



O.P. No.838 of 2016

O.P.No.838 of 2016
and
C.R.P.Nos.3896 to 3899 of 2017

P.B. BALAJI.J.,

Today, the matter is listed under the caption "for being mentioned" at the request of Mr.Roshan Balasubramanian, learned counsel for the first respondent in the Original Petition and the counsel for the revision petitioner in all the revisions.

2. I have heard the learned counsel Mr.Roshan Balasubramanian as well as Mr.Kaushik Ramaswamy, learned counsel appearing for respondents 3 to 5, as well as Mr.Boopalan, for Mr.J.R.K.Bhavanantham, counsel for the petitioner in the Original Petition.

3. Mr.Roshan Balasubramanian, learned counsel would bring to my notice certain inadvertent typographical errors that have crept in the final common order passed in the Original Petition as well as the revisions. At paragraph of 22, the date of counter claim has been mentioned as 21.01.2015 instead of **21.04.2015** and same needs to be corrected. At other



places, especially, paragraph 29, the correct date namely 21.04.2015 is mentioned. There can be no objections with regard to correcting the said typographical error.

4.The learned counsel for the petitioner would also submit that at paragraph 56 there is a mention of the sale of the brother's plots alone, though it should read as plots allotted to the developer. The said error is again only an inadvertent error, contrary to the admitted facts and hence the following portion **"in such view of the matter, when undivided share pertaining to plots allotted to the developer alone have been sold"** is to be replaced, instead of "In such view of the matter, when the plots allotted to the brother alone have been sold".

5. Mr.Kaushik Ramaswamy, learned counsel appearing for respondents 3 to 5 would point out that the fifth respondent's name has been omitted in the cause title of the O.P.No.838 of 2016. The fifth respondent **Mr.Deepak Krishnan** is also one of the legal heirs of the second respondent A.Krishnan and his name will have to be included in the cause title of the original petition. The same is also directed to be included.



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O.P. No.838 of 2016

6. Registry is directed to carry out the above corrections and upload a fresh order copy.

am

20.02.2025

P.B. BALAJI, J.

am

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O.P. No.838 of 2016

O.P.No.838 of 2016
and
C.R.P.Nos.3896 to 3899 of 2017

Dated: 20.02.2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS



O.P. No.838 of 2016

Reserved on: 28.01.2025

Pronounced on: 17.02.2025

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THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

O.P. No.838 of 2016
and
C.R.P.Nos.3896 to 3899 of 2017

O.P. No.838 of 2016

Dr.A.Tulsi Ram

... Petitioner

Vs

1. Chaitanya Builders and Leasing Private
Limited, Chennai – 600 018.

2. A.Krishnan

3. Maheswari Krishnan

4. Vignesh Krishnan

... Respondents

PRAYER: This Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned award dated 01.06.2016 and the erratum dated 10.08.2016 passed by the Arbitrator pertaining to the disputes between the petitioner and the respondents.

For Petitioner : Mr.J.R.K.Bhavanandham

For Respondents : Mr.Roshan Balasubramanian for R1

: Mr.S.Kaushik Ramaswamy for R3 to 5

C.R.P.No.3896 of 2017

5/58



O.P. No.838 of 2016

1.D.Barat

2.Jeyasree Barat

... Petitioners

Vs

1.Dr.A.Tulsi Ram

2.M/S.Chaitanya Builders and Leasing Private Limited,

Kakani Towers, 15, Khader Nawaz Khan Road,

Chennai – 600 006, rep. by its Managing Director

3. XXX

R3 Removed vide Court order dated 12.07.2023 ... Respondents

PRAYER: This Civil Revision Petition has been filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.08.2017 in I.A.No.402 of 2015 in O.S.No.188 of 2014 on the file of the Additional District Court, Chengalpet, and consequently strike off the suit in O.S.No.188 of 2014 pending on the file of the Additional District Court, Chengalpet.

C.R.P.No.3897 of 2017

1. G.Vishnu Dev

2.M/S.Chaitanya Builders and Leasing Private Limited,

Kakani Towers, 15, Khader Nawaz Khan Road,

Chennai – 600 006, rep. by its Managing Director

... Petitioners



O.P. No.838 of 2016

Vs

1. Dr.A.Tulsi Ram
Chennai – 600 018

2. XXX

R2 Removed vide Court order dated 12.07.2023 ... Respondents

PRAYER: This Civil Revision Petition has been filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.08.2017 in I.A.No.663 of 2015 in O.S.No.173 of 2014 on the file of the Additional District Court, Chengalpet, strike off the suit in O.S.No.173 of 2014 pending on the file of the Additional District Court, Chengalpet.

C.R.P.No.3898 of 2017

1. M/s.BSR Infrastructure P Ltd.,

(Now known as BSR Infrastructure LLP)

No.8/1, King Street, Off.Richmond Road,

Bangalore – 560 025.

2.M/S.Chaitanya Builders and Leasing Private Limited,

Kakani Towers, 15, Khader Nawaz Khan Road,

Chennai – 600 006, rep. by its Managing Director ... Petitioners

Vs

1. Dr.A.Tulsi Ram

2. XXX

R2 Removed vide Court order dated 12.07.2023 ... Respondents



O.P. No.838 of 2016

PRAYER: This Civil Revision Petition has been filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.08.2017 in I.A.No.664 of 2015 in O.S.No.174 of 2014 on the file of the Additional District Court, Chengalpet, strike off the suit in O.S.No.174 of 2014 pending on the file of the Additional District Court, Chengalpet.

C.R.P.No.3899 of 2017

1.Philip Verghese
2.Behnaz Sayeed
3. M/S.Chaitanya Builders and Leasing Private Limited,
Kakani Towers, 15, Khader Nawaz Khan Road,
Chennai – 600 006, rep. by its Managing Director
... Petitioners

Vs

1.Dr.A.Tulsi Ram
2. XXX

R2 Removed vide Court order dated 12.07.2023 ... Respondents

PRAYER: This Civil Revision Petition has been filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.08.2017 in I.A.No.359 of 2015 in O.S.No.175 of 2014 on the file of the Additional District Court, Chengalpet, and consequently strike off the suit in O.S.No.175 of 2014 pending on the file of the Additional District Court, Chengalpet.



O.P. No.838 of 2016

C.R.P.No.3898 of 2017

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1. M/s.BSR Infrastructure P Ltd.,

No.8/1, King Street, Off.Richmond Road,

Bangalore – 560 025.

2. M/S.Chaitanya Builders and Leasing Private Limited,

Kakani Towers, 15, Khader Nawaz Khan Road,

Chennai – 600 006, rep. by its Managing Director ... Petitioners

Vs

1.Dr.A.Tulsi Ram

2. XXX

R2 Removed vide Court order dated 12.07.2023 ... Respondents

PRAYER: This Civil Revision Petition has been filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.08.2017 in I.A.No.664 of 2015 in O.S.No.174 of 2014 on the file of the Additional District Court, Chengalpet, strike off the suit in O.S.No.174 of 2014 pending on the file of the Additional District Court, Chengalpet.

