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

Judgment reserved on : 18.01.2024

Judgment pronounced on : 05.04.2024

+ **O.M.P. (COMM) 250/2021 & I.A. 10669/2021**

MOHD. AMIN (DECEASED) THROUGH LRS & ORS.

..... Petitioner

Through: Ms. Sumita Hazarika, Ms. Nazia Parveen,
Advs.

versus

MOHD. IQBAL (DECEASED) THROUGH LRS & ORS.

..... Respondent

Through: Mr. Sanjay Bansal, Mr. Pushkar Sood, Ms.
Swati Bansal, Ms. Ayushi Bansal, Ms. Vaishali Gupta,
Mr. Priyadarshi Kumar, Adv.

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+ **OMP (ENF.) (COMM.) 129/2021**

MOHD IQBAL DECEASED THROUGH LRS. & ORS.

..... Decree Holder

Through: Mr. Sanjay Bansal, Mr. Pushkar Sood, Ms.
Swati Bansal, Ms. Ayushi Bansal, Ms. Vaishali Gupta,
Mr. Priyadarshi Kumar, Adv.

versus

MOHD AMIN DECEASED THROUGH LRS & ORS.

..... Judgement Debtor

Through: Ms. Sumita Hazarika, Ms. Nazia Parveen,
Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

O.M.P. (COMM) 250/2021

1. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter, "the Act") challenging the Award dated 18.05.2021 (hereinafter, "Impugned Award") passed in Arbitration Case No. (AR)



9/2019, whereby the learned Sole Arbitrator has allowed the claims of the respondents against the petitioners and thereby has primarily directed the petitioners to redeliver the possession of land measuring 435 sq. yds, situated at 268, Naseem Bagh, Jamia Nagar, Okhla, New Delhi (hereinafter, “disputed plot/land”).

Brief Facts

2. The brief facts are as under:
3. The predecessor-in-interest of the respondents (claimants in the arbitration proceedings) i.e. Late Mohd. Iqbal was allegedly in illegal and unauthorized possession of the disputed plot since 1974 and as on 25.02.1991.
4. The predecessor-in-interest of the petitioners (counter-claimants and respondents in the arbitration proceedings) i.e. Late Mohd. Amin instituted Suit No. 331/1989 against Late Mohd. Iqbal for permanent injunction, to restrain the defendant (Mohd. Iqbal) from interfering with his (Mohd. Amin) possession and right of peaceful enjoyment of the disputed land. During the pendency of the suit, the parties entered into a Compromise Agreement dated 25.02.1991 (hereinafter, “Agreement”) and filed a joint application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (hereinafter, “CPC”) along with their affidavits, and the suit was dismissed as withdrawn with the direction that the parties shall remain bound by the terms of the Agreement.
5. The Agreement recorded that Mohd. Amin was the exclusive owner and in possession of the property known as Nasim Bagh bearing Khasra No. 138 (5 Bigha, 3 Biswa), 139 (11 Biswa), 140 (2 Bigha, 6 Biswa) and 141 (2 Bigha, 1 Biswa) comprising of an area measuring about 8430 sq. metres. Mohd. Amin had entered into an agreement with developer M/s Unitech Limited for developing a portion of the said property measuring 6000 sq. mts. into a Multi Storeyed Group Housing Complex (hereinafter, “Project”). The



Agreement also recorded that Mohd. Iqbal was “allegedly” in illegal and unauthorised possession of the disputed land and had “allegedly” made illegal constructions thereon. The Agreement was entered into to avoid further litigation, and by way of the same, the disputed land was handed over to Mohd. Amin for the Project on the condition that Mohd. Amin would deliver 6% of the total built up area in the Project building to Mohd. Iqbal.

6. As per Clause 10 of the Agreement, both the parties agreed that if for any reason the proposed Project was abandoned, the disputed land would be returned to Mohd. Iqbal who would then be free to use the said land as desired by him and the Agreement would become null and void. Clause 10 reads as under:

“10. That without prejudice to the aforesaid, it is hereby specifically agreed by and between the parties that if for any reasons, the aforesaid Multistoreyed Group Housing Project is abandoned the area of the plot measuring 435 Sq. yd. shall be reverted to the SECOND PARTY and this Agreement shall become null and void. And the SECOND PARTY shall be free to use the said land according to its desire.

In case of abandonment of the project, the possession of aforesaid area will be reverted to the SECOND PARTY. However, the SECOND PARTY shall keep harmless and indemnified the FIRST PARTY, if there has been any financial liability arising out of the said reversion or incidental thereto.”

7. In 1999, Mohd. Iqbal filed Execution Case No. 191/1999 before this Court praying for return of the disputed plot. The Court, *vide* order dated 12.01.2004, directed the Registry to draw up a decree in terms of the Order dated 25.02.1991 whereupon a formal decree was drawn up on 24.02.2004. The Court, however, *vide* order dated 12.03.2004 held that the execution



petition was not maintainable as Clause 10 of the Agreement constituted a new contract between the parties and therefore, the order dated 25.02.1991 was not executable.

8. On appeal, the Division Bench of this Court remanded the matter to the executing Court disagreeing with its finding, and on remand, the Single Judge Bench *vide* order dated 30.11.2007 allowed the execution petition and issued warrants of possession for the disputed land in favour of Mohd. Iqbal.
9. Against this order, Mohd. Amin filed an appeal and the Division Bench *vide* order dated 15.04.2009 held that Mohd. Iqbal could not have sought execution of a decree in a suit which was dismissed as withdrawn and allowed the appeal.
10. The legal representatives of Late Mohd. Iqbal (having expired in the year 2008), i.e. the respondents herein, challenged this order in the Hon'ble Supreme Court being Civil Appeal No. 6936/2011, which on the joint request of the parties was disposed of on 17.09.2019 by referring the disputes arising out of the Agreement to arbitration.
11. Before the learned Sole Arbitrator, the respondents registered the following claims:

“Claim-I:- Handover vacant possession of the plot ad-measuring 435 sq. yards (as per site plan Annexure C-2) situated at 268, Naseem Bagh, Jamia Nagar, Okhla, New Delhi, to the claimants, in terms of Clause 10 of the Settlement Agreement dated 25.02.1991;

Claim-II:- Award compensation & damages to the claimant, quantified as Rs. 25,00,000/- (Rupees Twenty Five Lacs Only) for erasing the construction existing on the land in question at the time of takeover and delayed reversion of the plot in question to the claimants;

Claim-III:- Award the cost and expenses of the litigation.”



