, Page 309]*** which is also as follows:



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*“The true test for determining whether or not the plaintiff and the defendant were in pari delicto, is by considering whether the plaintiff could make out his case otherwise than through the medium and by the aid of the illegal transaction to which he was himself a party: **Simpson v. Bloss** [7 Taunt. 246], **Fivaz v. Nicholls** [2 C.B. 501]. It is to be observed that in this case the illegality is not in a collateral matter, as in the case of **Ferret v. Hill** [15 C.B.207; 23 L.J.(C.P.) 185] which was cited for the plaintiff; but is the direct result of the transaction upon which the deposit of half-note took place.”*

38. It is also relevant to note that in **Sita Ram vs. Radhabai and Others** [1968 AIR 534] the three Judges Bench of Honourable Supreme Court has held as follows:

“The principle that the Courts will refuse to enforce an illegal agreement at the instance of a person who is himself a party to an illegality or fraud is expressed in the maxim in pari deucto portior est conditio defendentis. But as stated in Anson's 'Principles of the English Law of Contracts', 22nd End., p. 343:



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'there are exceptional cases in which a man will be relieved of the consequences of an illegal contract into which he has entered cases to which the maxim does not apply. They fall into three classes: (a) where the illegal purpose has not yet been substantially carried into effect before it is sought to recover money paid or goods delivered in furtherance of it; (b) where the plaintiff is not in pari delicto with the defendant. (c) where the plaintiff does not have to rely on the illegality to make out his claim.' There was in this case no plea by the plaintiff that there was any illegal purpose in entrusting the jewellery to Lachhmi Narain. It was also the plaintiff's case that Gomti bai knew that the jewellery in dispute was entrusted by the, plaintiff to Lachhmi Narain I and if the avernments made in the plaint are to be the sole basis for determining the contest, Gomtibai did not suffer any loss In consequence of the entrustment. Assuming that the Trial Court was competent without a proper pleading by the appellant and an issue to enter upon an enquiry into the question whether the plain. tiff could maintain an action for the jewellery entrusted by her to Lachhmi Narain, the circumstances of the case clearly make out a case that the parties were not "in pari



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delicto". It is settled law that 'where the parties are not in pari delicto, the less guilty party may be able to recover money paid, or property transferred, under the contract. This possibility may arise in three situations. First, the contract may be of a kind made illegal by statute in the interests 'of a particular class of persons of whom the plaintiff is one.'"

39. Considering the above settled position, even assuming that the contract has been entered into illegal purpose maxim “pari deucto portior est conditio defendentis” will not apply to the facts of the case. Alleged illegal purpose has not been substantially carried into effect before it is sought to recover money paid or goods delivered in furtherance of it. As discussed above, it is nowhere mentioned in the Memorandum that the cash transaction made only to evade tax i.e., illegal purposes. Whereas even before the Income Tax authorities they have admitted to pay the tax. If the intention of the parties whereto conceal the amount from taxes, there was no reason as to why there were correspondence between the parties and e-mails exchanged and enteries were made in the books of accounts of the 1st Respondent. Therefore, it cannot be said that the Claimants are in *pari delicto* with the Petitioner herein. Therefore the maxim cannot be applied to the facts of



the case and only the Petitioner has taken advantage in evading the proper stamp duty on the market value for which the Claimants cannot be blamed. Though Claimants are party to the sale deed their participation cannot be construed to mean that they have also party to evade the stamp duty. Accordingly at the most it could be held that they are less guilty than the Petitioner. In such view of the matter the maxim cannot be applicable to the facts of the present case, as the Petitioner has admitted the price money and failed to discharge their burden in proving the payment of Rs.34.50 Crores as alleged in the entire proceedings. The Arbitrator finding that payment has to be made by the Petitioner cannot be found fault with.

40. The other reliefs passed taking note of the conduct of the Petitioner. Having taken advantage of the registration for the lesser amount, the Petitioner immediately mortgaged the property and realised the huge amount from the finance companies. These facts in fact weighed the mind of Arbitrator to pass other reliefs of attachment, charge and injunction etc., till the amount is realised. The same in view of this Court does not require any interference. There is no perversity found in the findings of the Arbitrator. The learned Arbitrator specified a reason for not



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taking contempt proceedings against the 1st Respondent is well balanced, which does not require any interference. In fact, the learned Arbitrator has also recorded the fact that the 2nd Respondent had active involvement in the negotiation and also in subsequent transaction between the Claimants and the 1st Respondent and dismissed the counter claim also.

41. On perusal of the entire judgments, this Court is of the view that the Award passed by the Arbitrator does not require any interference. Accordingly, the same is confirmed and both the Original Petitions are dismissed.

09.11.2021

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