(In all CRP.s)

For Petitioners : Mr.Roshan Balasubramanian

For Respondents : Mr.J.R.K.Bhavanandham for R1



O.P. No.838 of 2016

COMMON ORDER

The Original Petition has been filed under Section 34 of Arbitration and Conciliation Act, 1996 (in short 'Act'), to set aside the award of the learned Sole Arbitrator, a retired Judge of this Court, dated 01.06.2016 and the erratum to the award dated 10.08.2016.

2. I have heard Mr.J.R.K.Bhavanandham, learned counsel for the petitioner in O.P.No.838 of 2016 and the first respondent in Civil Revision Petitions, Mr.Roshan Balasubramanian, learned counsel for the first respondent in O.P.No.838 of 2016 and the petitioner in all the Civil Revision Petitions and Mr.S.Kaushik Ramaswamy, learned counsel for the respondents 3 to 5, who are the legal heirs of the second respondent, who is none else than the brother of the petitioner in O.P.No.838 of 2016.

3. The brief facts, which are necessary to adjudicate the Original Petition under Section 34 of the Act as well as the Civil Revision Petitions, are as follows:

The petitioner is the brother of the second respondent and they along



with their mother were co-owners of the land comprised in Survey Nos.59/2A, 59/3A, 59/4 and 81/5A situated at East Coast Road, Muttukadu, lands measuring to an extent of 4.92 Acres.

4. The first respondent evinced interest to develop the said land, belonging to the family of the petitioner and on 27.03.2006, a joint development agreement was entered into between the first respondent, the petitioner, the second respondent and the mother of the petitioner and the second respondent, viz., K.A.Vitoebai. Immediately, upon execution of the joint development agreement, the mother executed a power of attorney in favour of the first respondent on 28.03.2006. On the same day, the petitioner also executed a power of attorney in favour of the first respondent. The second respondent also executed a power of attorney on 26.03.2006 in favour of the first respondent. The said powers of attorney were executed to enable the power agent to manage, develop and administer the property, prepare a lay out, plot out the land, etc., besides also empowering the agent to identify purchasers for purchasing plots in the lay out. The initial agreement arrived at was that the owners would be entitled to 60% and the developer would be entitled to 40%. The parties also agreed as to the actual



plots that each of the owners would become entitled to in the lay out. The joint development captured other terms and conditions agreed upon by the parties like construction of 32 Villas and 13 Villas would be constructed for the owners, each villa having a built up area of 3,000 sq.ft and 4800 sq.ft of land and the mother would be entitled to 5 villas and the petitioner and the second respondent would be entitled 4 villas each. The joint venture also contemplated to provide roads, swimming pools, club house, etc, which were to be common facilities for the enjoyment of all the owners in the lay out. The said joint development agreement contained an Arbitration Clause for resolution of any dispute arising between the parties.

5. Thereafter, the parties also entered into a Supplementary Agreement on 17.02.2009, in and by which certain areas regarding interpretation of the respective entitlement of plots/ villas, OSR area and extent of site were trashed out between the parties and the modified terms were incorporated in the said Supplementary Agreement. Under the said Supplementary Agreement, the parties also agreed upon the allotment of respective plots as per the DTCP Approval, having a particular measurement (in square feet), besides also mentioning the built up area of the villas to be



allotted to the parties, viz., the owners as well as the first respondent. It is not in dispute that the mother died after execution of the Supplementary Agreement and the petitioner and the second respondent were the only surviving legal heirs.

6. The petitioner complaining that the first respondent has not completed the project, initiated the arbitration proceedings. The parties also went for trial before the learned Sole Arbitrator. The learned Arbitrator passed an award on 01.06.2016 and also an erratum to the said award on 10.08.2016. The petitioner was the claimant before the Sole Arbitrator. Aggrieved by the award, he has preferred the present Original Petition projecting some of the ground available under Section 34 of the Arbitration and Conciliation Act, thereby laying a challenge to the award of the learned Sole Arbitrator.

7. The learned Counsel Mr.J.R.K.Bhavanandham, appearing for the petitioner would first and foremost submit that on the date of passing of the award, the Arbitrator did not have a mandate and there was inordinate delay in passing of the award, and on the ground of delay alone, he would submit



that the award requires to be set aside. Apart from the preliminary objection with regard to the challenge on account of delay, the learned counsel for the petitioner would attack the findings of the learned Arbitrator. He would also submit that the first respondent has made a counter claim before the Arbitrator and the said counter claim is barred by limitation. In this regard, he would take me through the plaint filed by the first respondent before this Court in which Section 8 proceedings were initiated and the said suit was referred to be decided by the resorting to Arbitration under the Arbitration and Conciliation Act, 1996. The learned counsel would therefore submit that the cause of action for the first respondent had arisen even when this Court was moved by way of a Civil suit and therefore, the counter claim filed long after the period of limitation was hopelessly time barred and the learned Arbitrator ought not to have awarded reliefs, which are barred by the law of limitation.

8. The learned counsel would further submit that the learned Arbitrator has relied upon decisions of Courts, which were not cited on either side and no opportunity was given to the petitioner to counter with regard to the applicability of the decisions to the facts of the present case.



He would further submit that the learned Arbitrator travelled beyond the scope of the Arbitration proceedings by taking into consideration, the plea of impossibility of performance relying on frustration of Contract, under the Indian Contract Act, with respect to the claim of specific performance. Therefore, according to the learned counsel, Mr.J.R.K.Bhavanandham, the award is rendered as one being opposed to fundamental policy of Indian Law. He would further submit that the first respondent had not completed the project as contemplated under the Development Agreement or the Supplementary Agreement, especially, by not constructing a club house, which was never dispensed with, despite the parties entering into a Supplementary Agreement. Further contention of the learned counsel for the petitioner is that the first respondent has not even chosen to plead, leave alone prove hardships and further the first respondent was proceeding to enter into an agreement for sale and also registered sale deeds in favour of prospective purchasers, thereby, realizing crores of rupees from the project, and therefore, there is no question of the first respondent suffering any losses.

9. Further, referring to Section 33(4) of the Arbitration and



Conciliation Act, in the Arbitrator having rightly dismissed the application filed by the first respondent, ought not to have entertained an application under Section 33(1)(a) of the Act, under the pretext of correction of computation errors etc. This, according to the learned counsel for the petitioner amounted to the Arbitrator reviewing his own award and therefore, on this ground also the award is liable to be set aside, including the erratum award.

