HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE EIGHTH DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND

THE HONOURABLE SMT JUSTICE RENUKA YARA

WRIT APPEAL NOS: 1698 AND 1725 OF 2008

W.A.No.1698 of 2008

Writ Appeal under clause 15 of the Letters Patent against the Order dt. 26-11-2008 in WP No. 3574 of 2001 on the file of the High Court.

Between:

R.P. Sinha, S/o.H.N. Sharma, R/o. 411, Raghava Ratna Towers, Chirag Ali Lane Hyderabad.

.....APPELLANTS/5th RESPONDENT

AND

1. Dr. S.K. Snngh, S/o. Durga Shankar Prasad Singh Presently R/o.. U.S.A. Rep. by his G.P.A. Dr. T. Dilnehas Kumar Singh S/o. Rathan Singh, aged 58 yrs, Occ Medical Practitioner R/o. 4-4-476, Sultan Bazar, Hyderabad.
2. The Cooperative Tribunal, Hyderabad.
3. The Deputy Registrar of Cooperative, Societies (Housing) at Basheerbagh, Hyderabad.
4. The Jubilee Hills Coop. House Building Society Ltd., Jubilee Hills, Hyderabad, Rep. by its Secretary.
5. Smt. V. Aruna, W/o. V. Ashok Rao, Major R/o. 102051, Sai Krupa Towers Plot No. C-1, Domalguda, Hyderabad.

.....RESPONDENTS/WRIT PETITIONER/

RESPONDENTS 1 to 4

I.A.NO:1 OF 2008 (WAMP.NO:3335 OF 2008)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to

suspend the Judgment of the learned Single Judge in WP No. 3574 of 2001 dt. 26-11-2008 pending disposal of the appeal in the interest of Justice.

Counsel for Appellant : SRI P.SRI RAGHU RAM

Counsel for Respondent No.1 : SRI SUNIL B.GANU, LEARNED SENIOR COUNSEL REPRESENTING SRI T.S.PRAVEEN KUMAR

Counsel for Respondent Nos.2 & 3 : Ms. B.MOHANA REDDY, LEARNED G.P FOR COOPERATION

Counsel for Respondent No.4 : SRI C.V.R.RUDRA PRASAD

Counsel for Respondent No.5 : SRI SATHVIK MAKUNUR

W.A.NO: 1725 OF 2008

Writ Appeal under clause 15 of the Letters Patent filed against the order dated 26.11.2008 and made in WP.No.3574 of 2001 on the file of the High Court.

Between:

The Jubilee Hills Cooperative House Building Society Limited, Jubilee Hills, Hyderabad rep.by its Secretary.

.....APPELLANT/RESPONDENT-3

AND

1. Dr.S.K.Sing, S/o.Durga Shanker Prasad Singh presently residing at USA rep.by his GPA Dr.Dinesh Singh S/o.Ratnam, Medical PRactitioner,R/o.4-4-476, Sultan Bazar, Hyderabad.

.....RESPONDENT/WRIT PETITIONER

2. The Deputy Registrar of Cooperative Societies,(Housing), At Basheerbagh, Hyderabad.
3. Smt.V.Aruna, W/o.,V.Ashok Rao, R/o.1-2-31,Sai Krupa Towers,Plot No.C-1 Domalguda, Hyderabad.
4. R.P.Singh, S/o.H.N.Sharma, R/o.411, Raghava Ratna Towers,Chirag Ali Lane Hyderabad.