12. The petitioners also raised a counter-claim wherein they claimed 4/5 crores towards damages for mental agony caused by illegal acts of the respondents.

Impugned Award

13. By way of the Impugned Award, the learned Sole Arbitrator allowed the claims of the respondents against the petitioners. The same reads as under:-

“70. In the wake of the above findings, the Tribunal makes the following Award:

- i) Claim No. I of the Claimants is allowed. The Respondents are hereby directed to redeliver to the Claimants, the possession of the disputed plot measuring 435 Sq. Yds, situated at 268, Naseem Bagh, Jamia Nagar, Okhla, New Delhi along with the constructions standing thereon as on 25.02.1991, as per Clause 10 of the Agreement, within thirty days herefrom.*
- ii) In the event, the constructions standing on the disputed land, described hereinabove and evidenced by the Report of the Local Commissioner dated 04.03.1989 and the photographs accompanying the same and submitted in Suit No. 331 of 1989, are not in existence as on date, the Respondents would pay to the Claimants, a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) as the money value thereof, by way of compensation/damages. Claim No. II is allowed to this extent.*
- iii) If the amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) is payable in terms of Clause II, the Respondents would make the payment thereof to the Claimants, within 60 days herefrom.*



- iv) *Costs of arbitration assessed at Rs. 12,69,380/- (Rupees Twelve Lakhs Sixty Nine Thousand Three Hundred and Eighty Only) would be payable by the Respondents to the Claimants within 60 days herefrom.*
- v) *Failing the payment of the money part of the Award within 60 days herefrom, the same would carry interest @18% per annum computed from beyond such 60 days, till the date of payment.*

71. The Counter Claim of the Respondents is rejected.”

Submissions (Petitioners)

- 14. Ms. Hazarika, learned counsel for the petitioners has made the following submissions:
- 15. She states that the Impugned Award is bad and perverse in law and against public policy of India. She states that it is recorded in the Agreement that *“the Second Party was allegedly in illegal and unauthorised possession of a piece of land”* and *“allegedly made illegal constructions thereon”*. In this regard, learned counsel refers to paragraph 31 of the Impugned Award, which reads as under:

“31. Having regard to text and context of the terms of reference as outlined by the Order dated 17.09.2019 by the Hon’ble Apex Court, the questions pertaining to right, title and interest in and/or legality of the possession of the disputed land and the constructions thereon at the time of delivery thereof by Mohd. Iqbal to Mohd. Amin are beyond the purview of the scrutiny of this Tribunal...”
- 16. It is stated that the learned Arbitrator, by awarding compensation to an encroacher, has in effect aided a rank encroacher in his encroachment on private property. She states that it is admitted fact that the respondents do not have any kind of proof to show their lawful rights over the disputed



property. As per the Agreement, Mohd. Iqbal was entitled to reversion of the land i.e. he would be put in the same position that he was in prior to the filing of the Suit No. 331/89 i.e. as an encroacher.

17. Learned counsel further states that the counter-claim filed by the petitioners has been illegally and erroneously rejected without application of mind. It is stated that the learned Arbitrator ignored the fact that the encroached land would have appreciated in value many fold in the span of 30 years. The compensable loss, if any, has been suffered by the petitioners.
18. Ms. Hazarika further argues that when the petitioners agreed to the arbitration reference in the Hon'ble Supreme Court, they did not give up the point regarding limitation and therefore the petitioners cannot be prejudiced on this account.
19. It is further argued that the learned Arbitrator has decided the Section 14 (Limitation Act, 1963) ground without giving petitioners an opportunity to deal with it and hence, the Impugned Award is against principles of natural justice. It is contended that no Section 14 application was made by the respondents, nor was there any specific plea or averments to this effect, and despite that, the learned Arbitrator framed an issue on limitation and the claims of the respondents were allowed on the basis of Section 14. It is stated that a specific plea of Section 14 has to be made and evidence has to be led in support of the same. In the present case, the plea of Section 14 was only in the rejoinder and not in the pleadings. Reliance is placed upon ***Ram Sarup Gupta v. Bishun Narain Inter College***, (1987) 2 SCC 555.
20. It is argued that the facts of the present case fail to meet the statutorily prescribed preconditions for extending the benefit of Section 14 of the Limitation Act, 1963, which are: i) the plaintiff/applicant has been prosecuting with due diligence, another civil proceeding; ii) such civil proceeding may be in court of first instance or of appeal or revision; iii) such



civil proceeding is against the same defendant/opposite party; iv) the proceeding is related to the same matter in issue or for the same relief; v) the proceeding has been prosecuted in good faith in the court, which for defect of jurisdiction and other cause of like nature, is unable to entertain it; vi) only if the contingencies in clause (i) to (v) exist, the time spent while the plaintiff/applicant has been prosecuting the civil proceeding shall be excluded.

21. Ms. Hazarika states that though the learned Arbitrator has held that the respondents have been prosecuting the executing proceedings with due diligence and in good faith, the facts of the case fail to meet the test as laid down and reiterated in ***Rabindra Nath Samuel Dawson v. Sivakasi***, (1973) 3 SCC 381, ***Deena v. Bharat Singh***, (2002) 6 SCC 336, and ***Mohinder Prakash v. DLF Commercial Developers Ltd.***, 2012 SCC OnLine Del 932.
22. Applying the test to the facts of this case, she submits that the respondents from 1999-2019 were engaged in a litigation which was not maintainable in law. In the execution petition filed by Late Mohd. Iqbal (predecessor-in-interest of the respondents), Late Mohd. Amin (predecessor-in-interest of the petitioners) took a preliminary objection that since the Suit No. 331/89 was dismissed as withdrawn in terms of the Agreement, no decree was drawn up and therefore the execution petition was not maintainable. Besides, the Agreement contained an arbitration clause being Clause 19, which was raised by Late Mohd. Amin in his amended objection filed in October 2006. Clause 19 reads as under:

“19. That all disputes, differences relating to the technical aspects and arising out of and in connection with this agreement or interpretation of the provisions of the Agreement, shall be referred to the Project Architect, as sole arbitrator, whose decision shall be final and binding on the parties hereto. The provisions of Indian



Arbitration Act, 1940, or any statutory modification thereto shall be applicable to such arbitration. The venue shall be at DELHI.”