10. The learned counsel for the petitioner also took me through the civil suit in C.S.No.46 of 2011 filed by the first respondent, seeking recovery of Rupees Two Crores Fifty Lakhs and Ninety Three Thousand only, together with interest and also for a direction to the defendants in the said suit, to perform the clauses of the agreement dated 27.03.2006 and the subsequent agreement dated 17.02.2009. In the said suit, an application No.5822 of 2011 was filed for referring the disputes to Arbitration. On 15.06.2012, the said application was allowed and O.S.A.No.447 of 2012 was filed by the first respondent contending that the Arbitration Clause was superseded by the Supplementary Agreement dated 17.02.2009. The appeal was also dismissed, as against which, the petitioner preferred a Special Leave Petition before the Hon'ble Supreme Court in S.L.P. (Civil)No.3737



of 2014. The said Special Leave Petition was also dismissed by the Hon'ble Apex Court on 10.03.2014. The learned counsel would also attack the findings of the Arbitrator, referring to the computation of the period to ascertain the correct limitation period. In short, the award in this regard is challenged on the ground of contravention of Section 31(3) of the Arbitration and Conciliation Act by failing to take into account, the terms of contract applicable to trade usage.

11. According to the learned counsel for the petitioner, the Award is also in violation of the provisions of the Act, requiring the Arbitrator to pass an award which would not be construed as one that no fair minded or no reasonable person would take or that the Arbitrator's reasoning was not even possible and that the Arbitrator wandered outside the contract and dealt with matters not allotted to him and there is a clear error of jurisdiction which can be invoked under Section 34(2-A) for setting aside the award on the ground of patent illegality.

12. As regards the counter claim that has been allowed by the first respondent, the learned counsel of the petitioner would submit that the



claims had to be made within a period of three years from the date of order passed in the Section 8 application and admittedly, the counter claim was made beyond the said period and therefore, the Arbitrator ought to have dismissed the counter claim made by the first respondent, citing limitation.

13. The learned counsel for the petitioner, Mr.J.R.K.Bhavanandham, would also contend that the first respondent colluded with the petitioner's brother / the second respondent to deprive the petitioner of his lawful entitlement and would further contend that merely because, the second respondent had settled the disputes with the first respondent, the settlement terms cannot be applied to the petitioner as well. The learned counsel would also submit that they failed to adhere to the terms of contract, whereunder, the parties had specifically agreed that neither party would be entitled to claim any short fall in extent of land / plots mentioned in the schedule and in the light of the same, the Arbitrator could not have held that the first respondent developer is entitled to compensation towards excess fraction portion valued. He would further submit that even Section 26 of the Arbitration and Conciliation Act, has not been complied with and the Chief Architect has also not been examined and from the available materials



placed on record by the first respondent, R.W.1, there was no sufficient and satisfactory material to show that the project was completed in entirety. The learned counsel would harp on the fact that the club house has not been constructed and therefore, even though the villas had been constructed, it cannot be stated that the project had been completed by the first respondent in all respects.

14. The learned counsel for the petitioner would therefore submit that for violating the fundamental policy of India, ignoring the provisions of the Limitation Act and Contract Act, the Arbitrator has exercised jurisdiction. The Arbitrator has not treated the petitioner equally on the same footing on which his brother has been treated and therefore, even under Section 18 of the Arbitration and Conciliation Act, the award is liable to be interfered with.

15. The learned counsel for the petitioner would submit that the first respondent also exceeded the power of attorney and sold undivided shares belonging to the petitioner and he would also contend that the sales were effected using the power of attorney, after the demise of the mother and



therefore, the sale deeds in favour of third party purchasers were void.

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16. The learned Counsel for the petitioner would place reliance on the following decisions:

(i) State of Chattisgarh vs Sal Udyog, reported in 2022 (2) SCC 275;

(ii) Maula Bux vs. Union of India, reported in 1969 (2) SCC 554;

(iii) State of Goa vs Praveen Enterprises, reported in 2012 (12) SCC 581;

(iv) Voltas Ltd vs. Rolta India Ltd, reported in 2014 (4) SCC 516;

(v) J. G. Engineers Private Limited vs. Union of India and another, reported in (2011) 5 Supreme Court Cases 758;

(vi) Ramdas vs. Sitabai and Others, reported in (2009) 7 Supreme Court Cases 444;

(vii) Suryadev Alloys and Power Pvt. Ltd. vs. Govindaraja Textiles Pvt. Ltd. reported in 2020 (6) CTC 881;

(viii) M/s. Suryachakra Power Corporation Limited vs. Electricity Department, Rep. by its Superintending Engineer, Port Blair and Others, reported in



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MANU/SC/1292/2016;

(ix) Rohan Builders (India) Private Limited vs. Berger Paints India Limited, reported in MANU/SC/1008/2024; and

(x) Purni Devi and another vs. Babu Ram and another, reported in 2024 (5) CTC 748.

17. Per contra, Mr.Roshan Balasubramanian, learned counsel appearing for the first respondent / developer would contend that before the Arbitrator, both the petitioner as well as the first respondent had in effect only made claims for specific performance of the agreements entered into between themselves. The Arbitrator has assessed the oral and documentary evidence and held that the project has been completed in terms of the agreement and therefore, there is no scope for interference under Section 34 of the Arbitration and Conciliation Act.

18. The learned counsel for the first respondent would also submit that the petitioner had misrepresented the area available for development and having given an indemnity in the development agreement, especially, covering Land Acquisition Proceedings, the petitioner ought to have



disclosed the same to the first respondent. He would also refer to the portion of the award, where the Sole Arbitrator has found that the petitioner has not settled the payments to be made and therefore, when the development agreement itself imposed a restriction on the petitioner to take possession of his share of plots and villas, the claim of the petitioner was fallacious. In this regard, the learned counsel for the first respondent would submit that despite the said Clause available in the contract, the first respondent did not take any undue advantage of the same and instead, even offered to hand over all the villas to the claimant, retaining just one alone till the settlement of the disputes. However, it was the claimant who refused even the said offer and therefore, according to the learned counsel for the petitioner, the first respondent cannot be pointed fingers at for delay in handing over the villas.

19. As regards the delay in publishing the award, the learned counsel for the first respondent would submit that even in the order passed in the Section 11 application in O.P.No.160 of 2012 dated 05.12.2014, the Hon'ble Chief Justice, who passed the order, did not fix any time limit and only requested the Sole Arbitrator, to complete the proceedings preferably within a period of six months. Further, it is only after the amendment to the



Arbitration and Conciliation Act, 1996, by introduction of 29-A that the lines time have been introduced and the delay in passing the award would enable an aggrieved party, to have the award set aside. He would therefore, contend that when the present Arbitration proceedings were prior to the amendment being introduced and when the Hon'ble Supreme Court has clearly held that the Amendment Act is prospective in nature and would apply only to arbitration proceedings commencing after 23.01.2015, the ground of delay cannot be raised by the petitioner. He would in any event submit that the Arbitral Tribunal commenced the proceedings by notice dated 07.12.2015 and passed an award on 01.06.2016. In other words, the entire proceedings were concluded in less than a year and four months. Considering the fact that pleading runs to almost 1240 pages and the documents running to 1000's of pages and the award itself being an excess 100 of pages, it would only justify the time period consumed by the Arbitrator in publishing the award. According to the learned counsel for the first respondent, the delay cannot be said to be unreasonable and therefore, on the ground of delay, the Arbitration Original Petition cannot be allowed.