....RESPONDENTS/RESPONDENTS 1, 2, 4 & 5

5. **The Commissioner of Cooperation & Registrar of Cooperative, Societies, Andhra Pradesh, Hyderabad.**
6. **Sri T.Sreenivasulu, District Cooperative Officer, Enquiry Officer, Ranga Reddy District, Hyderabad.**

Note : Respondents 6 & 7 are impleaded as per Court Order dated 11-12-2008 in WAMP.No.3304 of 2008)

....RESPONDENTS/PROPOSED RESPONDENTS 6 & 7

I.A. NO: 2 OF 2008(WAMP. NO: 3368 OF 2008)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the judgment and order dated 26/11/2008 in WP No. 3574 of 2001 in so far as it has imposed the cost of Rs.1,00,000/- on the appellant Society and also directed the Commissioner and Registrar of Cooperative Societies to initiate appropriate proceedings either under Sec.51 of 52 of the A.P.Cooperative Societies Act, 1964 to enquire into the affairs of the Society and the consequential order of the commissioner of Cooperation and Registrar of Cooperative societies, A.P., Hyderabad, in Proceedings Rc.No.28113/2008-HG1, dated 06/12/2008 pending disposal of the writ appeal.

Counsel for Appellant : SRI C.V.R.RUDRA PRASAD

Counsel for Respondent No.1 : SRI SUNIL B.GANU Sr. COUNSEL FOR SRI. T.S. PRAVEEN KUMAR

Counsel for Respondent Nos.2 & 3 : Ms. B.MOHANA REDDY, LEARNED G.P FOR COOPERATION

Counsel for Respondent No.4 : SRI SATHVIK MAKUNUR

Counsel for Respondent No.5 : SRI P.SRI RAGHU RAM

Counsel for Implead Respondents 6 & 7 : SRI P.KAMLAKAR

The Court made the following COMMON JUDGMENT: -

THE HON'BLE THE ACTING CHIEF JUSTICE SUJOY PAUL

AND

THE HON'BLE SMT. JUSTICE RENUKA YARA

WRIT APPEAL Nos.1698 AND 1725 OF 2008

COMMON JUDGMENT *(Per Hon'ble Smt. Justice Renuka Yara):*

Heard Sri P.Sri Raghuram, learned Senior Counsel for the appellant in W.A.No.1698 of 2008, Sri C.V.R.Rudra Prasad, learned counsel for the appellant in W.A.No.1725 of 2008 and respondent No.4 in W.A.No.1698 of 2008 and Sri Sunil B Ganu, learned Senior Counsel appearing for Sri T.S.Praveen Kumar, learned counsel for respondent No.1 in W.A.Nos.1698 and 1725 of 2008. Perused the record.

2. The above intra-court appeals are preferred aggrieved by the order dated 26.11.2018 passed by the learned Single Judge in W.P.No.3574 of 2001, whereby the judgment passed by the Co-operative Tribunal, Hyderabad (for short, 'the Tribunal') in CTA No.182 of 1997 dated 30.11.200 was set aside confirming the order passed by the Arbitrator in ASRC No.4 of 1994, dated 10.05.1995 by transferring plot No.1012 and the writ petitioner's membership in favour of respondent Nos.4 and 5 is vitiated by fraud and the ownership of plot No.1012 and the

membership in the Jubilee Hills Co-operative House Building Society Limited, Hyderabad (for short, 'the Society') was directed to be restored in favour of the writ petitioner.

3. The parties hereinafter referred to as they are arrayed in the writ petition.

Brief facts of the case:

4. The writ petitioner-Dr.S.K.Singh is the member of Jubilee Hills Co-operative House Building Society Limited, Hyderabad. He was allotted plot No.1012 *vide* allotment letter dated 04.08.1975. The writ petitioner is a resident of United States of America (USA) and is represented by his nephew Dinesh Singh. The said plot was not amenable to him on account of its rocky topography, as such, made requests to respondent No.3-society to provide an alternative plot in the place of plot No.1012. While the things stood thus, on 22.03.1993, respondent No.4 fabricated documents dated 04.05.1992 and 04.07.1992 and an affidavit dated 06.07.1992 containing forged signatures of writ petitioner and got the membership as well as plot No.1012 transferred to her name and thus, the membership of writ petitioner was transferred in favour of respondent No.4 through