23. It is stated that even in the submissions filed before the learned Arbitrator, the respondents have maintained that filing of the execution petition was in fact pursuance of the correct legal remedy. Further, the Arbitrator also did not accept or assert that filing of execution was the wrong remedy. The Division Bench order of 15.04.2009 did not dismiss the execution petition for want of jurisdiction. Thus, it is stated that Section 14 of the Limitation Act therefore cannot be invoked.
24. Ms. Hazarika argues that the respondents denied the applicability of the arbitration clause contained in Clause 19 of the Agreement in 2006 after failing to avail of the arbitration clause within the period of limitation of 3 years from the cause of action arising. That subsequently on 17.09.2019, after failing to obtain relief in execution, the respondents before the Hon'ble Supreme Court submitted to the arbitration clause without disclosing that they had stated this remedy to be invalid in 2006. It is stated that the learned Arbitrator failed to note the lack of good faith of the respondents in bringing up the arbitration clause in 2019, after denying its applicability in 2006. Reliance is placed upon ***Madhavrao Narayanrao Patwardhan v. Ram Krishna Govind Bhanu***, 1959 SCR 564.
25. Lastly, the learned counsel argues that the Award is beyond the terms of the Agreement. Relying upon Clause 10 of the Agreement, it is stated that the Arbitrator was not entitled under the Agreement to hold that the land should be returned along with the structures. Besides, it is the respondents' own understanding that under the Agreement, they were entitled only to reversion of the land in dispute and nothing more, as is also showcased in the execution petition filed by them. Relying upon ***Alopi Parshad and Sons Ltd. v. Union of India***, 1960 SCC OnLine SC 13, the learned counsel states that



if damages are awarded ignoring the express terms of the contract, the Arbitrator would commit misconduct of the proceedings. Reliance is also placed upon *Naihati Jute Mills Ltd. v. Khyaliram Jagannath*, 1967 SCC OnLine SC 10 and *W.B. State Warehousing Corpn. v. Sushil Kumar Kayan*, (2002) 5 SCC 679.

Submissions (Respondents)

26. Mr. Bansal, learned counsel for the respondents has made the following submissions:
27. It is stated by the learned counsel that the petitioners, while giving consent to refer the dispute to be resolved through arbitration, did not raise the issue of the claim being barred by limitation before the Hon'ble Supreme Court. The same is also not mentioned in the order of the Hon'ble Supreme Court dated 17.09.2019. Thus, the petitioners acquiesced as regards submission of claims of the respondents before the learned Arbitrator without taking the objection of limitation. It is also stated that the petitioner raised the claim of limitation before the learned arbitrator which has been rightly decided by him.
28. Mr. Bansal further states that the predecessor-in-interest of the petitioners 'always disputed the fact of abandonment' stating on oath by way of affidavits that he was still pursuing with M/s Unitech Limited for construction of the Project. He further states that the fact of abandonment in the year 1999 was for the first time taken by the petitioners in their Statement of Defence before the learned Arbitrator (filed on 24.02.2020). The plea of the claims being barred by limitation was not taken any time earlier. He argues that the petitioners cannot approbate and reprobate at the same time according to their convenience.
29. The learned counsel further raises the following questions for consideration:
 - a) whether Section 14 of the Limitation Act is applicable in the present arbitration proceedings;
 - b) whether the respondents/claimants followed



proper procedure or correctly invoked/pleaded Section 14 (Limitation Act) in the present arbitration proceedings; c) whether the finding of the Arbitrator on the application and benefit of Section 14 to the case of the respondents/claimants is a reasoned finding or a perverse one requiring intervention of this Court under Section 34 of the Act.

30. He states that under the CPC, invocation of Section 14 benefit requires some procedure, whereas in arbitration proceedings, there is no such procedure in view of Chapter V of the Act. Reliance is placed upon Sections 18, 19, 23 and 24 of the Act, **Jagjeet Singh Lyallpuri v. Unitop Apartments & Builders Ltd.**, (2020) 2 SCC 279 and **Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd.**, (2018) 11 SCC 470.
31. He further states that the plea of Section 14 of the Limitation Act has been taken by the respondents in their rejoinder and has been specifically pleaded in the written note of rejoinder arguments of the respondents/claimants dated 26.03.2021. The learned Arbitrator had framed the issue of limitation as Issue No. 1, thus, it is stated that the petitioners had sufficient opportunity to lead evidence as regards the issue of limitation and there is no perversity in the procedure adopted by the learned Arbitrator. Further, it is argued that no perversity can be found in the reasoning given by the learned Arbitrator on the question of application and benefit of Section 14 (Limitation Act), who has noted down the arguments of the parties, considered their submissions and then given a finding.
32. Lastly, Mr. Bansal relies upon the judgments in **Delhi Airport Metro Express (P) Ltd. v. DMRC**, (2022) 1 SCC 131, **Ssangyong Engg. & Construction Co. Ltd. v. NHAI**, (2019) 15 SCC 131, **Associate Builders v. DDA**, (2015) 3 SCC 49, **Power Grid Corporation of India v. LS Cable** 2018:DHC:6776-DB which discuss the scope of interference of the Court in an arbitration award under Section 34 of the Act. It is stated that in the



present case, no patent illegality can be shown by the petitioners in the Impugned Award, and the same is well reasoned and thus the present petition is liable to be dismissed.

Analysis

33. I have heard learned counsel for the parties.

Scope of Interference under Section 34

34. The scope of interference and power of review of this Court in dealing with a petition under Section 34 of the Act has been outlined in a catena of judgments, and more particularly in *Associate Builders v. DDA*, (2015) 3 SCC 49, *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131 and *Delhi Airport Metro Express (P) Ltd. v. DMRC*, (2022) 1 SCC 131.

35. The Hon'ble Supreme Court in *Associate Builders* (supra) has observed as under:

“17. It will be seen that none of the grounds contained in sub-section (2)(a) of Section 34 deal with the merits of the decision rendered by an arbitral award. It is only when we come to the award being in conflict with the public policy in India that the merits of an arbitral award are to be looked into under certain specified circumstances.

....

29. It is clear that the juristic principle of a “judicial approach” demands that a decision be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective.

30. The audi alteram partem principle which undoubtedly is a fundamental juristic principle in Indian law is also contained in



Sections 18 and 34(2)(a)(iii) of the Arbitration and Conciliation Act.

....

31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- (i) a finding is based on no evidence, or*
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
- (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.*

....

33. It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts....

....

42.1 (a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of



the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(a) of the Act....

....

42.2 (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality – for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.

42.3 (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act....

....

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do.”

36. Subsequently, in **Ssangyong Engg.** (supra), it has been held as under:

“37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within “the fundamental policy of Indian law”, namely, the contravention of a statute not linked to public policy or



public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. To elucidate, para 42.1 of Associate Builders, namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders, however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders, namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders, while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an



award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.”

