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

Date of decision: 21st FEBRUARY, 2025

IN THE MATTER OF:

+ **O.M.P. (COMM) 140/2023 & I.A. 7054/2023, I.A. 7056/2023**

PREM LATA SUREKHA

.....Petitioner

Through: Mr. T.S. Ahuja, Mr. Varun Ahuja,
Mr. Himanshu Sharma and Ms. Ridhi
Kapoor, Advocates.

versus

SRI CHAKRADHARI SUREKHA & ORS.

.....Respondents

Through: Mr. Kunal Kalra, Advocate.

+ **OMP (ENF.) (COMM.) 55/2023 & EX.APPL.(OS) 372/2023,
EX.APPL.(OS) 373/2023 & EX.APPL.(OS) 1302/2024**

CHAKRADHARI SUREKHA

.....Decree Holder

Through: Mr. Kunal Kalra, Advocate.

versus

PREMLATA SUREKHA THROUGH S.P.A. & ORS.

.....Judgement Debtors

Through: Mr. T.S. Ahuja, Mr. Varun Ahuja,
Mr. Himanshu Sharma and Ms. Ridhi
Kapoor, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

O.M.P. (COMM) 140/2023 & I.A. 7054/2023, I.A. 7056/2023

1. The present petition under Section 34 of the Arbitration & Conciliation Act, 1996 has been filed by the Petitioner challenging the impugned arbitral award dated 02.01.2023 passed by the learned Sole Arbitrator.
2. Shorn of unnecessary details, the facts leading to the filing of present



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petition are as under:-

- i. It is stated that a family run Partnership Firm, namely, M/s Sri Narain Rajkumar, i.e., Respondent No.2 herein was established on 02.04.1973. It is stated that the original partnership consisted of Chakradhari Surekha, i.e., Respondent No.1 herein, Prem Lata Surekha, i.e., the Petitioner herein and Nitya Nand Yadav, i.e., Respondent No.3.
- ii. It is stated that the firm was primarily composed of family members and one partner outside the family, i.e., Nitya Nand Yadav/Respondent No.3 herein (now deceased). It is stated that the partnership firm was engaged in trading, manufacturing and import business.
- iii. It is stated that the firm was re-constituted on 22.07.1974 when Rachna Kedia, i.e., Respondent No.6, who was a minor daughter of the family was admitted as a beneficiary.
- iv. It is stated that a plot of land measuring 450 sq. yds. at Y-10, Naraina, New Delhi was acquired in the firm's name on 24.01.1980 from the Delhi Administration on a leasehold basis for a consideration of Rs.20,700/- (*hereinafter referred to as the 'subject property'*).
- v. Disputes arose between the parties on the allegations regarding impropriety and mismanagement within the family following the deaths of late Shri Narain Rajkumar (2003) and late Nitya Nand Yadav (2003), who were considered pivotal to the firm's operations.
- vi. Respondent No.1 alleged that the Petitioner herein in collusion



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- with her husband Vishnu Kumar Surekha, fabricated a series of partnership deeds to exclude him from the partnership firm and misappropriate its sole asset, i.e., the subject property.
- vii. There are allegations that the husband of the Petitioner attempted to create third party rights on the subject property. Material on record indicates that FIRs have been registered against the husband of the Petitioner in this regard.
- viii. It is stated that Respondent No.1 issued a legal notice dated 23.03.2015 formally dissolving the partnership and invoking Clause 15 of the Original Partnership Deed which contained an arbitration clause. The said legal notice was replied to by the Petitioner on 09.04.2015 denying all the claims made by Respondent No.1 in the said legal notice. The case of the Petitioner is that the firm had been dissolved in 1981 itself.
- ix. Respondent No.1 issued another legal notice dated 12.07.2016 to the Petitioner for referring the disputes to arbitration. Subsequently, a petition under Section 11 of the Arbitration & Conciliation Act being ARB.P.457/2017 was filed by Respondent No.1 on 26.07.2017 seeking appointment of an arbitrator to adjudicate upon the disputes between the parties.
- x. This Court *vide* Order dated 01.08.2018 in ARB.P. No.457/2017 constituted the Arbitral Tribunal by appointing a Sole Arbitrator to adjudicate upon the disputes between the parties. This Court in the said order recorded that Clause 15 of the Partnership Deed of 1974 contains an arbitration clause. The Coordinate Bench also observed that disputes have also arisen with regard to the



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Partnership and whether the Partnership Firm was in existence or not. The Coordinate Bench of this Court restrained the husband of the Petitioner herein from creating any third party interest in the subject property and appointed a former Judge of this Court as an Arbitrator to adjudicate upon the disputes between the parties.