resolution dated 30.07.1992 passed by the society. Consequently, respondent No.4 became member of respondent No.3-society with effect from 16.11.1992. At this juncture, the writ petitioner addressed a letter to respondent No.3-society in December, 1992 enquiring about his plot and allotment of an alternative plot. Respondent No.3 gave reply dated 05.01.1993 informing that his membership as well as plot were transferred to respondent No.4 on the basis of letter dated 04.07.1992 and affidavit dated 06.07.1992. The writ petitioner addressed a letter dated 22.03.1993 to respondent No.3-society denying his relationship with respondent No.4-V.Aruna and denying authorship of the letter dated 04.07.1992 and affidavit dated 06.07.1992 and requested for restoration of his membership and re-transfer of the plot in his favour. While so, respondent No.3-society informed the writ petitioner about there being no procedure for re-transfer and advised him to find his own remedy. Aggrieved by the response of the respondent No.3-society, the writ petitioner filed ASRC No.4 of 1994 before an Arbitrator. The said ASRC No.4 of 1994 has been disposed of transferring the membership and plot in favour of the writ petitioner while declaring the transfer of said membership and plot in favour of respondent No.4 as void in law. The learned

Arbitrator ordered respondent No.3-society to restore the plot in favour of writ petitioner and to cancel the membership of respondent No.4 and to restore the membership of the writ petitioner. Aggrieved by the said Award, respondent No.3-society approached the Tribunal by filing CTA No.182 of 1997. The Tribunal dealt with the matter and has set aside the Award giving liberty to respondent No.3-society to consider the request of the writ petitioner in allotting another plot to him, if he is not otherwise disqualified. Aggrieved by the same, a writ petition *vide* W.P.No.3574 of 2001 was filed challenging the findings made by the Tribunal. The learned Single Judge had taken up a detailed scrutiny of the fact situations as well as the documents filed by the writ petitioner and the findings of the Arbitrator as well as the Tribunal, and through a detailed order discussing the contents of the documents filed by both the parties and conduct of both the parties, allowed the Writ Petition setting aside the judgment of the Tribunal confirming the Award passed by the Arbitrator, which led to the filing of the present writ appeals.

Contentions of respondent No.5 in the writ petition (respondent No.5 in W.A.No.1725 of 2008 and writ appellant in W.A.No.1698 of 2008) are as follows:

5. Learned counsel for respondent No.5 would fairly submit that he does not intend the challenge the merits of the order passed by the learned Single Judge. However, it is submitted that all the requirements of a *bona fide* transfer are fulfilled by respondent No.5 in the transfer of the subject plot 1012 from the ostensible owners i.e. respondent No.3-society and V.Aruna. It is submitted that the writ petitioner himself is responsible for creation of third party rights on account of failure to take diligence actions following the alleged fraudulent transactions. It is submitted that all misrepresentations need not amount to fraud. Even though there is no relationship between respondent No.4 and respondent No.5, there is no intention of deceiving any of the parties and therefore, there is no fraud. It is contended that the observation of the learned Single Judge about non-exercise of reasonable care in ascertaining the transfer in favour of respondent No.5 is devoid of correct appreciation of facts. Since respondent No.3-society has passed a resolution for transfer and respondent No.5 has fulfilled all the requirements of a *bona fide* purchaser, the finding of the learned Single Judge

is perverse. Lastly, it is contended that the writ petitioner has filed a criminal complaint *vide* C.C.No.1077 of 2000 and civil suit in O.S.No.5422 of 1998 before the III Junior Civil Judge, City Civil Court, Hyderabad for declaration of title and possession, wherein, the burden of proof is on the writ petitioner and the appellant will not have a fair chance to represent his case. Lastly, a reference is made to the finding of the learned Single Judge which is extracted below:

> "The Tribunal further failed to consider the documentary evidence filed before the Arbitrator, the authenticity of which is not and for that matter cannot be disputed, which established beyond any pale of doubt that Exs.B3 to B5, the two letters and the affidavit are forged and to establish this fact there was no need for the presence of the petitioner."

6. Learned counsel for respondent No.5 vehemently argued that the learned Single Judge cannot exercise writ jurisdiction to give finding of fact about the nature of Exs.B3 to B5 forged documents. Since the writ jurisdiction cannot be exercised to give a finding about the forgery being committed to create Exs.B3 to B5, it is argued that the order passed by the learned Single Judge is liable to be set aside.