20. As regards the sale of undivided share effected by the first



respondent, the learned counsel for the first respondent would submit that after settling the disputes between the petitioner and the second respondent, the second respondent had executed a power of attorney, Ex.C92 and only in terms of the said power of attorney, undivided shares were sold and there is no contravention of the power of attorney as claimed by the petitioner. He would also invite my attention to Section 44 of the Transfer of Property Act, which permits a co-owner owning undivided interest in the property to dispose of the same in favour of third parties. Therefore, he would submit that there is no merit in the contentions advanced by the learned counsel for the petitioner in this regard.

21. Insofar as the argument regarding the irrevocable power of attorney and the sales effected to the third parties being void, the learned counsel for the first respondent would submit that the power of attorney was irrevocable and coupled with interest and therefore, post death of the mother, the power of attorney would still subsist and he would invite my attention to Section 202 of the Indian Contract Act, in this regard. There upon he would also refer to the Arbitral award itself, where, the Arbitrator has clearly found that the power of attorney was coupled with interest and consequently,



irrevocable. In any event, the learned counsel for the first respondent would submit that apart from the petitioner and the second respondent, there were no other legal heirs and therefore, there was no violation of the power of attorney, since the entire share of the second respondent's brother has already been acquired and alienated by the first respondent and in respect of the share of the petitioner, the award has clearly stipulated the entitlement of the first respondent including the share of the deceased mother, through her legal heirs, viz., the petitioner and the second respondent.

22. As regards plea of limitation, the learned counsel for the first respondent would submit that the suit in C.S.No.46 of 2011 was filed on 15.12.2010 and only on 09.04.2014, the said suit was struck off from file and thereafter, the Arbitrator was appointed on 15.12.2014 and the counter claim came to be filed on 21.01.2015. In such circumstances, the learned counsel for the first respondent would submit that the petitioner himself was residing out side India for a period in excess of three years between 08.03.2010 and 21.10.2015 and specific pleading was made by the first respondent in the rejoinder filed by the first respondent, which has not been denied by the petitioner at any point of time. Therefore, referring to Section 15 of the



Limitation Act, the learned counsel for the first respondent would submit that the period during which the petitioner was out side India has to be necessarily excluded while calculating limitation.

23. The learned counsel for the first respondent would place reliance on the following decision in support of the above contentions:

(i) *Church of Christ Charitable Trust V. Ponniamman Educational Trust* reported in 2012-8-SCC-709;

(ii) *Bhargavi Constructions V. Kothakapu Muthyam Reddy* reported in 2018-13-SCC-480;

(iii) *Rajendra Bajorai V. Hemant Kumar* reported in 2022-12-SCC-641;

(iv) *K.K.Modi V. K.N.Modi* reported in 1998-3-SCC-573;

(v) *M.Somasundaram V. V.Srinivasan* reported in 2009-4-LW-785;

(vi) *Dr.S.Jayakumar V. K.Kandasamy Gounder* reported in 2006-2-LW-259;

(vii) *Meenakshi Overseas V. V.V.V. & Sons Edible Oils Limited* reported in 2019-SCC-Online Mad. - 29067;

(viii) *Sathish Kumar and Others V. Surinder Kumar and others* reported in AIR-1970-SC-833;



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(ix) *Cheran Properties Limited V. Kasthuri and Sons Limited reported in 2018-16-SCC-413;*

(x) *State Trading Corporation V. Gelencore Grain B.V. Reported in MANU/WB/0164/2015;*

(xi) *Shipping Corporation of India V. Machado Brothers reported in 2004-11-SCC-168;*

(xii) *Executive Officer, Arulmigy V. Chandran reported in 2017-3-SCC-702;*

(xiii) *Union of India V. Ibrahim Uddin reported in 2012-8-SCC-148;*

(xiv) *Dilboo V. Dhanraji reported in 2000-7-SCC-702;*

(xv) *M/s.MMTC Ltd., V. M/s.Sanco Tans Ltd., reported in 2017-SCC Online Mad.-10389;*

(xvi) *M.D.Enterprise V. Whirpool of India Ltd reported in 2013-SCC Online Cal-22787;*

(xvii) *M/s.Unique Builder V. The Union of India made in O.P.No.21 of 2020, dated 10.01.2025;*

(xviii) *Board of Control for Cricket in India V. Kochi Cricket Private Limited and others reported in 2018-6-SCC-287;*

(xix) *OPG Power Generation Private Limited V. Enexio Power Cooling Solutions India Private Ltd., reported in 2024-INSC-711;*

(xx) *Ssangyong Engineering and Construction*



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Company Ltd., V. National Highways Authority of India reported in 2019-15-SCC-131;

(xxi) Arkay Energy V. Tidel Partk Limtied in O.P.No.274 of 2021 dated 23.03.2023;

(xxii) Dr.A.Tulsi Ram V. M/s.Chaithanya Builders and Leasing P. Ltd., in O.P.No.160 of 2012, dated 05.12.2014;

(xxiii) Milkfood Ltd V. GMC Ice Cream (P) Ltd., reported in 2004-7-SCC-288;

(xxiv) Satya Jain and Ors. V. Anis Ahmed Rushdie and others reported in 2013-8-SCC-131;

(xxv) Rajender Singh V. Santa Singh reported in 1973-2-SCC-705;

(xxvi) Punjab National Bank V. Surendra Prasad Sinha reported in 1993-Supp-1-SCC-499;

(xxvii) Rajinder Kumar V. Kuldeep Singh reported in 2014-15-SCC-529;

(xxix) Seth Loon Karan Sethiya V. Ivan E. John reported in AIR-1969-SC-73;

(xxx) P.Seshareddy (Dead) V. State of Karnataka reported in 2022-SCC Online SC – 1590;

(xxxi) K.L.Mibin Antony Raj V. The Official Liquidator reported in MANU/TN/6362/2023;

(xxxii) Champaran Cane Concern V. State of Bihar reported in AIR-1963-SC-1737;



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(xxxiii) *Gautam Pal V. Debi Rani reported in 2000-8-SCC-330;*

(xxxiv) *Sarla Agarwal V. Ashwani Kumar Agarwal reported in 2013-SCC Online Del-3832; and*

(xxxv) *Ram Ratan V. Chandra Prakash reported in MANU/RH/1402/2012.*

24. Mr.S.Kaushik Ramaswamy, learned counsel would submit that the second respondent is the brother of the petitioner and pursuant to the demise of the second respondent, the respondents 3 to 5 have been impleaded in the proceedings as his legal heirs. The learned counsel appearing for the respondents 3 to 5 would submit that the petitioner had also made claims against his own brother/ second respondent, whose estate is now represented by the respondents 3 to 5. The learned Arbitrator has denied such claims in the award dated 07.06.2016 in toto. The learned counsel would submit that the Arbitrator has passed the award based on evidence available on record and the findings are also not erroneous, necessitating this Court to even consider upsetting the same. He would further submit that under Section 34, this Court has not power to re-appreciate the evidence.