3. The parties to the arbitration are Prem Lata Surekha, i.e., the Petitioner herein, Chakradhari Surekha, i.e., Respondent No.1 herein, M/s Shri Narain Raj Kumar, i.e., Respondent No.2, Nitya Nand Yadav through his legal heir, i.e., Respondent No.3, Krishna Yadav and Shiv Ratan Yadav, i.e., Respondents No.4 and 5 respectively who were never inducted as partners. However, they are impleaded as proforma parties, and Rachna Kedia, i.e., Respondent No.6.

4. It is stated that Respondent No.1 sought multiple reliefs including a declaration that the partnership deeds fabricated by the Petitioner herein and her husband on 07.02.1985, 01.11.1988, 24.03.1993 and 01.04.1999 were null and void. Respondent No.1 also sought a permanent injunction to prevent the Petitioner and others from creating third party interest in the property. Furthermore, Respondent No.1 requested partnership of the property into two equal shares and the rendition of accounts for the partnership firm's business activities.

5. The Arbitral Tribunal first examined the validity and continuity of the original partnership deed of 22.07.1974. It is noted by the Tribunal that the existence of the partnership was undisputed. The Petitioner failed to provide any credible evidence to prove her claim that the partnership had been dissolved in 1981 or that subsequent partnerships had been formed. It is indicated that Respondent No.1 on the other hand consistently maintained



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that the partnership of 1974 remained valid until its formal dissolution in 2015.

6. The Petitioner herein relied on a series of partnership deeds allegedly executed in 1981, 1985, 1988, 1993 and 1999 claiming successive re-constitutions without the Petitioner. However, none of these deeds were supported by original documentation or credible secondary evidence. Despite summoning an official witness from the Registrar of Firms the discrepancies between the Petitioner's documents and the official records further undermined her case. The Tribunal concluded that the alleged re-constitutions were unproven and held that the partnership of 22.07.1974 continued until its dissolution in the year 2015.

7. The Tribunal confirmed that the subject property was acquired in the firm's name and remained its sole asset. While the Petitioner alleged that the property had been acquired in lieu of another family property at Loha Mandi, New Delhi, no evidence was produced to substantiate this claim. The Tribunal emphasized that the ownership of the subject property was firmly vested in the partnership firm, making past contributions irrelevant for the purpose of partition.

8. The Tribunal rejected the Petitioner's argument that the claim was barred by limitation due to Respondent No.1's alleged delay in raising his grievance. The Tribunal held that irrespective of Respondent No.1's inactivity the partnership remained legally valid and enforceable under the Indian Partnership Act, 1932, until its formal dissolution in the year 2015. The Tribunal observed that mere inaction by Respondent No.1 does not extinguish his legal rights.

9. The Tribunal proceeded to determine the division of the property



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having established that the partnership deed of 1974 was valid until its dissolution, as per Clause 6 of the partnership deed, profits and losses were to be distributed among the partners in specific proportions. However, since the firm was no longer a going concern, the Tribunal held that the property must be divided equally (50% each) between the Petitioner and Respondent No.1, who were the only remaining partners with actionable claims. The legal heirs of Nitya Nand Yadav, who was a partner, had either sold their shares or chose not to contest the matter, while Rachna Kedia, Respondent No.6, who was a beneficiary and not a full partner, did not appear to contest her stake. The Tribunal further restrained the Petitioner from transferring or alienating the property until the partnership was finalized.

10. The request of Respondent No.1 for a declaration that the subsequent partnership deeds were forged and for the rendition of accounts was dismissed by the Tribunal. It is noted by the Tribunal that these matters fell outside the scope of the Tribunal's jurisdiction, as defined by the arbitration clause in the partnership deed dated 22.07.1974.

11. The award dated 02.01.2023 is under challenge in the present Petition.

12. Learned Counsel for the Petitioner contends that the arbitrator had become *functus officio* on the date on which the award was made. It is contended that the first notice invoking arbitration was given on 23.03.2015 which was superseded by another notice dated 12.07.2016. The order of this Court records both the notices. He further contends that if the notice dated 12.07.2016 superseded the notice dated 23.03.2015, then as per Section 29A of the Arbitration and Conciliation Act, 1996, which was introduced by the amending Act, 2015 w.e.f. 23.10.2015, the period within which the arbitration was to be completed was one year from the date the arbitrator



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entered into Reference, i.e., 01.08.2018 and therefore since the award has not been delivered within a period of one year the Arbitrator had become *functus officio* on 01.08.2019.