37. More recently, the Hon’ble Supreme Court in ***Delhi Airport Metro Express*** (supra) has reiterated and summarised the position *vis-à-vis* the scope of Section 34 of the Act:

“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 reappraise 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”.

30. Section 34(2)(b) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of



settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression “public policy of India” and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in violation of Section 75 or Section 81 of the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice.

31. In Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , this Court held that the meaning of the expression “fundamental policy of Indian law” would be in accordance with the understanding of this Court in Renusagar Power Co. Ltd. v. General Electric Co. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] . In Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644], this Court observed that violation of the Foreign Exchange Regulation Act, 1973, a statute enacted for the “national economic interest”, and disregarding the superior Courts in India would be antithetical to the fundamental policy of Indian law. Contravention of a statute not linked to public policy or public interest cannot be a ground to set at naught an arbitral award as being discordant with the fundamental policy of Indian law and neither can it be brought within the confines of “patent illegality” as discussed above. In other words, contravention of a statute only if it is linked to public



policy or public interest is cause for setting aside the award as being at odds with the fundamental policy of Indian law. If an arbitral award shocks the conscience of the court, it can be set aside as being in conflict with the most basic notions of justice. The ground of morality in this context has been interpreted by this Court to encompass awards involving elements of sexual morality, such as prostitution, or awards seeking to validate agreements which are not illegal but would not be enforced given the prevailing mores of the day. [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213]”

38. In light of the aforementioned principles, I will deal with the objections raised in this petition.

On Principles of Natural Justice

39. Learned counsel for the petitioners states that the Impugned Award is against principles of natural justice as the learned Arbitrator has decided the Section 14 (Limitation Act) ground without giving the petitioners an opportunity to deal with it. It is stated that no specific plea of Section 14 (Limitation Act) was made by the respondents in the pleadings, and no evidence was led in support of the same.
40. This argument is untenable.
41. Strictly speaking, under Order VI Rule 1 of the CPC, “pleadings” is defined to mean plaint or the written statement. Pleadings by way of rejoinder/replication are not statutorily contemplated by the CPC, but the practice of filing rejoinders/replications after obtaining leave from the Court has been developed over time. The same is observed by the Court in **Anant Construction (P) Ltd. v. Ram Niwas**, 1994 SCC OnLine Del 615, wherein it also iterated that replication/rejoinder is a subsequent pleading, however, it



cannot be inconsistent with the original pleading (i.e. plaint or written statement) or a substitute for amendment in original pleadings.

42. Nevertheless, in arbitration proceedings, rules of CPC are not strictly applicable in light of Chapter V of the Act, specifically Section 19, which reads as under:

“19. Determination of rules of procedure.—(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.”

43. Hence, I am of the view that “pleadings” have to be given a liberal interpretation to include the rejoinder filed by the respondents. Further, it is the substance of the pleadings which needs to be considered, rather than their form. This view is supported by **Ram Sarup Gupta** (supra), the operative portion of which reads as under:

“6. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know



the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Some times, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence in that event it would not be open to a party to raise the question of absence of pleadings in appeal....”

44. The plea of Section 14 of the Limitation Act has been taken by the respondents/claimants in their rejoinder and has been specifically pleaded in the written note of rejoinder arguments of the respondents/claimants dated 26.03.2021.
45. Paragraphs 3 and 4 of the reply to Preliminary Objections in the rejoinder filed by the respondents do not explicitly mention Section 14 but nevertheless incorporate its ingredients and read as under:

“3.It is submitted that as soon as the cause of action accrued in favour of the claimant in the year 1999, they immediately filed Execution Petition, seeking enforcement of the agreement dated



25.02.1991 being Execution Petition No. 191 of 1999 before the Hon'ble High Court of Delhi, which was pursued by the claimant's predecessor, in various appeals and finally in Civil Appeal No. 6936 of 2011 before the Hon'ble Supreme Court of India. Thus, it cannot be said that the claimants did not pursue their remedy available in law.

4.it is submitted that the predecessor of the claimant had filed Execution Petition No. 191 of 1999 on or around 28.07.1999 before the Hon'ble High court of Delhi and had thus taken recourse to appropriate legal remedies as soon as the cause of action arose in the year 1999.”

46. Paragraph 6 of the written note of rejoinder arguments explicitly mentions Section 14 and reads as under:

“6. Without prejudice to my above submissions, only for the sake of argument, alternatively, even if it is now assumed in view of submission of the respondent that the project was abandoned in 1999, this Hon'ble Tribunal may consider giving benefit of Section 14(1) of the Limitation Act, 1963, read with Explanation (c) and Section 43 (3) of Arbitration & Conciliation Act, 1996, in calculating the period of limitation as claimant has been bona fide, in good faith, on legal advice, diligently, pursuing the litigation since 1999 till 2019, before a court which was unable to entertain it for reason of 'cause of action' always being in dispute.”

47. Further, a perusal of the Statement of Defence of the petitioners/counter-claimants shows that Section 14 (Limitation Act) has been resisted by the petitioners, though not expressly but impliedly in as much as they stated that the respondents/claimants had “*mala fide*” (not *bonafide*) intentions in pursuing remedies “*not admissible in law*” (wrong remedy). In addition, the



petitioners also urged before the learned Arbitrator that the respondents failed to initiate appropriate proceedings between 1999 and 2009. The operative portion reads as under:

“8. That the Late Mohd. Iqbal / Claimants again deliberately and with malefide intentions avoided to seek the remedies available on the basis of clause 10 of the agreement dated 25.02.1991 in accordance with law and again attempted a short-cut method to avail remedies which is not admissible in law.

9. That it is pertinent to note that during the proceedings in the EFA (OS) 13/2004 filed by Mohd. Iqbal / Claimants deliberately and with malefide intentions avoided invoking clause 19 which provided for arbitration in relation to the agreement dated 25.02.1991 for enforcement his rights.

10. That between 1999 and 2009 the Claimants deliberately and with malefide intentions persisted in attempting to obtain the execution of a decree based on the agreement dated 25.02.1991 and failed to initiate appropriate legal proceedings and also failed to invoke arbitration proceedings as per clause 19 of the agreement for enforcement of the claimant's rights under the agreement.”

48. After competition of the pleadings, issues were framed by the learned Arbitrator wherein Issue No. I is on limitation and reads as under:

“I. Whether the reliefs claimed by the Claimants in the present reference are barred by Law of Limitation as contended by the Respondents? If no, to what relief(s) are the Claimants entitled?

