



2025:DHC:11693-DB



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 10.11.2025*

*Pronounced on: 22.12.2025*

+ **FAO(OS) (COMM) 194/2022 & CM APPL. 32863/2022, CM APPL. 22098/2025**

SHRI BRAJENDRA KHANDELWAL .....Appellant

Through: Mr.S. S. Sastry, Mr.Rahul  
Kumar and Mr.Abhishek  
Anand, Advs.

versus

M/S RAJENDRA IRON MART & ORS. ....Respondents

Through: Mr.Pawanjit S. Bindra, Sr. Adv.  
with Mr.Vinayak Marwah,  
Adv.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE MADHU JAIN**

### **J U D G M E N T**

#### **NAVIN CHAWLA, J.**

1. This appeal has been filed challenging the Judgment and Order dated 20.05.2022 (hereinafter referred to as the 'Impugned Order') passed by the learned Single Judge of this Court in O.M.P. (COMM) 135/2019, titled *M/s Rajendra Iron Mart & Anr. v. Shri Brajendra Khandelwal & Ors.*, whereby, the learned Single Judge was pleased to allow the application filed under the Section 34 of the Arbitration and Conciliation Act, 1996 (in short, 'A&C Act') by the respondent nos. 1 and 2 herein, and set aside the Arbitral Award dated 31.01.2019 (in short, 'Award').



2. It is the case of the appellant that a Partnership Firm was being run by respondent no.2 along with three other partners, Sh. Suresh Chand Khandelwal, Sh. Rajender Prasad Khandelwal, and Mr Lalit Kumar Mathur, in terms of the Partnership Deed dated 02.06.1981. Sh. Suresh Chand Khandelwal expired on 01.08.1992, Sh. Rajender Prasad Khandelwal expired on 08.10.2001, and Sh. Lalit Kumar Mathur expired on 25.04.2004. Thereafter, a Partnership Firm was constituted *vide* a Partnership Deed dated 15.01.2008 (hereinafter the 'Partnership Deed') by four partners *inter alia* consisting of the respondent nos. 2 and 3 and the appellant. The same was registered with the Registrar of Firms on 17.07.2008.

3. It is averred that in terms of Clause 15 of the Partnership Deed dated 02.06.1981, the heirs of the deceased partner were entitled to become partners in his/her place. Accordingly, the appellant was joined as a partner in the business of the Firm, which stood reconstituted with effect from 15.01.2008. The partners of the reconstituted Firm further agreed that the profits and losses of the partnership business would be shared and contributed by the four partners in the following proportion:



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|   |                              |                       |
|---|------------------------------|-----------------------|
| A | Shri Mahesh Chand Khandelwal | Rs.0.17 P. in a rupee |
| B | Smt. Sneh Lata Khandelwal    | Rs.0.17 P. in a rupee |
| C | Shri Brajendra Khandelwal    | Rs.0.33 P. in a rupee |
| D | Smt. Ravi Bala Mathur        | Rs.0.33 P. in a rupee |

4. It is the case of the appellant that the Firm had applied to the Delhi Development Authority (in short, 'DDA') for an industrial plot of land admeasuring about 605 sq. yards, bearing no. 179, Block A, Okhla Industrial Development Area, Phase-I, Delhi (in short, 'Property'). By a letter dated 29.09.1970, the DDA had allotted the said Property to the Firm, however, the said allotment was cancelled by the DDA subsequently. The respondent no.2 and the respondent no.1 Firm had filed a Writ Petition, that is W.P.(C) No. 6398/2008, titled *M/S Rajendra Iron Mart & Anr. v DDA*, challenging the cancellation of the allotment by DDA. The said petition was allowed by the learned Single Judge of this Court *vide* its Order dated 20.07.2011, directing the DDA to restore the allotment of the Property in favour of the Firm.

5. The DDA challenged the said decision before a Division Bench of this Court in form of LPA 196/2012, titled *Delhi Development Authority v. Rajindra Iron Mart & Anr.* In the said appeal, the appellant herein sought to implead itself as a party by moving an impleadment application, however, the said application was dismissed by this Court, holding that the *inter se* dispute between the parties



herein was not the subject matter of the said LPA. Thereafter, the said appeal was dismissed by this Court *vide* its Orders dated 02.07.2012 and 20.07.2012.

6. The appellant claims that the respondent no.2 had attempted to exclude the appellant from the Firm, and thereby, his share in the Property, by fabricating and manipulating the Retirement Deed dated 19.01.2010 as well as Form V, that is, the notice of change in the constitution of the Firm filed with the Registrar of Firms.