13. It is stated by the learned Counsel for the Petitioner that the parties and the Arbitrator have proceeded on the premise that the amendment in the Arbitration and Conciliation Act in the year 2015 was applicable. He draws attention of this Court to proceedings dated 31.10.2019 wherein parties had agreed that the period for making the award be extended by six months with effect from 23.01.2020, meaning thereby, the award had to be pronounced by 23.06.2020. It is, therefore, contended by the learned Counsel for the Petitioner that since no extension was taken post 23.06.2020, the mandate of the arbitrator stood terminated. It is stated that even if the period as exempted by the Apex Court in **Suo Motu Writ Petition (C) No.3/2020** titled in Re: Cognizance for Extension of Limitation, the mandate would still be terminated by May, 2022, and therefore, the Arbitrator after having become *functus officio* could not have delivered the Award on 02.01.2023.

14. Learned Counsel for the Petitioner states that he also challenges the Impugned Award on merits. He contends that the Arbitrator has ignored vital material which had been produced to show that partnership firm had been registered. He states that the Arbitrator ought not to have disbelieved the material on the ground that the registration has not been proved. He states that the Arbitrator has erred in disbelieving the signatures of the Claimant on the letter dated 01.12.1982 ignoring the fact that the signatures on the said letter dated 01.12.1982 had been admitted and only the contents thereof have been denied. Attention has also been drawn by the learned Counsel for the Petitioner to the fact that the Claimant has admitted



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signatures in the form of registration in the cross-examination, meaning thereby, the firm has been registered. It is also contended that the Arbitrator has ignored that the registration of the firm has not been challenged by the Claimant. He states that the Petitioner has never acted as a partner of the firm after 01.04.1981. It is stated that the Petitioner has never signed the profit and loss account and balance sheet of the firm after 01.04.1981 which is the date when the partnership firm was re-constituted and the firm was registered.

15. Learned Counsel for the Petitioner also contends that the partnership ought to have been dismissed on the basis of the share of the Petitioner whereas, the Arbitrator has partitioned the property equally between the Petitioner and Respondent No.1. He challenges the finding of the Arbitrator that there are only two partners remaining. He states that the Award is contrary to Section 48 of the Arbitration and Conciliation Act, 1996.

16. Learned Counsel for the Petitioner further states that the Award is based on equity and good conscience which could not have been the basis of passing the Award as it is contrary to Section 28(3) of the Arbitration and Conciliation Act, 1996. It is stated that the Claimant has challenged the proceedings beyond 32 years as the Petitioner had resigned from the firm in the year 1981 and the firm was also re-constituted in the year 1981. It is stated that the Respondent had resigned from the firm in the year 1984. It is, therefore, stated that the dispute was not arbitrable as it was barred by limitation.

17. *Per contra*, learned Counsel for Respondent No.1 contends that the Petitioner is trying to mislead this Court by suppressing the date of notice of invocation which is to be considered in terms of Section 21 of the



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Arbitration & Conciliation Act. The notice was issued by the Respondent on 23.03.2015 and the reply was sent by the Petitioner on 09.04.2015. He states that if date of invocation of arbitration is to be taken into consideration, Section 29A is not applicable to the present case as Section 29A which was introduced only on 23.10.2015, i.e. after invocation of the Arbitration and Section 29A cannot be applied retrospectively.

18. Learned Counsel appearing for the Respondents contends that the Petitioner along with Sh. Nitya Nand Yadav was carrying on business from 02.04.1973. The partnership firm was re-constituted in the year 22.07.1974 in the name and style of M/s Sri Narain Raj Kumar. The partnership was carrying on business of trading, manufacturing, export, import and other business. It is stated that Sh. Nitya Nand Yadav passed away in June, 2003 and his legal heirs were never inducted as partners in the partnership firm. It is stated that after the death of Sh. Nitya Nand Yadav, there were only two partners left i.e., the Petitioner and the Respondent No.1 and, therefore, the argument of the Petitioner that the Petitioner had resigned from the partnership firm in the year 1974 itself is not correct as has been rightly found by the Arbitrator. It is stated that after the death of the father of the Respondent, the Respondent No.2 i.e., the brother of Respondent No.1 started creating problems. It is stated that the Respondent No.1 was time and again requesting to provide the current account of the firm which was being denied by the Petitioner. It is stated that the Petitioner was not responding to the request made by the Respondent, then he tried to obtain certified copies of the documents from D.D.A. in month of February, 2015. It is stated that the Respondent has availed the entire file of the property and he came to know that Vishnu Kumar Surekha was acting in connivance with the