49. The submissions of the respondents specifically urging Section 14 (Limitation Act) are also noted by the learned Arbitrator in paragraphs 10 and 12 of the Impugned Award:



“10. ...In the alternative, the Ld. Counsel has maintained that in the discernment of the Claimants, the Order dated 25.02.1991 disposing of the suit though on withdrawal, did generate an enforceable decree and as they bonafide and with due diligence did prosecute the execution proceedings with regard thereto from the year 1999 till 2019 before the Hon’ble Supreme Court, in terms of Section 14 of the Limitation Act, 1963 (hereafter referred to as Limitation Act) this period is liable to be excluded in computing the period of limitation for any suit or proceedings in law and thus the claims registered in this reference made on 30.01.2020 are within the period of limitation.

....

12.Without prejudice to these assertions, Mr. Bansal has strenuously urged that in view of the belated acceptance of the Respondents that the Project had been abandoned in the year 1999, it is a fit case in which the Claimants who have been bonafide pursuing their reliefs since that point of time, be granted the benefit of Section 14 of the Limitation Act read with Section 43(3) of the Act. In endorsement of this submission, Mr.Bansal has traversed the entire gamut of the pleadings and the Orders passed by the different forums right from the stage of institution of the execution proceedings.”

50. On submission of written note of rejoinder arguments by the respondents, the learned Arbitrator gave opportunity to petitioners/counter-claimants to file their response which they did not avail. This is duly noted by the learned Arbitrator in the Impugned Award:

“9.The Ld. Counsel for the Claimants has also submitted a written note of his rejoinder arguments in supplementation of his



oral submissions. The Ld. Counsel for the Respondents, however elected not to file any written addendum.”

51. The following principles can be culled out from a combined reading of Chapter V of the Act and **Ram Sarup Gupta** (supra): a) arbitration proceedings are more flexible and not strictly bound by the procedural requirements under the CPC or the Evidence Act, and parties can agree to the procedure to be followed; b) pleadings should be given a liberal interpretation i.e. the substance is to be considered and not the form, and as long as the parties knew the case and the issues at hand.
52. Applying these principles to the present case, it is seen that the ground of Section 14 (Limitation Act) has been urged by the respondents, both in substance and in form, in their pleadings as well as in their oral/written submissions wherein the ingredients of Section 14 (Limitation Act) have been made out. The ground of Section 14 has even been resisted by the petitioners in their Statement of Defence. Thereafter, the issue on limitation was framed by the learned Arbitrator. Hence, the petitioners throughout knew that the issue of limitation would entail the discussion on Section 14 (Limitation Act). I am of the view that the petitioners had sufficient opportunity to meet the argument of Section 14 and to lead evidence.
53. Hence, for the reasons stated above, the argument that the Impugned Award suffers from a violation of principles of natural justice because the plea of Section 14 (Limitation Act) was only in the rejoinder and not in the “pleadings” does not find favour with this Court.

On Applicability/Inapplicability of Section 14 (Limitation Act)

54. Learned counsel for the petitioners states that the respondents from the year 1999 to 2019 were engaged in a litigation which was not maintainable in law and hence, the benefit of Section 14 of the Limitation Act has wrongly been granted to the respondents. For this, reliance is placed upon **Rabindra Nath**



Samuel Dawson (supra), *Deena* (supra), *Mohinder Prakash* (supra) and *Madhavrao Narayanrao Patwardhan* (supra).

55. The aforementioned judgments have dealt with the issue of applicability and inapplicability of Section 14 (Limitation Act). Given the facts of *Rabindra Nath Samuel Dawson* (supra), the Hon'ble Supreme Court was of the view that it was clear that the previous suit was not maintainable (for non-joinder of necessary party), objections regarding the same were raised at the very initial stage, and despite that, the party risked proceeding with the suit till the stage of revision. This, it held, was not a case of prosecuting the previous proceedings *bona fide*, and denied the benefit of Section 14 to the appellant therein. This was relied upon by the Court in *Deena* (supra).
56. The Court in *Mohinder Prakash* (supra) held that for deriving the benefit of Section 14, the onus is on the plaintiff to show that he was pursuing a wrong remedy diligently and in good faith, for which he must establish that there was an element of mistake in the remedy or selection of a wrong forum which was being pursued with due diligence and good faith defined as "exercise of due care and attention". In *Madhavrao Narayanrao Patwardhan* (supra), the question before the Hon'ble Supreme Court was that whether, given "due care and attention", the plaintiff could have discovered the omission (in the plaint to mention the value of the properties involved in the suit) without having to wait for about 10 years or more. In its opinion, the plaintiff was not entitled to the benefit of Section 14 given the factual matrix of the case.
57. There is no dispute with regard to the legal propositions laid down in these judgments.
58. Having said that, the argument of the petitioners, in essence, amounts to re-appreciation of the evidence before the learned Arbitrator. This Court in its exercise of jurisdiction under Section 34 of the Act is only to assess that the



finding of the Arbitrator was a reasoned one, and deduced from the evidence led before it, not ignoring any vital evidence.

59. The learned Arbitrator, in paragraphs 50-52 of the Impugned Award has discussed the law on claiming the benefit under Section 14 (Limitation Act) and thereafter, in paragraph 58, has given its findings on whether the ingredients of Section 14 have been satisfied in the present case or not. The operative portions read as under:

“50. A cumulative reading of Sub-Section 1 and 2 of Section 14 predicates that in computing the period of limitation for any suit or application, the time during which the plaintiff/applicant had been prosecuting with due diligence, another civil proceeding whether in a court of first instance or of appeal or revision against the defendant/opposite party for the same matter in issue or for the same relief, in good faith in a court, which from defect of jurisdiction or other cause of like nature is unable to entertain it, shall be excluded. Clause(c) of the Explanation to the section, elucidates that mis-joinder of parties or causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

51. The statutorily prescribed prerequisites for availing the benefit of this mitigatory provision are:

- I. The plaintiff/applicant has been prosecuting with due diligence, another civil proceeding.*
- II. Such civil proceeding may be in a court of first instance or of appeal or revision.*
- III. Such civil proceeding is against the same defendant/opposite party.*
- IV. The proceeding related to the same matter in issue or for the same relief.*



V. *The proceeding has been prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

VI. *If the contingencies in Clause I to V exist, the time during which the plaintiff/applicant has been pursuing the civil proceeding shall be excluded for computation of the period of limitation prescribed for any suit or application relating to the same matter in issue or for the same relief.*

52. *The expanse and amplitude of Section 14 of the Limitation Act, discernably, if all other preconditions for invocation thereof coexist, is decisively defined by the words 'other cause of a like nature', though the Explanation thereto, illustratively provides a clarification that mis joinder of parties or causes of action shall be deemed to be a cause of like nature with defect of jurisdiction."*

.....

