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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 15.07.2022

\+ FAO (OS) (COMM) 176/2022

SH. GURDEEP SINGH ..... Appellant

versus

JASPAL KAUR (SINCE DECEASED)
THROUGH LEGAL HEIRS ..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Shamit Mukherjee, Mr. Manish Kumar and Mr. Vijay Kumar, Advocates

For the Respondents : None

CORAM:
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM No.31027/2022 (Exemption)

Allowed subject to all just exceptions.

FAO (OS) (COMM) 176/2022 and CM APPL. 31028/2022 (stay)

1. Appellant impugns judgment dated 24.02.2022 whereby the

petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') impugning the award dated 13.05.2015 has been dismissed.

2. At the outset, learned counsel for the appellant commenced his submissions by candidly referring to the judgment of the Supreme Court in *Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation Limited, (2022) 1 SCC 131* wherein the Supreme Court has clarified the scope of examination under Sections 34 and 37 of the Act in the following terms :-

> *"28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with*

arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the *other party is a facet of perversity falling within the expression "patent illegality"."*

3. In the present case, the predecessor of the appellant and predecessor of the Respondents were partners in a partnership firm, which was trading under the name and style of *'M/s. New Delhi Madhya Pradesh Roadlines'*.

4. Smt. Jaspal Kaur, wife of one of the partners, Sh. Hardev Singh had made a claim before the Arbitral Tribunal seeking dissolution of the firm and payment of her 50% share in the said partnership firm.

5. The Arbitral Tribunal by its award dated 13.05.2015 passed an award dissolving the partnership firm *'M/s. New Delhi Madhya Pradesh Roadlines'* and held that one-half of the share of the partnership firm belonged to the appellant i.e. Gurdeep Singh S/o. Sh. Mohinder Singh and the other half belonged to the legal heirs of the claimant, Smt. Jaspal Kaur (who had expired during the pendency of the claim proceedings), who was the wife of the deceased partner Sh. Hardev Singh.

6. Arbitral Tribunal also gave a declaration that the partnership firm owned Property No.AG-48, Sanjay Gandhi Transport Nagar and property no.23, Transport Nagar, Ludhiana and thus, the parties were entitled the said two properties as per their share declared by the

arbitral award.

7. The award was impugned by the appellant by filing objections under Section 34 of the Act.

8. By the impugned judgment dated 24.02.2022, learned Single Judge of this Court in great detail examined the arbitral award as well as the contentions raised by the appellant and held that the impugned award is informed by reasons and had been made after examining and evaluating the evidence led by the parties.

9. The impugned order also records that the appellant sought re-adjudication of the disputes that had been adjudicated by the Arbitral Tribunal after examination and evaluating the evidence led by the parties.

10. Learned Single Judge found no infirmity with the decision of the Arbitral Tribunal or any patent illegality in the award or that the award fell afoul of Public Policy of India.

11. Impugning the award as well as impugned order of learned Single Judge, rejecting the objection filed under Section 34 of the Act, subject appeal has been filed.

12. Before this Court also, learned counsel for the appellant endeavoured to take this Court through the evidence led by the parties

as well as documents filed before the Arbitral Tribunal.

13. Though it is settled position of law that while examining an award under Section 37 of the Act, the Appellate Court does not re-appreciate the evidence or the material placed on record and examine the award as if it were a First Appellate Court, nonetheless, since we were taken through the evidence, brief reference to the submissions made by learned counsel for the appellant would be required.

14. Three fundamental submissions were made by learned Senior Counsel for the Appellant. First of all that Plot No.8, Gujranwala Town, Part-2, Delhi was owned by the partnership firm and as such should have been included as an asset of the partnership firm.

15. This submission is predicated on reference to Section 14 of the Partnership Act, 1932. It is contended by learned counsel for the appellant that the said asset was acquired from the money belonging to the firm and as such is deemed to have been acquired by a partnership firm.

16. Section 14 of the Partnership Act, 1932 reads as under :-

> *"14. THE PROPERTY OF THE FIRM - Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm for the*

purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interest in property acquired with money belonging to the firm are deemed to have been acquired for the firm."

17. For a property, not purchased in the name of the firm, to be deemed deeming to have been acquired for the firm, the precondition is that the property and rights and interest in the property must have been acquired with money belonging to the firm. There is a caveat to this deeming provision and that is *'unless contrary intention appears'*.