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Petitioner and has fabricated the partnership deeds in their favour and has claimed to be a partner of the partnership firm namely M/s Sri Narain Raj Kumar. He states that it is important to mention that the Respondent has neither resigned from the partnership firm nor any dissolution deed was ever executed by him. Hence, the subsequent partnership deeds inducting Vishnu Kumar Surekha as a partner are absolutely frivolous, false, and fabricated with sole motive to deprive the Respondent from his rightful share. It is stated that Respondent No.2 has no concern with the partnership firm but he has illegally and wrongfully fabricated partnership deeds and has misappropriated the assets of the partnership firm by selling the same. He further states that from the R.T.I., the Respondent has come to know that Vishnu Kumar Surekha has illegally entered into an agreement to sell with Mr. Umesh Garg and has taken Rs.30 Lakh from him and has agreed to sell 1/3rd of the property. It is stated that the said Mr. Umesh Garg has filed an FIR against Vishnu Kumar Surekha in which it has been proved on record that Vishnu Kumar Surekha was neither the owner nor the partner of the firm. It is stated that the status report of the concerned A.C.P. in the said case mentioning that Vishnu Kumar Surekha is not a partner of the partnership firm is already on record. He states that the Respondent has filed a criminal complaint against the Petitioner and has invoked the arbitration clause. It is stated that on 01.08.2018, the Hon'ble Delhi High Court was pleased to appoint this Hon'ble Tribunal to adjudicate the dispute between the parties. The Respondent has filed a claim enumerating the above facts and has prayed an Award of partition of property bearing no. Y-10, Naraina, New Delhi in two equal shares by metes and bounds and the possession of 50% of the said property. He states that the respondent has also sought the



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Award of declaration declaring the alleged fake partnership deed as null and void apart from the Award of rendition of accounts of the partnership firm along with an Award of injunction restraining the Respondents from creating any third party interest or part with possession. It is stated that the Tribunal has given the Award after giving adequate opportunity to both the parties. It is stated that the Tribunal after assessing the entire material has come to the conclusion that the Petitioner herein (Respondent in the arbitral proceedings) had neither resigned nor any dissolution deed was executed to dissolve the partnership prior to 2015. He contends that the CW-3 - Assistant Director, DDA has affirmed that the original lease deed of the suit property is in the name of the partnership firm through its partners, namely, Chakradhari Surekha, Premlata Surekha and Nitya Nand Yadav and there is no other lease deed and the property had been converted to freehold, thereby demonstrating that the Petitioner continued in the firm. He states that the Petitioner has failed to enter into witness box and has given a power of attorney in favour of Respondent No.2 who was already creating problems in the firm.

19. It is contended by the learned Counsel for the Respondent that Vishnu Kumar Surekha was specifically asked to show any document whereby Chakardhari Surekha had resigned from the firm but he had failed to produce the same. It is stated that Mr. Vishnu Kumar Surekha has admitted that the property is in the name of firm having the then original partners. It is stated that Vishnu Kumar Surekha has further admitted that the Form No.1 of the partnership firm filed by the Petitioner with written statement is different from the Form No.1 marked as Mark S. It is submitted that it is proved on record that Form No.1 and the record of Registrar of Firm have



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been fabricated and manipulated. It is stated that from the cross-examination of Petitioner, it has been proved that Vishnu Kumar Surekha has illegally sold the property. It is stated that it was also specifically put to the said witness as to whether there was any dissolution deed signed by the Respondent to which no reply has been given. It is stated that as per the settled principles of law, the question as to whether the suit was barred by law or not also must be judged from the aspect of cause of action, and the rights and liability of the partner in respect of partnership property would be discharged only when the firm is finally wound up and the properties of the firm are distributed. It is stated that merely execution of dissolution deed will not discharge the party thereto from their rights and liability as held in Shreedhar Govind Kamerkar v. Yesahwant Govind Kamerkar & Anr., (2006) 13 SCC 481. It is stated that in the present case it is has been proved on record that there is neither any dissolution deed nor any resignation executed by the Respondent, therefore, the claim of the Respondent is rightly allowed by the Arbitrator.