58. *To recall, the predecessor in interest of the Claimants, after long eight years from 25.02.1991, filed the execution petition before the Hon'ble Delhi High Court to secure reversion of the disputed land in terms of Clause 10 of the Agreement imbued with the comprehension that the Order disposing of the suit on withdrawal on the basis of the settlement between the parties did yield a compromise decree executable in law. This endeavor was resisted by the predecessor in interest of the Respondents principally on two counts namely, there did not exist any executable decree and that the Project had not been abandoned. Though in the first round, the Learned Single Judge, by in his Order dated 12.03.2004 did hold that there was no decree to be executed and left the predecessor in*



interest of the Claimants to seek other remedies on the basis of Clause 10 of the Agreement in accordance with law, in appeal, the Learned Division Bench by its Order dated 18.11.2005 differed from the said view and remanded the matter for a fresh decision whereupon, the Learned Single Judge by his Order dated 30.11.2007, held that the decree holder i.e the predecessor in interest of the Claimants was entitled to warrant of possession of the disputed plot and directed issuance of such warrant. In the appeal filed by the predecessor in interest of the Respondents, the Learned Division Bench of the Hon'ble Delhi High Court by its Order dated 15.04.2009 however restored the view that a dismissed suit could not give rise to an executable decree. In the appeal, preferred against the same by the Claimants before the Hon'ble Apex Court, the dispute(s) arising out of the Agreement have been referred to arbitration on the consent of the parties without forever adjudicating the same on merits.

Having regard to the above admitted sequence of events the Tribunal, in the attendant facts and circumstances, does not feel persuaded to hold that the Claimants and their predecessor in interest, lacked bonafide and diligence in prosecuting the execution proceedings from the year 1999 till 2019. The fact that the Learned Division Bench of the Hon'ble Delhi High Court in its Order dated 18.11.2005 had entertained in essence, the view that a decree executable in law did exist and the Learned Single Judge by his Order dated 30.11.2007 had issued the warrant of possession in execution of such decree to effectuate the undertaking engrafted in Clause 10 of the Agreement, do to a considerable extent endorse this deduction. Though the Learned Single Judge of the Hon'ble



Delhi High Court and the Learned Division Bench thereof by Order dated 12.03.2004 and 15.04.2009 did hold otherwise, the issue remained unexplored on merits before the Hon'ble Apex Court leaving the same unanswered.

As hereinbefore stated, this question falls beyond the ken of the present reference and therefore further dilation thereon is inessential. Suffice it to record that in the overall conspectus of facts, it is not possible to conclude that the Claimants and their predecessor in interest did lack in bonafide, good faith and diligence in prosecuting the execution proceedings, which indeed is a civil proceeding within the meaning of Section 14 of the Act. That the execution proceedings, relate to the same matter in issue and relief namely reversion of the disputed land under Clause 10 of the Agreement on the abandonment of the Project is also beyond doubt. Having regard to the reasons recorded in the Order dated 12.03.2004 of the Learned Single Judge of the Hon'ble Delhi High Court and the Order dated 15.04.2009 of the Learned Division Bench of the said Court referred to hereinabove, denying the relief(s) claimed in the execution proceedings, this Tribunal is of the unhesitant opinion that such refusal to entertain the execution proceedings filed by the predecessor in interest of the Claimants, squarely falls within the ambit of the expression 'other cause of a like nature' applied in Section 14 of the Limitation Act. The statutorily prescribed preconditions for extending the benefit of Section 14 of the Limitation Act to the Claimants, thus stand satisfied.

The Claimants, in the facts and circumstances of the case are therefore entitled, for the purpose of computation of the period of



limitation for the present reference, to exclusion of time from the year 1999 to 2019 devoted to prosecute the execution proceedings. Computed thus, the claims registered by them at the time of reference of the dispute(s) by the Hon'ble Apex Court on 17.09.2019 and lodged with this Tribunal on 30.01.2020 are not barred by limitation. Additionally, no default, negligence, inaction or slackness in efforts on the part of the Claimants and their predecessor in interest as well, is decipherable throughout the course of the execution proceedings spanning over two decades in their bid to regain the possession of the disputed land under Clause 10 of the Agreement. As per the said Clause, on the abandonment of the Project, the disputed plot measuring 435 Sq.Yds has to revert to the Claimants whereafter the Agreement would be rendered null and void. It cannot be gainsaid that the Agreement is binding on the parties and is still in force and hence, on the abandonment of the Project, the Respondents are obliged under Clause 10 thereof to redeliver the possession of the disputed land to the Claimants. The plea of the Respondents that the claims of the Claimant are barred by limitation therefore cannot be sustained and is thus rejected.”

60. Thus, the test of Section 14 (Limitation Act) and its ingredients have been duly adverted to by the learned Arbitrator, wherein he has provided sufficient reasoning to justify his view that the respondents herein were prosecuting a wrong remedy in good faith and should be granted the benefit under Section 14. These findings are neither arbitrary nor capricious, and are based on evidence enumerated in the orders of the civil court which show the see-saw nature of the litigation preceding the arbitration. The finding of the learned Arbitrator is justified, based in law and on evidence. I am of the view that there is no perversity or illegality in the findings of the learned



Arbitrator, and no ground has been made out by the learned counsel for the petitioners to warrant interference on this ground.

61. Further, the learned counsel for the petitioners' has relied upon ***National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd.***, (2009) 1 SCC 267 particularly paragraph 22 of the judgment, which reads as under:

"22. Where the intervention of the court is sought for appointment of an Arbitral Tribunal under Section 11, the duty of the Chief Justice or his designate is defined in SBP & Co. [(2005) 8 SCC 618] This Court identified and segregated the preliminary issues that may arise for consideration in an application under Section 11 of the Act into three categories, that is, (i) issues which the Chief Justice or his designate is bound to decide; (ii) issues which he can also decide, that is, issues which he may choose to decide; and (iii) issues which should be left to the Arbitral Tribunal to decide.

....

22.2. The issues (second category) which the Chief Justice/his designate may choose to decide (or leave them to the decision of the Arbitral Tribunal) are:

- (a) Whether the claim is a dead (long-barred) claim or a live claim.*
(b) Whether the parties have concluded the contract/transaction by recording satisfaction of their mutual rights and obligation or by receiving the final payment without objection."