Contentions of respondent No.3-society in the writ petition (appellant in W.A.No.1725 of 2008 and respondent No.4 in W.A.No.1698 of 2008):

7. Learned counsel for respondent No.3-society argued that the Tribunal has rightly appreciated the facts on the basis of record made available to it, whereas the same is not the case before the Arbitrator. It is pointed out that the Award passed by the learned Arbitrator does not contain Appendix of evidence with list of witnesses or exhibits, except for making reference to Exhibits marked by both the parties and the oral evidence led in the text of the Award. Further, learned counsel for respondent No.3 would submit that the original power of attorney of the GPA holder of the writ petitioner was not available before the Tribunal and therefore, the findings given by the Tribunal on the basis of the documents made available is proper and ought not to have been set aside. It is argued that the society was compelled to file the appeal before the Tribunal on account of the unjustifiable remarks made by the Arbitrator about respondent No.3 society colluding with respondent No.4 irrespective of the fact that the Secretary of the society deposed that the society would abide by the Award passed by the Arbitrator. The counsel for respondent No.3 denied the society

encouraging transfer of plots on the basis of false claim of relationship in violation of the bye-laws. It is also contended that the learned Single Judge does not have jurisdiction to direct the Registrar of Co-operative Societies to initiate action under Section 51 or 52 of the Co-operative Societies Act, 1964 (for short, 'the Act') against the Co-operative Society while deciding the issue involved in the writ petition i.e. learned Single Judge travelled beyond the scope of the writ by ordering enquiry. It is also contended that the Registrar of Co-operative Society has no power or jurisdiction to take action under Section 51 or 52 of the Act for the purpose of evolving proper method of fraudulent transfers. Learned counsel relied upon the judgment of the Hon'ble Supreme Court of India in ***Syed Yakoob v. Radhakrishnan and others***[1], wherein it is held that:

> "A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
>
> An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In

[1] 1963 SCC Online SC 24

regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding,

xxxif a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court....."

8. On the basis of above judgement of the Hon'ble Supreme Court of India, the learned counsel for respondent No.3-society argued that the learned Single Judge had no occasion to venture into the findings of facts given by the Tribunal while exercising writ jurisdiction.

Contentions of writ petitioner (Respondent No.1 in both the Writ Appeals):

9. Learned counsel for the writ petitioner vehemently argued that the finding of the learned Single Judge about respondent No.3-society indulging in fraudulent activities is apt, and contra argument cannot be countenanced. It is argued that the bye-laws of respondent No.3 society permit transfer of plots by the members only in favour of their siblings/relatives but not third parties. In order to circumvent this rule/bye-law, the society is accepting, with full knowledge of the false affidavits submitted by various third parties claiming relationship with the members

and the false affidavits filed by the members claiming relationship with third parties, in order to transfer the plots. Filing false affidavits and claiming false relationships does amount to fraud and the same cannot be said to be a fair way of presenting facts. Therefore, it is contended that the arguments of the learned counsel for respondent No.3-society are untenable.

10. Coming to the aspect of the judgment passed by the Tribunal, it is argued that the original GPA executed by the writ petitioner in favour of Dinesh Singh was filed before the Arbitrator. The said GPA was executed before Embassy of India, Washington, D.C. and it is an authentic document. Subsequently, the said original GPA was taken back for the purpose of filing a criminal case whereas the Tribunal has given a finding that a photocopy of GPA is filed and such a finding cannot be supported by respondent No.3-society which had full knowledge of filing of the original GPA before the Arbitrator.