He would further submit that the award is neither unfair nor unreasonable



and therefore, he would pray for the Original Petition being dismissed.

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25. The learned counsel for the respondents 3 to 5 relied on the following decisions of the Hon'ble Supreme Court

(i) Ssangyong Engineering and Construction Company Ltd., V. National Highways Authority of India reported in 2019-15-SCC-131;

(ii) ONGC Ltd V. Western Geco International Ltd reported in 2014-9-SCC-263;

(iii) Dyna Technologies Pvt. Ltd V. Crompton Greaves Ltd., reported in 2019-20-SCC-1;

(iv) Welspun Specialty Solutions Ltd V. Oil and Natural Gas Corporation Ltd., reported in 2022-2-SCC-382;

(v) PSA Sical Terminals Pvt. Ltd V. Board of Trustees reported in 2021-SCC-Online SC 508; and

(vi) Associate Builders V. Delhi Development Authority reported in 2015-3-SCC-49.

26. I have carefully considered the submissions advanced by the learned counsel on either side, with regard to the question of delay in passing the award.



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27. The learned counsel for the petitioner would contend that the award was passed beyond mandate of Arbitral Tribunal and consequently, both the award as well as the erratum have to be set aside. In fact, in *M/s.Unique Builder's*, I had an occasion to deal with in the aspect of delay in passing of an award and ultimately, I have set aside the award only on the ground of delay. The said decision was in fact brought to my attention by the learned counsel for the first respondent himself to distinguish the facts of the said case and the present case. Having authored the said order in *M/s.Unique Builder's* case, conscious of the circumstances which necessitated me to set aside the award, on the ground of delay, here, I do not find any such circumstances available to consider rejecting the Original Petition on the ground of delay. Firstly the proceedings commenced prior to the introduction to Section 29-A of the Arbitration and Conciliation Act. Secondly, even in the Section 11 Petition, this Court appointed an Arbitrator and only requested the Arbitrator to pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. Therefore, a reading of the order evidences the fact that the Court did not fix any time period for the Arbitrator to conclude the proceedings.



Further, as rightly contended by the learned counsel for the first respondent, considering the nature and volume of evidence, I do not find there has been any unreasonable delay on the part of the Arbitrator. Further, at no point of time, the petitioner raised the issue of delay and on the contrary, he willingly participated in the proceedings and therefore, after suffering an award, it is not open to the petitioner to contend that the award is liable to be set aside, on the ground of unreasonable delay. The petitioner has also not invoked avenues open to him to terminate the mandate of the Arbitrator, which are available under the provisions of Arbitration and Conciliation Act, 1996, which was in fact invoked in the *M/s.Unique Builder's* case.

28. In view of the above and foregoing discussion, I am unable to countenance the submission of the learned counsel for the petitioner that the award is liable to be set aside on the ground of delay.

29. Coming to the next contention regarding limitation, especially, pertaining to the counter claim relief, admittedly, the first respondent filed a suit for specific performance on 15.12.2010 in C.S.No.46 of 2011. In the said suit, the petitioner filed a Section 8 application, which was allowed by



the Single Judge of this Court on 15.06.2012. The matter was taken up to the Apex Court and finally by order dated 10.03.2014, the Hon'ble Supreme court upheld the Section 8 application being allowed, thereby, necessitated the parties to go before the Arbitrator. Thereafter, O.P.No.160 of 2012 was filed by the petitioner under Section 11(5) for appointment of Sole Arbitrator and the same was allowed on 15.12.2014. The counter claim came to be filed on 21.04.2015. In ***M.D.Enterprise's case***, relied on by the respondents, it was held that it would suffice for a party to initiate Arbitration within three years from the date of order in the Section 8 application. The view of the Calcutta High Court was followed by this Court referred herein supra. The Section 8 application was allowed by this Court in 16.08.2012 and the counter claim was filed on 21.04.2015. Therefore, the same cannot be said to be barred by limitation. Further, giving the benefit of Section 15 of the Limitation to the first respondent as well, the counter claim cannot be said to be time barred. In any event, the limitation being a mixed question of law and fact and the Arbitrator having considered the said contention of the petitioner and having held that the counter claim is not time barred at Paragraphs 34.1 to 34.6, I do not find any justiciable grounds to interfere with such factual findings rendered by the Arbitrator holding that the counter



claim was not barred by limitation, especially, when such findings are based on available documentary evidence placed before the Arbitral Tribunal.

30. With regard to the power of attorney executed by the mother terminating with her death and the said power of attorney having been misused by the first respondent, it is an admitted fact that though the mother had executed power of attorney in favour of the first respondent, she died before the project was complete and the first respondent relying on the power of attorney executed by the petitioner / second respondent and the mother conveyed sale deeds to various third party buyers. According to the petitioner, due to the death of the mother, the power of attorney executed by the mother got extinguished automatically and the first respondent, could have never acted as an Agent thereafter. It is the contention of the first respondent as well as the second respondent's legal heirs that the power of attorney executed by the mother was coupled with consideration and therefore, the power of attorney was an irrevocable power of attorney. In this regard, the learned counsel for the first respondent would invite my attention to the Clauses in the development agreement, which speak about the owners transferring their interest in favour of the developers in



consideration of the developer agreeing to construct a villas to the owners.

He would refer to Clauses 6 and 7(F), which provides that the owners executed an irrevocable power of attorney in favour of developers, enabling the developer to sell plots allotted to the developer and also to appropriate for consideration to receive from such sales thereof. The learned counsel would therefore submit that the power of attorney was for consideration and in view of the mandate of Section 202 of Indian Contract Act, the agency cannot be revoked, since it would prejudice the interests of the first respondent / developer.

31. The Hon'ble Supreme Court in **P.Sesh Reddis case**, referred herein supra, held that even though the death of the original contractor may have amounted to termination of agency, on account of an assignment deed, an interest accrued in favour of the appellant enabled the appellant to continue with the agency. This Court also in **K.L.Mibin Antony Raj's case**, held that in a contract which is coupled with interest, it is irrevocable. The learned Arbitrator has applied his mind to the facts in issue and rendered categorical findings that the powers of attorney are coupled with interest and consequently, irrevocable. Resultantly, the Arbitrator while passing the



award, issued a direction to the claimant to execute a power of attorney in favour of the first respondent, to enable the first respondent to execute the sale deeds for the Developer's share of villas. The power of attorney executed by the mother was only in pursuance of the joint venture agreement between the parties. The joint venture agreement contemplated the first respondent to lay out the property, construct villas at its cost in lieu of the land being surrendered by the owners for the purposes of joint development. Further, in the light of the decision of the Hon'ble Supreme Court referred herein supra, the contract is one coupled with interest and the Arbitrator also rightly arrived at such findings, which I find, is based on the available materials placed by the parties and therefore, I do not find any ground warranting interference of such findings, thereby persuading me to set aside the award on this ground.