62. In the present case, the learned Arbitrator has already given a finding that the claim of the respondents was a live claim and I am of the view that the said finding is based on correct appreciation of law and is based on the evidence led before the learned Arbitrator.
63. I am of the view that there is no illegality or infirmity in the order of the learned Arbitrator in holding that the claim of the respondents was within the



period of limitation. Thus, the award on Claim I requires no interference by this Court.

On Damages, Interest and Costs

64. As regards Claim II of the respondents being allowed, it is stated by the learned counsel for the petitioners that the learned Arbitrator, by awarding compensation (of Rs. 15,00,000/- against the claimed amount of Rs. 25,00,000/-) and by holding that the land should be redelivered along with structures, has travelled beyond the scope of the Agreement, which only provides for reversion of disputed plot (Clause 10 of the Agreement).
65. Issue on damages was framed by the learned Arbitrator, and his discussion on Claim II is reproduced herein under:

“61. Vis-a-vis Claim No.II, in their pleadings, the Claimants though have mentioned about the constructions raised on the disputed plot by their predecessor in interest and have referred as well to the report and the photographs to that effect submitted by the Local Commissioner in the suit , there is no averment therein, furnishing any basis of the valuation thereof. The Respondents in their pleadings have admitted the existence of the said constructions but have dismissed the same as illegal, repudiating the possession of the disputed land by the predecessor in interest of the Claimants , as without any authority of law.

....

....To reiterate, the Tribunal in the present reference having regard to the purview thereof, is not required to probe into the legality or otherwise of the possession of the disputed plot by Mohd.Iqbal or of the constructions existing thereon at the time of delivery thereof to Mohd. Amin pursuant to the Agreement. Significantly, though the Claimants have sought compensation and or damages to the tune of



Rs.25,00, 000/- (Rupees Twenty Five Lakhs) for demolition of the said constructions as well as for delayed reversion of the disputed plot under this head of Claim, no evidence to this effect is forthcoming.”

66. Thereafter, the learned Arbitrator has delved into various case laws for computation of compensation/damages in cases where no evidence to prove the loss is available and/or led. The operative portion reads as under:

“62. Computation of compensation/ damages grantable in some fact situations where either no evidence whatsoever to prove the loss is available or such evidence is wanting, is a formidable challenge.

In F.T. Kingsley vs. The Secretary of State of India in Council, a Division Bench of the Hon’ble High Court of Calcutta (AIR 1923 Cal. 49), was in seisin of a dispute with regard to damages in respect of a license for catching elephants in Assam. The case for the Plaintiff-Appellant was that he could not catch as many elephants as he would have done, but for the wrongful acts of the officers of the Defendant. The Plaintiff was in appeal before the Hon’ble High Court against the decision of the learned Subordinate Judge contending that inadequate damages had been awarded to him. The aspect of inadequacy of evidence in support of the claim surfaced for scrutiny. Their Lordships, in this context, amongst others, ruled that in cases admitting of proof of such damage, the amount must be established with reasonable certainty, but it did not mean that absolute certainty is required nor in all cases is there a necessity for direct evidence as to the amount. It was held that damages are not uncertain for the reason that the loss sustained is incapable of proof with certainty of mathematical demonstration, or



is to some extent contingent and incapable of precise measurement. Their Lordships quoted with approval the observation made by Hon'ble Supreme Court of the United States in Hetzel vs. Baltimore 27 & O.R. Co. (1897) 169 U.S. 26 at page 38, that certainty to reasonable extent is necessary, and the meaning of that language is that the loss or damage must be so far removed from speculation or doubt as to create in the minds of intelligent and reasonable men the belief, that it was most likely to follow from the breach of the contract and was a probable and direct result thereof. The determination in Morris vs. United States [(1898) 174 U.S. 196 at page 291] to the effect that where absolute certainty is impossible, judgment of fair men as to damages directly resulting, governs. Their Lordships also noted the observation of Hon'ble Christiancy, J in Allison vs. Chandler (1863) 11 Mich. 542, that insistence for proof of exact amount with certainty as a condition precedent to allow the injured party to recover damages would ensure certainty but there would be certainty of injustice as well, in case such party is ready to show to the satisfaction of the Jury that he has suffered large damages by the breach. The observation in Williams vs. Giddy (1911) A. C. 381, that the substance of the matter is that only such approximation to certainty is required as would satisfy the mind of a prudent and impartial person, was underlined.

63. The Hon'ble Apex Court in Dwaraka Das vs. State of M.P. and another, (1999) 3 SCC 500, approved in the facts of the case that where evidence was insufficient to demonstrate the actual loss suffered on account of the breach of the contract, grant of compensation quantified upon guess work as perceived to be reasonable is permissible.



The above renderings propound the judicial imprimatur of the discretion of the adjudicating forum to assess the quantum of compensation allowable in the concomitant facts and circumstances of a case as construed to be reasonable, in absence of direct and adequate evidence with regard thereto, if it is otherwise satisfied that the party which has suffered the breach of a contract, is entitled to such compensation or damages.”

67. Based on this, the learned Arbitrator has held:

“64. Judged on the touchstone of Clause 10 of the Agreement, the delay or failure on the part of the Respondents and their predecessor in interest to redeliver the disputed plot along with the structures thereon to the Claimants and their predecessor in interest on the abandonment of the Project in the year 1999, constitutes manifest breach of said contractual covenant, rendering them liable for compensation for any loss or damage suffered by the Claimants and their predecessor in interest by such breach. If the structures standing on the disputed land as on 25.02.1991, have indeed been demolished by the Respondents and their predecessor in interest, they would be liable to compensate the Claimants and their predecessor in interest , for the consequential loss suffered by them.

65. The records, more particularly the report of the Local Commissioner and the photographs of the constructions at the site submitted in Suit No .331 of 1989 before the Hon’ble Delhi High Court as required by it, demonstrate the existence of the following constructions/ structures from before the institution of the suit in the year 1989:

1) Old boundary wall with iron gate.



2) *One small room.*

3) *New ongoing constructions of about four and half feet height above the DPC / Ground level.*

4) *One handpump.*

In course of the arguments it was submitted on behalf of the Claimants that these constructions/structures had been demolished by the Respondents and their predecessor in interest after the disputed land along therewith had been handed over to them by the predecessor in interest of the Claimants. This assertion has not been disputed on behalf of the Respondents. In this view of the matter, these constructions/structures have indeed been dismantled and utilized by the Respondents and their predecessor in interest, while in their custody and possession, they are required in law to pay the money value thereof as on today along with the vacant possession of the disputed land to the Claimants. Having regard to the nature of the constructions existing as on 25.02.1991 or for that matter in 1989, the Tribunal on a rough ground estimate, assesses the current value thereof to be Rs. 15,00,000/- (Rupees Fifteen Lakhs Only). Claim No.II is allowed to this extent.”