20. Heard learned Counsel for the parties and perused the material on record.

21. The dispute is essentially between the Respondent No.1 herein, who was the Claimant before the arbitral proceedings and the Petitioner herein, who was the Respondent before the arbitral proceedings. Respondent No.2 is the husband of the Petitioner herein. The parties are related to each other inasmuch as, the Claimant i.e., Respondent No.1 herein and Respondent No.2 are brothers and the Petitioner herein is the wife of Vishnu Kumar Surekha who has not been arrayed as Respondent in the present petition as he was dropped during the arbitral proceedings. The dispute is primarily in



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respect of a plot measuring 450 sq. yards. at Y-10, Naraina, New Delhi. As pointed by the Arbitrator the dispute has its genesis in a partnership firm which inter-alia was doing business of traders, manufacturers, and importers in the name and style of M/s Sri Narain Raj Kumar. The firm was doing the business from 1973. It was primarily a family partnership with two partners, namely, the Petitioner and Respondent No.1 herein who belong to the same family. Mr. Nitya Nand Yadav was also a part of the partnership firm but he does not belong to the family of the Petitioner and Respondent No.1. Mr. Nitya Nand Yadav passed away in June, 2003. In addition to the said three persons, two minor sons and a daughter of Shri Rajkumar Surekha were also admitted to the partnership but only as beneficiaries. The partnership firm was re-constituted on 22.07.1974 whereby two minor sons of Shri Rajkumar Surekha were dropped but the minor daughter was continued as beneficiary. A partnership deed dated 22.07.1974 containing the terms and conditions of the partnership was drawn. The plot which is the bone of contention was purchased on 24.01.1980 on a lease-hold basis in the name of the firm M/s Narain Raj Kumar.

22. It is the case of the Petitioner that the Petitioner has been demanding the accounts of the firm but has always been kept in dark.

23. It is the case of the Respondents that the Petitioner and her husband colluded with each other and fabricated partnership deed dated 07.02.1985 contrary to the terms of the original partnership deed dated 22.07.1974 whereby Mr. Nitya Nand Yadav and Respondent No.2, who is the husband of the Petitioner, became partners of the firm - M/s Narain Raj Kumar by falsely claiming that the Respondent No.1 herein had resigned from the partnership in 1981. It is the case of Respondent No.1 that in 2005,



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Respondent No.2 entered into an Agreement to Sell with one Umesh Garg, and thereby he promised to sell 1/3rd share in property No. Y-10, Loha Mandi to him by representing that he was the owner of the same, and also took Rs.30 lacs from him. However, when the time for executing the sale deed drew close, Respondent No.2 allegedly started avoiding Umesh Garg which made him suspicious of his true motive, and hence he made enquiries from DDA which revealed that Respondent No.2 was not the owner of the property in question. It is stated that the said Umesh Garg got an FIR registered against the husband of the Petitioner. The proceedings are pending against the said FIR. However, it is not clear as to what has happened in the further proceedings. It is stated that the Respondent No.2 before the arbitral proceedings i.e., the husband of the Petitioner, vide an application dated April 17, 2006 had applied to DDA for conversion of the plot in question from leasehold to freehold which was objected to by Rajkumar Surekha, father of the minor Rachna Surekha, who vide communication dated March 17, 2011 wrote to DDA that the firm Narain Rajkumar had only four partners, namely, Premlata Surekha, Chakradhari Surekha, late Nitya Nand Yadav, and Rachna Surekha, and that the applicant Vishnu Kumar Surekha had forged partnerships to cheat the existing partners. Pursuant thereto, DDA vide its communication of April 21, 2011 rejected the application for conversion, on the ground, that the title of the property was in dispute, and accordingly informed Shri Rajkumar Surekha about the same. The claimant has also alleged that it came to his knowledge that on September 14, 2015 Respondent No.2 had executed yet another sale deed, this time in favour of Smt. Lata Gupta, and thereby he sold 150 sq. yards of the plot to her. The Respondent had no other option but to send a



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legal notice dated 23.03.2015 stating that he was not being taken into confidence about the business activities of the firm and that he was interested in dissolving the partnership firm with immediate effect. The arbitration clause being clause 15 of the partnership deed dated 22.07.1974 was invoked. The legal notice was also replied to. This Court was approached by filing an arbitration petition and this Court on 01.08.2018 appointed a Sole Arbitrator.

24. The Petitioner herein who was Respondent before the arbitral proceedings contended that she does not dispute setting up of partnership of July 22, 1974 with three partners namely, Chakradhari Surekha, Nitya Nand Yadav and herself. She however says that the partnership of July 22, 1974 vis-à-vis had come to an end way back. She also does not dispute the acquisition of the subject property in the name of partnership firm, but she says that the same was acquired in lieu of another property at Loha Mandi belonging to the father of the claimant, and her father-in-law, namely, Sitaram Surekha. She alleges that the claimant did not contribute any money towards the capital of the firm, nor did he ever involve himself in the affairs of the firm. According to her, the partnership firms were being constituted and reconstituted on the verbal instructions of the family patriarch Shri Sitaram Surekha. It was on his instructions that the partnership of July 1974 had come into existence. It was on his instructions again that in the year 1981, or sometime prior thereto, she had resigned from the partnership of July, 1974 resulting into formation of another partnership dated April 01, 1981 with only the claimant and Nitya Nand Yadav as its partners. To support her submission, she has relied upon annexure R-2 filed along with her reply to the statement of claim which shall be referred to in detail a little