32. Insofar as the sale of undivided share pursuant to the first respondent settling the dispute with the second respondent, it is the contention of the petitioner that the first respondent has alienated even the share of the petitioner and thereby committed breach. Section 44 of the Transfer of Property Act permits a co-owner, having an undivided interest of



the property to convey the same in favour of a third party. In the present case, the first respondent, petitioner and his brother / second respondent were ear marked particular villas and in lieu of the development being undertaken by the first respondent, the second respondent has executed a power of attorney vide power of attorney dated 12.09.2011, Ex.C92.

33. On a perusal of the said Ex.C92, it is clear that the said power of attorney was only in respect of the second respondent's 50% of undivided share in the property and not encroaching into even one bit of the petitioner's entitlement. Therefore, the argument of the learned counsel for the petitioner that the Arbitral Tribunal has not appreciated the conduct of the first respondent in disposing of the property of the claimant also cannot be countenanced. In this regard, the decisions on which reliance is placed on by the learned counsel for the first respondent in **Goutam Pal's** case, and the Supreme Court in **Champan Cane Concern's** case, the law laid down is that a co-owner is entitled to sell his undivided share in the property and does not require any consent from the other co-owner.

34. Coming to the next argument of the learned counsel for the



petitioner that the project was not complete in all respects, the categorical case of the petitioner is that the first respondent had not completed the development, and admittedly he had not constructed the club house. In this regard, the Arbitrator, has found that the development has been completed in all respects even in March 2010. The first respondent has filed documentary evidence to substantiate the completion of various stages, viz., ground floor, roof, first floor, internal and external planted and total villa completion. In this regard, reliance is placed on the Exhibits R58, 59, 60, 61 as well as Ex.R99 – 100. The petitioner also does not dispute the fact that the villas were completed and the only complaint is that the project is different and the villas are different and it was necessary for the first respondent to complete the project as well, which included the construction of club house and providing other facilities. In this regard, it is the contention of the learned counsel for the first respondent that the learned Arbitrator, besides taking note of the evidence produced by the parties also took the pains of visiting the property and his findings have been incorporated in the award, where he mentioned that the development is complete. Further, even before this Court, an Advocate Commissioner was appointed and he has also filed a report along with photographs to show that the project was complete. As



regards the completion of the club house, the first respondent would submit that in view of the non-availability of adequate space, the club house could not be constructed and the first respondent cannot be compelled to perform something, which is impossible to perform. In this regard, my attention is invited to the findings of the learned Arbitrator. The findings of the learned Arbitrator, in this regard placing reliance on some decisions, not relied on by either of the parties is a complaint of the petitioner. Even though the parties had not cited any of those decisions, when the Hon'ble Supreme Court has laid down the law and the learned Arbitrator thought it fit to follow the said ratio the unsuccessful party in the Arbitration proceedings cannot complain that the Arbitrator has on its own, relied on decisions of the Courts and held the same against the petitioner. The Arbitrator has assessed the oral and documentary evidence available on record and come to the finding that the original space intended for lay out was not available and therefore, there was also a re-adjustment of plots vide the Supplementary Agreement between the parties and therefore, it was impossible for the first respondent to construct the club house as originally contemplated in the Development Agreement. Therefore, in this context, the learned Arbitrator has placed reliance on the decision of the Hon'ble Supreme Court regarding granting



relief of specific performance and when the performance itself is impossible, I am unable to countenance the submission of the learned counsel for the petitioner that the learned Arbitrator cannot rely upon the decisions of the Superior Courts, while passing the award. The Arbitrator has arrived at certain findings and only to support the findings, he has referred to some decisions. Therefore, I do not see the said act of the Arbitrator to be unfair or depriving the petitioner of an opportunity, as contended by the learned counsel for the petitioner.

35. With regard to the various other monetary claims, which have been elaborately argued by the learned counsel for the petitioner, the Arbitrator, is the master of the quantity as well as the quality of evidence adduced by the parties and therefore, this Court exercising a very narrow and limited power of setting aside the award and that too under very limited ground under Section 34 of the Arbitration and Conciliation Act, cannot sit on appeal over the award of arbitral tribunal and re-appreciate the evidence to come to any different conclusion. More so, when I find that the findings arrived at by the Arbitral Tribunal are based on the materials placed before the Arbitrator and there has been consideration of the said evidence adduced



by the parties, I do not find that the petitioner has made out any case for setting aside the award. In fact, the Arbitral Tribunal has also disallowed the several heads of monetary claims made by the petitioner on the ground that the petitioner did not enter into the witness box. For example, the petitioner has claimed reimbursement of travel expenses, which has been disallowed by the learned Arbitrator. The learned Arbitrator has clearly held that when the petitioner did not adduce any evidence in the nature of travel bills and further when there was no contract between the parties for reimbursement of any travel expenses incurred by the petitioner for travelling back and forth between US and India, such claims cannot be awarded. Though the learned counsel for the petitioner Mr.J.R.K Bhavanatham argued that the passports had indeed been filed vide Ex.R130 and R131, I am unable to countenance the said submissions for the simple reason that mere filing of the passports would not suffice to establish a claim for damages. The petitioner ought to have got into the witness box and made out a case for damages/losses suffered. Therefore, the petitioner having initiated the Arbitral proceedings and made several claims, has taken a huge risk of not leading evidence before the Arbitral Tribunal and after consciously waiving his right to substantiate the various claims, I am unable to see how the petitioner can



challenge the award of the Arbitral Tribunal, which has considered the pleadings and also materials documents, including the oral evidence adduced by the respondent / developer. I therefore, see no scope for interfering with the award as claimed by the petitioner, especially when the learned Arbitrator has rendered plausible findings at Paragraph 19.4 and 19.5 of the Award.

36. Coming to the claim of utility charges, interest, service tax etc., being made by way of counterclaim by the Developer, the learned Arbitrator has elaborately discussed the rival contentions regarding the said claims from Paragraph 20.1 to 20.9 and the findings arrived at by the learned Arbitrator are very much possible view taken in the light of the available oral and documentary evidence. Even with regard to the liability of service tax, the argument of the learned counsel for the petitioner that the same would be payable only if there is a demand from the Government Department is unacceptable, since the liability to pay service tax is on the Developer and the Developer cannot commit default in payment of statutory dues and await a demand from the authorities concerned. The learned Arbitrator has discussed these aspects at in Issue No.12 and I do not find any



patent illegality in the findings arrived at by the learned Arbitrator.

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37. Insofar as the various monetary claims made by the petitioner towards damages, mental agony etc., the learned Arbitrator has disallowed the same on the ground that the claimant has not substantiated the same by adducing oral evidence. Despite arriving at such findings, the learned Arbitrator based on the documentary evidence and applying the provisions of the Contract Act partly allowed Issue No.7 in favour of the Claimant directing the Developer to pay damages to the tune of Rs.27,04,680/- for delay/non completion of the project.