68. The learned counsel for the petitioners places reliance upon ***Alopi Parshad and Sons Ltd.*** (supra), ***Naihati Jute Mills Ltd.*** (supra) and ***W.B. State Warehousing Corpn.*** (supra) to state that if damages are awarded ignoring the express terms of the contract, the arbitrator would commit misconduct of the proceedings and would have acted in excess of his jurisdiction.
69. This reliance is misconstrued. In ***Alopi Parshad and Sons Ltd.*** (supra), the arbitrators had awarded compensation to the agents in excess of the expressly stipulated consideration, and the Hon'ble Supreme Court disagreed with the same and held that compensation *quantum meruit* cannot



be awarded where the contract itself provides for the consideration payable in that behalf. In *W.B. State Warehousing Corpn.* (supra), the Hon'ble Supreme Court was of the view that the arbitrator would have overstepped his jurisdiction if he decides a claim which cannot be claimed before him. This could be a specific term in the contract or the law which does not permit the parties to raise an issue before the arbitrator, or there is a specific bar in the contract against raising of a particular issue. In *Naihati Jute Mills Ltd.* (supra), the issue was altogether different i.e. regarding the frustration of contracts and its consequent effect on the arbitration clauses contained therein.

70. All three cases are distinguishable from the present case. In the factual matrix of this case, the land which was in possession of the predecessor-in-interest of the respondents was admittedly having superstructures when the possession of the land was given to the predecessor-in-interest of the petitioners. Since the predecessor-in-interest of the petitioners could not complete the Project, the disputed plot was to be reverted in terms of Clause 10 of the Agreement. The Agreement is silent upon whether the disputed plot was to be returned along with the constructions as existed thereon in 1991 or not, and given no specific bar in the Agreement restraining the respondents from raising a claim of damages before the learned Arbitrator, more than one view or interpretation in this regard is possible.
71. In deciding objections under Section 34 of the Act, this Court is to refrain from interfering in a finding by the learned Arbitrator as long as it is a plausible and reasoned one. I am of the view that the finding of the learned Arbitrator that since the construction has been dismantled by the petitioners while the disputed land was in their custody and possession and hence they are required to pay monetary value thereof is a plausible one given the sequence of events. The quantification is also reasonable and on sound legal



basis on account of the judgment in ***Dwaraka Das v. State of M.P.***, (1999) 3 SCC 500 relied upon by the learned Arbitrator, which allows for damages based on guess-work (as perceived to be reasonable) when little evidence regarding the actual damages is forthcoming.

72. For the aforesaid reasons, I am of the view that the learned Arbitrator has not committed misconduct of the proceedings and has not exceeded its jurisdiction while deciding and awarding the claim on damages in favour of the respondents. Hence, I find no reason to interfere with the Impugned Award on damages.
73. No substantial arguments have been raised by the learned counsel for the petitioners regarding the award on costs or interest before me. Hence, the same does not warrant any interference by this Court.

On Counter-Claim

74. Learned counsel for the petitioners alleges that the counter-claim has been erroneously rejected as the encroached land would have appreciated many fold in the span of 30 years, and thus, it is the petitioners who have suffered compensable loss.
75. The learned Arbitrator's findings on this issue are reproduced herein under:
- “66.Mrs.Kulan Rukshana Amin, RW -1, in her affidavit of evidence has reiterated the above pleaded stand of the Respondents. In her cross examination however, in answer to Question No.15 and 16, she recollected from the relevant records that there had been no stay or suspension on the development of the disputed plot till 15.04.2009, when the Learned Division Bench of the Hon'ble Delhi High Court dismissed the execution petition filed by the predecessor in interest of the Claimants and that thereafter the Hon'ble Apex Court by Order dated 04.09.2019 passed in SLP Civil*



No. 20119/2009, had only directed the Respondents not to transfer or create any encumbrance on the disputed property.

67. The pleaded averments as well as the evidence on record, according to the Tribunal, are wholly insufficient to prove the factual foundation of the Counter Claim of the Respondents. There is no semblance of any proof that the protracted litigation had any bearing on the process represented to have been initiated by the Respondents for undertaking the Project. On the other hand, as noted hereinabove they had doggedly resisted the execution proceedings from the year 1999 till 2019 contending that the Project had not been abandoned. They admitted only at the stage of arguments in the present reference that the Project had been abandoned in the year 1999 understandably in their endeavor to defeat the claims of the Claimant on the ground of bar of limitation. Neither the Claimants nor their predecessor in interest had any role - whatsoever in the process of initiation and completion of the Project. There is no evidence at all that the execution proceeding pursued by them did in any manner impede or hinder the said process. If the Respondents were aware that the Project indeed had been abandoned in the year 1999, as per the undertaking in Clause 10 of the Agreement, they and their predecessor in interest ought to have delivered back the disputed plot together with the constructions thereon to the Claimants and their predecessor in interest, forthwith. Instead, they tenaciously contested the execution proceedings over the years till 2019. On an overall consideration of all relevant aspects, the Tribunal is not inclined to sustain the Counter Claim of the Respondents and the same is thus rejected.



The Issue No.II is decided in the negative and against the Respondents.”

76. I find no infirmity in the reasoning of the learned Arbitrator. The same is given after due consideration of the pleadings of the parties and on appreciation of evidence. Thus, this finding also does not warrant any interference by this Court.

Conclusion

77. In view of the aforesaid, I am of the view that the petitioners have failed to make out any ground for interference with the award under Section 34 of the Act. None of the findings of the learned Arbitrator are such that they require an interference by this Court.

78. Hence, the petition is dismissed.

79. All pending applications, if any, are hereby disposed of.

O.M.P. (ENF.) (COMM.) 129/2021

80. In view of the order passed in O.M.P. (COMM) 250/2021, the execution petition is allowed and it is declared that in accordance with the award dated 18.05.2021 in Arbitration Case No. (AR) 9 of 2019, the judgment-debtors are directed to handover to the decree-holders the possession of land/plot measuring 435 sq. yds, situated at 268, Naseem Bagh, Jamia Nagar, Okhla, New Delhi along with awarded amount and interest @ 18% per annum from 17.07.2021 till the date of payment, within two weeks from today.

81. The petition along with pending applications, if any, is disposed of in the aforesaid terms.

JASMEET SINGH, J

APRIL 05th, 2024 / skm

Click here to check corrigendum, if any