18. To buttress his submission, learned counsel for the appellant referred to the cross-examination of Smt. Jaspal Kaur. He submitted that in her cross-examination, Smt. Jaspal Kaur stated that she did not acquire any immovable property in her name because she had no independent source of income during the lifetime of her husband.

19. Perusal of the examination and cross-examination of Smt. Jaspal Kaur shows that there is no cross-examination or even a suggestion given to Smt. Jaspal Kaur that the said property belonged to the partnership firm or that the money belonging to the firm was used for acquiring the same.

20. For Section 14 of the Partnership Act to come into play, the

pre-requisite condition is that the property must have been acquired with the money belonging to the partnership firm. It is an admitted position that the said property was acquired in the name of Smt. Jaspal Kaur. The property was acquired in the year 1977 by way of a General Power of Attorney.

21. There is no material on record placed by the appellant to suggest that either the property was acquired in the name of any of the partners of the firm or any money belonging to the firm was utilized for the purpose of acquiring the said asset.

22. As noticed above, there is not even a suggestion in the entire cross examination of Smt. Jaspal Kaur that the money of the firm was used for acquiring the said asset.

23. The Arbitral Tribunal has negated the contention of the appellant holding that the admitted position was that construction on the plot started in the year 1977 and was completed in the year 1978 and the property stood in the name of Smt. Jaspal Kaur. The Arbitral Tribunal has also noticed that the partnership deed does not refer to the plot as one of its assets and there is no evidence that the house constructed on the said plot was constructed from the funds of the partnership.

24. As noticed hereinabove, there is no material placed by the

appellant either before the Arbitral Tribunal; before the learned Single Judge or before us to show that any money of the firm was used for purchase of the said asset. From the date of acquisition of the asset in the year 1978 till date there is no material produced to show that money of the partnership was used either in acquisition of the plot or in construction of the property.

25. This Court under Section 37 of the Act is not required to go into the evidence or re-appreciate the findings returned by the Arbitral Tribunal. However, even if we were to re-examine the material placed before the Arbitral Tribunal, we find that there is no reason to take a view different from the one taken by the Arbitral Tribunal that the said asset was not an asset belonging to the partnership firm and was the sole asset of Smt. Jaspal Kaur.

26. Second contention raised by the appellant was with regard to Plot No.AG-6, Sanjay Gandhi Transport Nagar. Learned counsel for the Appellant contends that the said plot was allotted in the name of a similar concern, which was a sole proprietorship concern of Sh. Hardev Singh i.e. husband of Smt. Jaspal Kaur and payment for acquisition of the plot was made from the partnership firm's funds.

27. We once again find that there is no merit in the said contention for the reason that the Tribunal, after appreciation of the evidence produced before it, has returned a finding that application for

allotment of the said plot was made by *'New Delhi Madhya Pradesh Transport Service'*, which was a sole proprietorship concern of Sh. Hardev Singh. Subject partnership is *'M/s. New Delhi Madhya Pradesh Roadlines'*.

28. Tribunal has held that the application was not filed by, for or on behalf of the partnership firm but was made by the sole proprietorship firm of Sh. Hardev Singh. Tribunal has further held that even if some payment was made towards the price of the plot, from the funds of the partnership, it was obligatory on the part of the appellant to prove that the payment was made by the partnership firm from its own assets and in assertion of its title and not paid out of the profit share of Sh. Hardev Singh.

29. Tribunal has noticed that after the death of Sh. Hardev Singh, his widow Smt. Jaspal Kaur filed a writ petition before this Court in the year 1989. Said petition was filed because the allotment of the said plot had been cancelled. She succeeded in the proceedings on 23.10.2002 and in the said petition, Smt. Jaspal Kaur had claimed rights in the property as a sole proprietor. At no point of time when the proceedings were pending from 1989 to 2002, Appellant claimed any right in the said property and remained a silent spectator.

30. Learned Single Judge in the impugned order has also noticed that there is no infirmity in the finding returned by the Tribunal that

the said plot did not belong to the partnership firm.

31. Third contention of learned counsel for the Appellant is predicated on an alleged Family Settlement dated 07.10.1993.

32. The contention of learned counsel for the appellant on the said settlement is that as per the said settlement, it was agreed that the predecessor of the appellant shall retire from the partnership firm and in lieu of his capital, a sum of Rs.55 Lakh would be paid in full and final settlement. It is contended that the Respondents are failing to even honour the said settlement.

33. The Tribunal has noticed that the settlement is disputed by the Respondent. The Tribunal, with regard to the evidence led by the appellant, has given detailed consideration to the testimony of the witnesses.