38. Even with regard to the claim towards excess fractional portion, the learned Arbitrator has rightly interpreted the supplementary agreement Ex.C36 and the same not modifying or doing away with the claimants liabilities to pay for the excess fractional portion and therefore, the arguments of the learned counsel for the petitioner in this regard are also lacking merit.

39. Equally, while discussing the entitlement of the claimant to losses



on account of difference in size of built up area of the Villas, upsetting the agreed 60-40 ratio, the learned Arbitrator has considered the Supplementary Agreement entered into between the parties in 2009, which nullified the claimants entitlement for compensation on account of any shortfall, when the supplementary agreement incorporated new plans and the petitioner consented for the same.

40. With regard to the argument from the learned counsel for the petitioner revolving around Section 56 of the Transfer of Property Act, also I do not find any illegality in the findings arrived at by the Tribunal, especially when the Tribunal has taken note of the Advocate Commissioner's report and also the affidavit of the second respondent, in fact the learned Arbitrator has also referred and taken note of his personal visit to the project site, with the consent of the parties, in coming to the conclusion that the objections of the Claimant lacked substance.

41. Insofar as the various other decisions that has been relied on by the learned counsel for the petitioner, first respondent and the second respondent, the law is well settled with regard to the scope of a Section 34



petition and applying the ratio laid down in the various decisions with regard to the scope of interference under Section 34 of the Arbitration and Conciliation Act, in assessing the award impugned in the present Original Petition, I am unable to find that the petitioner has brought his challenge within the piegon-hole available under Section 34 of the Arbitration and Conciliation Act.

42. In view of the above, I do not see any justifiable grounds made out for setting aside the award of the Arbitral Tribunal. At the risk of repetition, though elaborate arguments were placed before me, touching the factual matrix, I am not dealing with the same in any greater detail, as I have already discussed what is required for the purposes of testing the award, in the light of Section 34 of the Arbitration and Conciliation Act.

43. In view of the above, the Original Petition is liable to be dismissed.

44. As regards the arguments of the learned counsel for the petitioner challenging the erratum award published by the learned Arbitrator, I find



that a petition has been filed under Section 33(4) of the Arbitration and Conciliation Act, by the first respondent / developer high-lighting certain claims for pre-award interest that has been omitted, in the counter claim. One other application has been filed under Section 33(1-A) of the Arbitration and Conciliation Act, bringing it to the notice of the Tribunal that certain clerical / typographical and computational errors have crept in, in the award dated 01.06.2016 and seeking to correct the said errors, the application under Section 33(1-A) has been moved. The said applications were opposed by the petitioner / claimant, as misconceived and baseless and devoid of merits and further contending that the mistakes / errors cannot be brought within the ambit of Section 33(1-A) of the Arbitration and Conciliation Act or Section 33 (4) of the Act. In and by erratum dated 10.08.2016, the learned Arbitrator has dealt with both the applications and taken note of the objections of the petitioner / claimant. The Arbitrator has satisfied himself that the award has mistakenly granted the claim of refund of interest free refundable deposit, together with interest at 18% per annum from 08.03.2010 to 15.04.2015, worked out Rs.1,52,66,955/- and noticing a similar error has crept in at para - 37 of the award, the Arbitrator held that the first respondent is entitled to claim interest from the date of claim



petition till the date of actual payment and it had been erroneously stated that the interest should be from the date of claim to the date of actual claim instead of payment. The Arbitrator has found that it is only an inadvertent typographical error and has proceeded to rectify the same. Insofar as the amount of Rs.59,58,000/-, the same has been mentioned as Rs.58,59,000/- and not Rs.59,58,000/-, which was a typographical error even in the pleadings, which has consequently found its way in the award. By reducing the figure of Rs.59,58,000/- instead of Rs.58,59,000/-, the Arbitrator has only shown an indulgence in favour of the petitioner / claimant and therefore, the petitioner cannot claim to be prejudiced because of the said erratum award. As regards the liquidated damages, the Arbitrator again found a computational error and corrected the relevant portions of the award, taking into account, the agreement between the parties under the Supplementary Agreement to pay 15 rupees per square feet per month, which alone has been rectified by the Arbitrator. The learned Arbitrator has in great detail referred to the provisions of the Arbitration and Conciliation Act, more specifically Section 33(1-A) and 33(4) of the Arbitration and Conciliation Act and came to the conclusion that the request for modification of the award by the first respondent was maintainable and on



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facts found that the mistakes were only inadvertent and hence, proceeded to pass the erratum award. I have seen no illegality or perversity in the erratum award issued by the Arbitrator, the learned Arbitrator has provided ample and sufficient opportunity to the petitioner claimant to meet the said applications filed under Sections 33 (1-A) and 33(4) of the Arbitration and Conciliation Act and after taking into consideration all the objections of the petitioner / claimant alone the Arbitrator has passed an order, dismissing the application for making an additional award while allowing modification of the award in respect of certain typographical and computational errors. In fact, the Arbitrator has also disallowed certain request made by the first respondent and has not blindly entertained all the corrections sought for.

45. I do not find that the said excise undertaken by the Arbitrator is against the law or that it is impermissible for the Arbitrator to do so. In view of the above, I am not inclined to accept the arguments of the learned counsel for the petitioner that the erratum awards also suffers from illegality.

C.R.P.Nos.3869 to 3899 of 2017



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46. Coming to the revision petitions, the claimant has instituted suits in O.S.Nos.173 of 2024, 174 of 2014 and 175 of 2014, challenging the sale deeds dated 14.12.2011, 12.04.2012 and 28.03.2012 respectively. Insofar as O.S.No.188 of 2014, the claimant has sought for declaration to nullify the sale deed executed by the first respondent in favour of the respondents 3 and 4 in document No.4151/2010 on the ground that the said sale deed is null and void.

47. In all the suits, the claimant as plaintiff has also sought for permanent injunction to restrain the Developer from in any manner alienating or encumbering the plots which are the subject matter of four sale deeds and also seeks for damages to the tune of Rs.11,00,000/-in each of the suits.

48. The learned counsel for the petitioner in the revision petitions, Mr.Roshan Balasubramanian would submit that first and foremost insofar as the three suits which have been instituted, challenging three different sale deeds concerned, having gone for Arbitration and claims having been made insofar as these plots as well, it was not open to the petitioner / claimant to



maintain separate and independent suits with regard to three of the plots that have been sold to third party purchasers. He would further submit that the entire cause of action on which the suits have been filed is that the interest of the petitioner as plaintiff in the said suits has been dealt with by the developer and therefore, the said sale deeds cannot bind the claimant / plaintiff.

49. In this regard, my attention is invited to the power of attorney executed by the brother of the first respondent / plaintiff and also the schedule to the sale deeds covered by three documents which are sought to be nullified, to emphasise that the power of attorney dealt only with 50% undivided share in the property, which admittedly the entitlement of the brother of the first respondent / plaintiff and therefore, the plaintiff cannot maintain the suits, challenging the sale by his brother, through power agent, when there is absolutely no infringement of the first respondent / plaintiff's rights.