11. Further, learned counsel for the writ petitioner argued that a certified copy of the passport of the writ petitioner was filed before the Arbitrator. The said passport was certified to be true by the Second Secretary, Embassy of India, Washington,

D.C., 20008. The certified copy consists of 36 pages in its entirety. To the contrary, the Tribunal has given an erroneous finding to the effect that the passport of the writ petitioner was a photocopy and that while making the photocopy, certain entries may not have been photocopied. The certified copy of the passport of the writ petitioner is a crucial piece of document which shows that the writ petitioner was not present in India at relevant point of time while executing the letter dated 04.07.1992 and the affidavit dated 06.07.1992 at Guntur. It is argued that such erroneous findings of the Tribunal about the documentary evidence produced by the writ petitioner cannot be sustained.

12. Learned counsel for the writ petitioner referred to the observation made by the Arbitrator which was not referred by the respondents, but is relevant. The said observation is extracted below:

> "The respondent No.1 who has filed a Xerox copy of complaint letter given to the police, reveals that an ex employee of the society by name D.Venkateshwarlu has mastermind of creating the documents with reference to society records accessible to him and arranged to execute the transfer in favour of respondent No.1"

13. It is argued that the above text extracted from the Arbitrator's order clearly reveals that one of the ex-employee of

the society by name D.Venkateshwarlu has indulged in creation of documents taking advantage of his access to the society records and facilitated transfer of the plot in favour of respondent No.4-V.Aruna.

14. Referring to the arguments of the learned counsel for respondent No.5 about jurisdiction of a writ Court to dwell into facts, reference is made to the judgment of the Hon'ble Supreme Court of India in ***Central Council for Research in Ayurvedic Sciences and another v. Bikartan Das and others***[2], wherein it was held that

> "A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction conferred on it, the Court of Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
>
> An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the

[2] (2023) 16 SCC 462

impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

However, we may clarify that findings of fact based on "no evidence" or purely on surmises and conjectures or which are perverse points could be challenged by way of a certiorari as such findings could be regarded as an error of law.

To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings."

Analysis of the Court:

15. A perusal of the record, more particularly, the Award passed by the learned Arbitrator in ASRC No.4 of 1994, dated 10.05.1995 and the judgment of the Tribunal in CTA No.182 of 1997, dated 30.11.2000, show certain manifest errors committed by the Tribunal in its appreciation of evidence placed on record by the writ petitioner. It is undisputed fact that the writ petitioner is the original owner of plot No.1012 having been allotted in the year 1975. It is also an undisputed fact that the writ petitioner sought allotment of an alternative plot on account of rocky nature of the plot. While said correspondence was going on between the writ petitioner and respondent No.3 society, respondent No.4 produced the disputed Exs.B4 and B5 i.e. letter

and affidavit dated 04.07.1992 and 06.07.1992 respectively. The said documents according to respondent No.4, Exs. B4 and B5 are executed by the writ petitioner transferring his membership and plot No.1012 in her favour. Respondent No.4 claimed to be the sister of the writ petitioner. On the basis of Exs.B4 and B5, respondent No.3-society passed a resolution dated 30.07.1992 transferring the membership and plot of the writ petitioner in favour of respondent No.4. After the transfer, the writ petitioner addressed letter in December, 1992 to respondent No.3-society enquiring about his plot. At that time, respondent No.3 gave reply *vide* letter dated 05.01.1993 informing the writ petitioner that his plot and membership have been transferred in favour of respondent No.4 on the basis of Exs.B4 and B5. Immediately, the writ petitioner informed respondent No.3-society that respondent No.4 is not his sister, that he was not present in India at Guntur on 04.07.1992 and 06.07.1992 and that he did not execute Exs.B4 and B5 documents. The writ petitioner requested the society to re-transfer the plot in his favour. The society responded stating that the bye-laws do not permit re-transfer and therefore, the writ petitioner has to seek his own remedy.