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later. She has also relied upon a letter dated December 01, 1982 from the firm Shri Narain Rajkumar addressed to the Registrar of firms. The said letter, according to her is signed by the Claimant on behalf of the firm praying that the certified copies of Forms A & B be supplied to it as the originals of the same were not traceable. As per the Respondent, the claimant too had resigned from the Partnership on August 31, 1984, and on his resignation the partnership was reconstituted vide partnership dated February 07, 1985 with Shri Nitya Nand Yadav and Vishnu Kumar Surekha as its new partners. It is further her case that the partnership was yet again reconstituted vide partnership deed of November 01, 1988, whereby while Vishnu Kumar Surekha continued to be a partner, the mother of the parties, namely, Smt. Parmeshwari Devi was inducted as the new partner. This fact, it is stated, is borne out from annexure R-3 which is a communication from the Registrar of firms to M/S Narain Rajkumar acknowledging that it had received from the firm 'Form No.V' dated 21 August, 2006, wherein it was mentioned that Chakradhari Surekha stood retired from the firm, and Mr. Vishnu Kumar Surekha had joined the same vide Partnership Deed dated 7 December, 1985. It was also mentioned therein that Mr. Nitya Nand Yadav had retired from the firm and Smt. Parmeshwari Devi Surekha had joined the same vide Partnership Deed dated 1 November 1988 vide notice dated 21 August, 2006. The Respondent goes on to say that as per the information received by her the accounts of late Nitya Nand Yadav were duly settled, and whatever payment was due to him was made, and further neither he nor his legal heirs had any grievance on that score. It is stated that basing its case on the aforementioned facts, the Respondent has raised objection to the very maintainability of the claim petition contending that the same is



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hopelessly barred by the law of limitation as the claimant having resigned from the partnership on August 31, 1984, was approaching for arbitration after a span of 34 years. Furthermore, as per the status report filed by the police in the High Court, and on which reliance is being placed by the claimant himself, he was made aware of the partnership between Vishnu Kumar Surekha and Smt. Parmeshwari Devi in 2006-07, and yet he raised no claim till 2017. Hence, he is guilty of delay and latches.

25. The following issues were framed before the Arbitrator on 11.02.2019:

"1. Whether the claimant is entitled to partition and possession of property no. Y-10, Naraina, New Delhi in equal share with respondent no. 1. (OPC)

2. Whether the claim is barred by time. (OPD)

3. Whether the partnership deed dated 22nd July, 1974 stood dissolved and a fresh partnership was constituted in 1982. (OPD)

4. Whether the claimant is entitled to declaration in terms of prayer (a) of claim petition. (OPC)

5. Whether the claimant is entitled to rendition of accounts. (OPC) relief."

26. The Arbitrator after analyzing the evidence in detail has come to the conclusion that there is nothing on record show that the Petitioner herein had resigned from the partnership firm in the year 1974 and there is also nothing on record to prove that Mr. Nitya Nand Yadav had retired from the partnership or that his accounts were settled. The Arbitrator held that the Petitioner has taken care to file her own affidavit in support of the averments



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made by her and has also not participated in the proceedings diligently. It was, therefore, held that the Petitioner herein has failed to prove that she has resigned from the partnership firm. The Arbitrator was of the opinion that the partnership remained alive till 2015 and the Respondent herein is entitled to relief of partition of the property. Keeping in view the fact that there are only two partners available, as a natural corollary, the property in question was divided into two portions i.e., 50% each to the Claimant and the Respondent.

27. Learned Counsel for the Petitioner has laid emphasis on the fact that the Arbitrator had become *functus officio* inasmuch as, the parties had themselves agreed before the Arbitrator to extend the mandate for a period of six months from 23.01.2020 and since the Award was not made by 23.06.2020 and as there was no mutual extension of mandate, the Arbitrator could not have proceeded. It is the case of the Petitioner that since invocation of arbitration was prior to introduction of Section 29A which came in the year 2015, no time limit was fixed for conclusion of proceedings.

28. The issue in the present case is no longer *res integra*. Section 26 of the Amendment Act explicitly provides that its provisions shall not apply to arbitral proceedings that were initiated under Section 21 of the Arbitration Act prior to the commencement of the Amendment Act, unless the parties mutually agree to their application. Consequently, the Amendment Act is to be applied prospectively, barring a consensus for retrospective applicability. The key issue for determination before this Court is whether the time limits prescribed under Section 29A would extend to arbitral proceedings that were initiated before the enactment of the Amendment Act.