50. He would also refer to Section 44 of the Transfer of Property Act in this regard, which has already been dealt with by me while dealing with



the original petition under Section 44 of the Act. In short, the arguments of the learned counsel for the petitioner is that the suits are nothing but a clear attempt in re-litigation and an abuse of process of law and consequently, the plaintiffs are liable to be rejected on the ground of there had been no cause of action and also on the ground of being barred by law in view of the Arbitration award having been passed against the claimant, though under challenge in O.P.No.838 of 2016.

51. The learned counsel for the petitioner would place reliance on the following decisions:

(i) *Dahiben V. Arvinbhai Kalyanji reported in 2020-7-SCC-366;*

(ii) *Cheran Properties Limited V. Kasturi and Sons Limited reported in 2018-16-SCC-413;*

(iii) *K.K.Modi V. K.N.Modi reported in 1998-3-SCC-573;*

(iv) *M.Somasundaram V. Srinivasan reported in 2009-4-LW-785;*

(v) *Dr.S.Jaykumar V. K.Kandasamy Gounder reported in 2006-2-LW-259;*

(vi) *Meenakshi Overseas V. V.V.V. & Sons Edible*



Oils Ltd reported in 2019-SCC Online Mad.-29067;

(vii) Shipping Corporation of India Ltd V. Machado Brothers reported in 2004-11-SCC-168;

(viii) Executive Officer, Arulmigu V. Chandran reported in 2017-3-SCC-702;

(ix) Union of India V. Ibbrahim Uddin reported in 2012-8-SCC-148; and

(x) R.N.Shamugavadivel and S.V.Shanmugam V. R.N.Myilsami and others reported in 2010-5-LW-185.

52. Insofar as the other Civil Revision Petition in C.R.P.No.3896 of 2017 which pertains to the sale of plot involving the mother's share, the learned counsel for the petitioner would submit that though the said sale deed came to be executed after the demise of the mother on 12.06.2010, sale deed having been executed on 14.06.2010, the sale cannot be impeached for the reason that the power of attorney was coupled with interest and would therefore, would not lapse on her death. He would further contend that since admittedly, it is only the petitioner and his brother, who are the legal heirs of the mother / K.A.Vitoebai and the petitioner having already suffered an award and directed to execute a power of attorney to enable the developer to execute sale deeds in respect of the plots falling to the developer's share,



there would be no useful purpose to re-litigate the issue, when the Arbitrator had already gone into the entire factual matrix before passing an award. He would therefore submit that even though technically it may appear to be a sale deed having been executed using the power of attorney, after the death of the principal, on a careful consideration, the said sale deed cannot be set aside for two reasons; viz., (i) power is coupled with consideration (ii) the directions in the award take care of the suit reliefs as well.

53. Per contra, Mr.J.R.K.Bhavanandham, learned counsel for the first respondent would submit that the triable issues arise for consideration in the suit and apart from the relief of declaration, the plaintiff has also sought for damages to the tune of Rs.11,00,000/- in the suits and therefore, the relief for damages would have to be tested independently and the suits cannot be rejected under Order VII Rule 11 C.P.C and the trial Court has rightly dismissed the Order VII Rule 11 applications. He would further pray for the order of the trial Court being confirmed.

54. I have carefully considered the submissions advanced by the learned counsel on either side.



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55. Firstly, insofar as the three suits in respect of the brothers' power of attorney and sale deeds consequently executed by the first respondent, the petitioner's case in the three suits is that the property is undivided and the petitioner has been deprived of his lawful interest by his brother and the developer, by executing sale deeds in favour of third party purchasers.

56. On going through the power of attorney document, which is filed as a suit document in the suits, it is clear that the property in respect of which, the power of attorney was issued was only pertaining to the separate interest of the brother of the plaintiff and not encompassing the interest of the plaintiff. Therefore, insofar as the said sale deeds are concerned, the plaintiff is only a stranger to the documents and as long as no part of his property has been conveyed or dealt with under the said sale deeds, the plaintiff cannot have any grievance whatsoever and he cannot challenge the sale deeds executed by his brother. Further, even under the development agreement as well as the supplementary agreement, the parties have specifically agreed upon the allocation of particular plots to the two brothers as well as the developer. In such view of the matter, when the plots allotted



to the brother alone have been sold and there is no invasion of the plaintiff's share in the said sale deeds, I do not find any cause of action arising for the plaintiff to seek the sale deeds being nullified. Further, the very same issues have been gone into by Arbitrator and the Award considers the effect of the sale deeds executed by the brother. Even in respect of the other revision, relating to the mother's power of attorney, the Arbitrator has gone into the contentions of the parties in detail and arrived at a factual finding that the power of attorney was coupled with interest and therefore, it would not terminate or lapse on the death of the mother, K.A.Vitoebai. The same issue cannot be agitated by way of an independent suit. With regard to the argument of the learned counsel for the petitioner that there being a relief of damages to the tune of Rs.11,00,000/-, the plaints cannot be rejected in part and the parties would have to necessarily undergo the strict rigors of trial and the plaint cannot be summarily rejected, I am unable to countenance the said argument for the simple reason that the relief of damages which has been sought for is the dependant on the principal relief of declaration of the sale deeds as null and void. When the plaintiff is not entitled to even maintain a suit for the primary relief of declaration, then the consequential relief of damages would automatically fall along with it. Therefore, I am



unable to countenance the arguments of the learned counsel for the first respondent / plaintiff that the parties would have to be referred to trial, by confirming the order of dismissal of the rejection of plaint applications filed by the revision petitioner.

57. As held by the Hon'ble Supreme Court in *Cheran Properties'* case, reiterating the principles laid down in *Uttam Singh & Co. V. Union of India* (Civil Appeal No.162 of 1962 dated 11.10.1962), the Hon'ble Supreme Court held that when all claims which are the subject matter of a reference to arbitration stand merged in the award pronounced, then the rights and liabilities of the parties in respect of the said claims can be determined only on the basis of the award and after pronouncement of the award, no action can be initiated on the original claim, which was subject matter of the reference. The said ratio would squarely applicable to the facts of the present case. All the issues in the plaints have already been dealt with the learned Arbitrator in the award impugned in O.P.No.838 of 2016.

58. However, the trial Court without appreciating the legal position has held that the suits cannot be rejected and the parties will have to undergo



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trial. I am therefore constrained to set aside the order of the trial Court, dismissing the application under Order VII Rule 11 C.P.C.

59. In fine,

(i) O.P.No.838 of 2016 is dismissed

(ii) All the Civil Revision Petitions are allowed.

(iii) There shall be no order as to costs in the above proceedings.

Index : Yes / No
Internet : Yes / No
NCC : Yes/No
LS/rkp

17.02.2025

To

The Additional District Court,
Chengalpet.



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P.B.BALAJI, J.,

LS/rkp

O.P. No.838 of 2016
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