16. In this entire fact pattern, the first crucial question that needs to be determined is to ascertain the truth in the version of the writ petitioner's case of forging and fabrication of Ex.B4-letter dated 04.07.1992 and Ex.B5- affidavit dated 06.07.1992. Since the writ petitioner is residing in USA, he has executed GPA at Embassy of India, Washington, D.C. in favour of his nephew Dinesh Singh i.e. P.W.1. Such an original GPA executed in Indian Embassy before a responsible officer is sufficient authorization for P.W.1 - Dinesh Singh to represent the writ petitioner S.K.Singh before the Arbitrator. In this regard, the Arbitrator has considered the evidence of P.W.1 - Dinesh Singh on the basis of original GPA, whereas the Tribunal, without examining the order of the Arbitrator in its correct perspective, gave a finding that original of Ex.A1 GPA is not produced and, therefore, the evidence of P.W.1-Dinesh Singh cannot be considered. The Tribunal proceeded to state that P.W.1, who is the GPA, has no knowledge about the facts of the case, more particularly, about allotment of the plot in favour of the writ petitioner in the year 1975, whereas the fact situation is such that P.W.1 - Dinesh Singh is a nephew of the writ petitioner and, therefore, there is likelihood of knowledge about allotment of plot No.1012 in favour of the writ petitioner on account of

relationship. As such, there was a manifest in error of appreciation of documentary evidence by the Tribunal.

17. Next, important fact to be considered is that the presence of the writ petitioner in India at the time of execution of Exs.B4 and B5. To prove said fact, the GPA as writ petitioner P.W.1 got marked Ex.A2 certified copy of passport of the writ petitioner containing 36 pages and the same is certified to be a true copy by the officer of the Indian Embassy. On account of failure to peruse the order of the Arbitrator and as well as failure to examine the document correctly, the Tribunal has given an erroneous finding that Ex.A2 passport pressed into service by the writ petitioner is a photocopy, which cannot be relied on. Further, the Tribunal proceeded to assume and presume that certain entries might have been excluded while photocopying the passport. On account of the fact that a certified copy of the passport is produced before the Arbitrator, the witness P.W.1 successfully established that the writ petitioner was not present in India at Guntur at the time of execution of Exs.B4 and B5. This clearly proves the fact that the writ petitioner was not present in India and Exs.B4 and B5 are forged documents created by respondent No.4.

18. Lastly, the Tribunal further committed an error in holding that there was no evidence before the Arbitrator and that oral evidence of witnesses is not considered. There was both oral as well as documentary evidence before the Arbitrator and the same is discussed at length by the learned Arbitrator in arriving at his findings about commission of fraud by respondent Nos.3 and 4 in collusion and Exs.B4 and B5 being fabricated documents. Mere failure to provide an appendix of evidence along with the Award cannot be a ground to conclude that there was no evidence before the Arbitrator or the evidence produced before the Arbitrator on account of failure to provide appendix of evidence cannot be considered. As per judgment of the Hon'ble Supreme Court of India in ***Ircon International Limited v. GPT-Rahee JV***[3], strict rules of evidence are inapplicable to arbitral proceedings. The Arbitral Tribunal is required to render a decision after evaluating the material placed before it. In ***N.P.C.C. Ltd. V. Jyoti Sarup Mittal Engineers, Contractors & Builders***[4], the Hon'ble Supreme Court held that an arbitrator is not bound by the technical rules of evidence. As per judgment of the Hon'ble Supreme Court of India in ***Delhi***

[3] 2022 SCC Online Del 839
[4] 2006 SCC Online Dec 1496

Transport Infrastructure Development Corporation Limited v. AOM Advertising Private Limited[5], the arbitral Tribunal is not bound by the rules or procedure contained in CPC and in the Judgment of the Hon'ble Supreme Court in ***M.P. State Agro Industries Development Corporation Limited v. Murliwala Agrotech Private Limited***[6], it is laid down in Nahar Industrial Enterprises Ltd. V. Hong Kong and Shanghai Banking Corporation [Nahar Industrial Enterprises Limited v. Hong Kong and Shanghai Banking Coporation (2009) 8 SCC 646: (2009) 3 SCC (Civ) 481]. In para 98(n), the following was stated:

> (n) It is not bound by the procedure laid down under the Code. It may however be noticed in this regard that just because the Tribunal is not bound by the Code, it does not mean that it would be have jurisdiction to exercise powers of a court as contained in the Code. "Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice." (See ICICI Ltd. V. Grapco Industries Ltd. [ICICI Ltd. v. Grapco Industries Ltd., (1999) 4 SCC 710])

As per the aforesaid judgments, the proceedings before an Arbitrator are not strictly conducted in accordance with the provisions of the Civil Procedure Code, 1908 (CPC) or the Indian Evidence Act, 1872. Therefore, failure to strictly observe the

[5] 2021 SCC Online Del 5300
[6] 2025 SCC Online MP 2360

procedure contemplated under Civil Procedure Code cannot be a basis for finding fault with the Award passed by the learned Arbitrator.