34. The Tribunal in its award has noticed several discrepancies in the testimony of the crucial witness, Sh. R.S. Longia produced by the appellant.

35. Tribunal has also noticed that though the stand of the appellant was that in the alleged meeting, there were several other individuals present, however, none of them had been sought to be examined and no reason had been given as to why those witnesses have been kept back.

36. Tribunal has also noticed the discrepancy in the statement of Sh. R.S. Longia with regard to the date on which the settlement was allegedly arrived at and executed. Tribunal, after examining the evidence on behalf of the appellant held that neither the story nor the alleged settlement inspire confidence. Tribunal has further held that the settlement was neither duly stamped nor registered and as such could not be looked into.

37. It is an admitted position that no steps have been taken by the appellant from 06.10.1993, the alleged date of execution of the settlement till the date the suit was filed by the Respondent in June 2006 i.e. for a period of nearly 13 years to seek enforcement of the settlement.

38. In *Jhang Cooperative Group Housing Society Ltd. v. Pt. Munshi Ram, 2013 SCC OnLine Del 1886 : ILR (2013) 2 Del 1632*, a coordinate bench of this court in which one of use *(Sanjeev Sachdeva J.)* was a member, relying upon the judgment of the Supreme Court of India in *McDermott International INC. v. Burn Standard Co. Ltd., (2006) 11 SCC 181* held as under:

> *"15. The law is no longer res Integra and is settled that where the Arbitrator has assessed the material and evidence placed before him in detail, the court while considering the objections under Section 34 of the said Act does not sit as a court of appeal and is not expected*

to re-appreciate the entire evidence and reassess the case of the parties. The jurisdiction under Section 34 is not appellate in nature and an award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the court to interfere with the award merely because in the opinion of the court, another view is possible. The duty of the court in these circumstances is to see whether the view taken by the Arbitrator is a plausible view on the facts, pleadings and evidence before the Arbitrator. Even if on the assessment of material, the court while considering the objections under Section 34 is of the view that there are two views possible and the Arbitral Tribunal has taken one of the possible views which could have been taken on the material before it, the court would be reluctant to interfere. The court is not to substitute its view with the view of the Arbitrator if the view taken by the Arbitrator is reasonable and plausible.

16. If the Arbitrator has taken a view which the court finds reasonable and plausible, the court would certainly not interfere.

17. The extent of judicial scrutiny under Section 34 of the Arbitration Act 1996 is limited and scope of interference is narrow. Under Section 37, the extent of judicial scrutiny and scope of interference is further narrower. An appeal under Section 37 is like a second appeal, the first appeal being to the court by way of objections under Section 34. Where there are concurrent findings of facts and law, first by the Arbitral Tribunal which are then confirmed by the court while dealing with objections under Section 34, in an appeal under Section 37, the Appellate Court would be very cautious and reluctant to interfere in the findings returned in the

> *award by the Arbitral Tribunal and confirmed by the court under Section 34.*
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> *18. As laid down by the Apex Court, the supervisory role of the court in arbitration proceedings has been kept at a minimum level and this is because the parties to the agreement make a conscious decision to exclude the courts jurisdiction by opting for arbitration as the parties prefer the expediency and finality offered by it."*

39. Looked at from any angle, we find no infirmity in the view taken by the Arbitral Tribunal. Not only the view taken by the Arbitral Tribunal is a plausible view, we have not been shown any other view which could possibly have been taken by the Arbitral Tribunal on the facts and circumstances as well as the evidence by the parties.

40. In view of the above, we find no infirmity in the impugned order rejecting the objections of the appellant under Section 34 of the Act. Consequently, we find no merit in the appeal. The Appeal and is accordingly dismissed.

CM No.31029/2022 (condonation of delay in filing the appeal)

41. This is an application seeking condonation of delay of 23 days in filing the appeal.

42. Since this Court has already considered the appeal on merits and rejected it, the application is accordingly disposed of.

CM No.31030/2022 (additional documents)

43. This is an application seeking production of additional evidence.

44. It is noticed that no such evidence was produced by the Appellant before the Arbitral Tribunal even though appellant had sufficient opportunity to produce the witnesses and even cross-examine the witnesses produced by the Respondent. No reasonable explanation is forthcoming as to why the material was not produced at the appropriate stage.

45. Further no such relief was sought in the objections filed under Section 34 of the Act before the learned single judge.

46. Consequently, we find no merit in the application and the same is dismissed.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

JULY 15, 2022/'yg'