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29. It is significant to note that the Arbitration Act, prior to its amendment in 2015, did not prescribe any time limits for the issuance of an arbitral award. The introduction of such time limits was brought about for the first time through Section 29A, added by the Amendment Act of 2015 w.e.f. 23.10.2015. As per Section 21 of the Arbitration Act postulates that the arbitral proceedings are deemed to commence on the date the respondent receives a request for arbitration, unless otherwise agreed by the parties. In the present case, the arbitral proceedings commenced on 23.03.2015, when the notice invoking arbitration was first sent, well before the enactment of the Amendment Act. Accordingly, it must be concluded that Section 29A and the time limits stipulated therein are not applicable to this arbitral proceeding.

30. The Apex Court in TATA Sons (P) Ltd. v. Siva Industries & Holdings Ltd., (2023) 5 SCC 421 has held as under:

"36. In Shapoorji Pallonji [Shapoorji Pallonji & Co. (P) Ltd. v. Jindal India Thermal Power Ltd., 2020 SCC OnLine Del 2611] , the Delhi High Court had held that amended Section 29-A(1) of the Arbitration and Conciliation Act, being procedural law, would apply to the pending arbitrations as on the date of the amendment. However, a coordinate Bench in MBL Infrastructures Ltd. v. Rites Ltd. [MBL Infrastructures Ltd. v. Rites Ltd., 2020 SCC OnLine Del 2612] held that the amended Section 29-A would be prospective in nature, without referring to the earlier order in Shapoorji Pallonji [Shapoorji Pallonji & Co. (P) Ltd. v. Jindal India Thermal Power Ltd., 2020 SCC OnLine Del 2611] . Finally, the Delhi High Court in ONGC Petro Additions [ONGC Petro Additions Ltd. v. Ferns Construction Co. Inc., 2020 SCC OnLine Del 2582] settled the controversy and reiterated the position of



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law as laid down in Shapoorji Pallonji [Shapoorji Pallonji & Co. (P) Ltd. v. Jindal India Thermal Power Ltd., 2020 SCC OnLine Del 2611] . The Court, inter alia, stated that Section 29-A(1) shall be applicable to all pending arbitrations seated in India as on 30-8-2019 and commenced after 23-10-2015, and there is no strict timeline prescribed to the proceedings which are in nature of international commercial arbitration as defined under the Act, seated in India."

31. A Co-ordinate Bench of this Court vide a Judgment dated 19.12.2023 passed in **O.M.P.(MISC.)(COMM.) 674/2023** in the case of "Zillion Infraprojects Pvt. Ltd through Anant Saxena vs. Fab-Tach Works & Constructons Pvt. Ltd." has observed as under:

"5. Notably, the Arbitration & Conciliation (Amendment) Act, 2015 came into force on 23.10.2015. Section 26 of the Amendment Act provided that the Amendment Act would not apply to the arbitral proceedings that had already commenced in accordance with Section 21 of the Principal Act, before the commencement of the Amendment Act, unless the parties otherwise agreed. In other words, the applicability of the Amendment Act was made prospective unless the parties agreed for its retrospective application."

32. As far as the merits are concerned, this Court is of the opinion that the Arbitrator has meticulously analysed the evidence. The Arbitrator after recording the evidence has come to the conclusion that no cogent material has been given by the Petitioner to substantiate that she had retired from the partnership firm post 1974 rather the conclusion is that the partnership firm continued till 2015. Before this Court, nothing has been established to show that the finding of the Arbitrator is perverse nor there is any conclusive



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material to show that the Petitioner had indeed retired from the firm. It is well settled that the Arbitrator is the master of the evidence. If the analysis of the evidence is cogent then Courts while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996 should not interfere with the conclusion arrived at by the Arbitrator only because another view is possible.

33. In a latest judgment of the Apex Court in DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., (2024) 6 SCC 357, the Apex Court while entertaining a curative petition has given the contours of interference under Section 34 of the Arbitration and Conciliation Act, 1996. The Apex Court has observed as under:

“34. The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A) of the Arbitration Act, a domestic award may be set aside if the Court finds that it is vitiated by “patent illegality” appearing on the face of the award.

35. In Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , a two-Judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no



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reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are:

- (i) based on no evidence;*
- (ii) based on irrelevant material; or*
- (iii) ignores vital evidence.*

36. Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned.

37. A fundamental breach of the principles of natural justice will result in a patent illegality, where for instance the arbitrator has let in evidence behind the back of a party. In the above decision, this Court in Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] observed : (SCC pp. 75 & 81, paras 31 & 42)

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

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



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42.1. ... 42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.”