19. The finding of the Tribunal about the non-filing of original GPA and the passport of the writ petitioner being a photocopy are manifest errors on the face of the record. The said findings show that the Tribunal did not exercise minimum caution in perusing the nature of documents much less their contents. In the face of such factual errors committed by the Tribunal, the learned Single Judge was under obligation to rectify the same while passing the order in the writ petition. The order passed by the learned Single Judge is in the purview of the ratio laid down by the Hon'ble Supreme Court of India in ***Bikartan Das***'s case (2 supra) wherein it is held that a writ can be issued when a Court or Tribunal acts illegally or improperly.

20. Also, when there is a finding of fact recorded by a Tribunal, writ of *certiorari* can be issued when it is shown that in recording said findings the Tribunal had erroneously refused to admit admissible evidence and material evidence or has erroneously admitted inadmissible evidence which has influenced the impugned finding. Therefore, we are of the

considered opinion that the Tribunal has erroneously discarded the admissible and material evidence which was in the form of Ex.A1 original GPA executed by the writ petitioner and Ex.A2 certified copy of the passport of the writ petitioner. Only on account of the failure to appreciate the nature of the documents and the facts that are proved through said documents, the Tribunal arrived at an erroneous finding which became the subject matter of the writ petition.

21. With respect to the case of respondent No.5 being a *bona fide* purchaser, said matter was not an issue before the Arbitrator but cropped up in the midst of litigation before the Tribunal. The learned Single Judge rightly observed the conduct of respondent No.3 and respondent No.4 for their collusion in creation of documents and in creation of third party rights and therefore gave an adverse finding against both of them. The genesis of forgery is manifest in the observation of the learned Arbitrator about an ex-employee of the society by name D.Venkateswarlu being a mastermind in creation of documents taking advantage of his access to the records of the society. Said crucial fact is not raised anywhere and also not disputed by respondent No.3 society or respondent Nos. 4 and 5. Therefore,

the learned Single Judge, making caustic remarks about the conduct of respondent Nos.3, 4 and 5 is wholly justified. Further, we do not see any reason to interfere with the direction given by the leaned Single Judge to the registration of Co-operative society to take action against respondent No.3-society under Sections 51 and 52 of the 1964 Co-operative Societies Act, as the same is meant for disciplining respondent No.3-society's irregular activities. In view of the foregoing discussion, we do not see any ground to interfere with the order passed by the learned Single Judge.

22. In the result, the Writ Appeals are dismissed confirming the finding of the learned Single Judge in W.P.No.3574 of 2001, dated 26.11.2018. There shall be no order as to costs.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of.

SD/-I.NAGALAKSHMI
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To
1. Two CC's to G.P FOR COOPERATION, High Court for the State of Telangana at Hyderabad. (OUT)
2. One CC to SRI C.V.R.RUDRA PRASAD, Advocate [OPUC]
3. One CC to SRI T S.RAVEEN KUMAR, Advocate [OPUC]
4. One CC to SRI P.SRI RAGHU RAM, Advocate [OPUC]
5. One CC to SRI SATHVIK MAKUNUR, Advocate (OPUC)
6. One CC to SRI P.KAMLAKAR, Advocate (OPUC)
7. Two CD Copies

SA
LS

HIGH COURT

DATED:08/04/2025



COMMON JUDGMENT

WA.Nos.1698 AND 1725 of 2008

DISMISSING THE WRIT APPEALS

WITHOUT COSTS.

(10)

kpr
23/4/25