(emphasis supplied)

38. In *Ssangyong Engg. & Construction Co. Ltd. v. NHAI* [*Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , a two-Judge Bench of this Court endorsed the position in *Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , on the scope for interference with domestic awards, even after the 2015 Amendment : (*Ssangyong Engg. & Construction Co. case* [*Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , SCC p. 171, paras 40-41)

“40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in *Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. ... Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of



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the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.”

(emphasis supplied)

39. *In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149.] A “finding” based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of “patent illegality”. An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice.*

40. *A judgment setting aside or refusing to set aside an arbitral award under Section 34 is appealable in the exercise of the jurisdiction of the court under Section 37 of the Arbitration Act. It has been clarified by this Court, in a line of precedent, that the jurisdiction under Section 37 of the Arbitration Act is akin to the jurisdiction of the Court under Section 34 and restricted to the same grounds of challenge as Section 34. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, para 14 : (2019) 2 SCC (Civ) 293; Konkan Railway Corpn. Ltd. v. Chenab Bridge Project Undertaking, (2023) 9 SCC 85, para 18 : (2023) 4 SCC (Civ) 458 : 2023 INSC 742, para 14.]*



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34. Learned Counsel for the Petitioner has stressed only on the question that the Arbitrator had become *functus officio*. Other contentions raised by the Petitioner are more or less factual in nature which this Court does not want to delve into. As for the contention of the learned Counsel for the Petitioner that the Arbitrator has resorted to equitable distribution of assets which is not permitted under Section 28 of the Arbitration and Conciliation Act, 1996 till the parties expressly give the power to the Arbitrator, this Court is of the opinion that the Arbitrator has not resorted to Section 28 of the Arbitration and Conciliation Act, 1996. Paragraph Nos.34 and 35 of the Award are reproduced as under:

“34. This leaves the tribunal with the question of how the property of the firm is to be divided. Having held that the deed of July 22, 1974 continued to subsist till March, 2015 when it was dissolved by the claimant, it follows that as on the date of dissolution it had four partners, namely, the claimant, the respondent, Rachna Surekha, and Nityanand Yadav. As per clause 6 of the partnership deed of July 22, 1974 the profit and losses including the loss of capital was to be divided as follows:

	<u>Profit</u>	<u>Loss</u>
1. Shri Nitya Nand Yadav	25%	30%
2. Smt. Premlata Sureka	30%	40%
3. Shri Chakradhari Sureka	25%	30%
4. Ms. Rachna Sureka	20%	

35. The aforesaid clause is only concerned with the distribution of profit and loss of the firm, had it been a going concern. Nothing has been shown by the claimant that the firm has been functioning. Hence, the question of distributing its profit and loss does not rise. What remains then is the asset of the firm which is the



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plot in question. As noticed earlier, notices of the arbitration were sent to the legal heirs of Nityanand Yadav who was one of the partners and who had since died. In response to the notices, their counsel appeared and submitted that they had sold their shares to Vishnu Kumar Surekha and Panneshwari Devi. Nobody appeared for them thereafter. As for Rachna Kedia, she did not come forward to contest the matter. In any case she had no share in the assets of the firm, and was only entitled to its profit to the extent of 20%. This leaves only two partners namely, the claimant and the respondent Smt. Premlata Surekha. Accordingly, the plot bearing Y-10, Naraina, New Delhi is partitioned between the claimant and respondent no.1 in two equal shares of 50% each. The respondent shall not deal with the property, nor part with the possession of the same in any manner till the actual partition takes place. Rest of the prayers are disallowed.”

35. A perusal of the aforesaid shows that the Arbitrator was of the opinion that due to death of other partners, only two partners, namely, Claimant (Respondent No.1 herein) and the Petitioner herein survived and the property is divided in equal proportion. This Court, therefore, does not find any reason to interfere with the said finding. The Arbitrator also observed that the other alive partner Rachna Kedia did not come forward to contest the case and in any case, she had no share in the assets of the firm and was only entitled to profit. Since only the property was being divided no share has been rightly given to the other partners.

36. In view of the above, this Court does not find any reason to interfere with the Award dated 02.01.2023.

37. Accordingly, O.M.P. (COMM) 140/2023 is dismissed, along with pending application(s), if any.



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OMP (ENF.) (COMM.) 55/2023 & EX.APPL.(OS) 372/2023,
EX.APPL.(OS) 373/2023 & EX.APPL.(OS) 1302/2024

List on 23.07.2025.

FEBRUARY 21, 2025
hsk/sz/jp

SUBRAMONIUM PRASAD, J