7. The appellant, therefore, issued a notice dated 03.07.2012 under Section 21 of the A&C Act, *inter alia*, to respondent no.2 and 3, seeking reference of disputes *qua* his retirement from the respondent no.1 Firm to arbitration. The appellant also filed a petition under Section 9 of the A&C Act, being O.M.P. 1182/2012, titled ***Brajendra Khandelwal v. M/S Rajindra Iron Mart & Ors.***, seeking an order restraining the other parties from dealing with, selling, transferring, or in any manner encumbering the Property, by contending that the Firm's reconstitution by a Partnership Deed dated 10.03.2011, was "*illegal, invalid, sham and unfair*". The appellant claimed that the respondent no.2 had obtained certain signed blank papers from him, which had been mis-utilised and illegally used to reflect his retirement from the Firm and its reconstitution.

8. On 18.12.2012, the learned Single Judge of this Court passed an order allowing O.M.P. no.1182/2012 and restrained the respondents from entering into any negotiation regarding the Property.

9. The appellant also preferred a petition under Section 11 of the A&C Act, being Arbitration Petition 491/2012, titled ***Brajendra***



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***Khandelwal v. M/S Rajindra Iron Mart & Ors.***, seeking appointment of arbitrator for adjudicating the *inter se* disputes of the parties respectively. The learned Single Judge of this Court, *vide* its Order dated 22.07.2013, allowed the same and appointed Shri D.S. Pawaria, Ld. ADJ (Retd.) as the Arbitrator (hereinafter referred to as the ‘learned Arbitrator’) to adjudicate the disputes between the parties.

10. The appellant herein filed his Statement of Claim before the learned Arbitrator *inter alia* seeking a declaration that the reconstitution of the Firm by the Partnership Deed dated 10.03.2011 and the Retirement Deed dated 19.01.2010 was illegal, invalid, null and void, and unenforceable in law.

11. The respondent no.2, on the other hand, claimed that by a Retirement Deed dated 19.01.2010, the appellant herein had retired from the respondent no.1 Firm, and it was further agreed that the respondent no.2 and Smt. Sneha Lata Khandelwal would be entitled to continue the business of the Firm in its name. The respondent no. 2 claimed that the Retirement Deed was signed by the appellant as well as respondent no.2. Thereafter, the respondent no.2 and Smt. Sneha Lata Khandelwal entered into another partnership deed to carry on the business of the respondent no.1 Firm in its name (Rajendra Iron Mart), and on 19.09.2011, a notice of change of constitution of the Firm in the prescribed format (Form No.V) was filed with the Registrar of Firms. The said Form V was also signed by appellant as well as the respondent no.2.

12. The learned Arbitrator, *vide* the Award dated 30.01.2019, allowed the claims of appellant herein by declaring him to be a partner



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of the respondent no.1 Firm, and declared the Partnership Deed dated 10.03.2011 and the Retirement Deed dated 19.01.2010 to be null, void and illegal. Additionally, the learned Arbitrator also awarded the appellant costs quantified at ₹4,00,413/-.

13. The respondent nos. 1 and 2 challenged the said Award by filing an application under Section 34 of the A&C Act before the learned Single Judge of this Court, that is, O.M.P. (COMM) 135/2019, which came to be allowed by the Impugned Order and the Award was set aside.

14. Aggrieved thereof, the appellant has filed the present appeal under Section 37 of the A&C Act.

**Submissions by the learned counsel for the appellant:**

15. The learned counsel for the appellant submits that the learned Single Judge has failed to appreciate that the Award was passed by the learned Arbitrator after having appreciated the pleadings filed by the parties, the issues framed on the basis of the pleadings of the parties, the evidence led by the parties, and after hearing arguments advanced on behalf of the parties to the arbitration. He submits that the Award is a reasoned Award passed after considering the entire material placed before the learned Arbitrator. The same could not have been set aside by the learned Single Judge by re-appreciating the evidence.

16. He submits that the learned Single Judge, in Paragraph 47 of the Impugned Order, has mentioned that the learned Arbitrator has failed to give any finding *qua* the issue whether the Retirement Deed was manipulated or not. However, by placing reliance on Paragraph 32 of



the Award, he submits that the learned Arbitrator has considered this issue and has dealt with it in detail to come to the conclusion that the said Retirement Deed was not signed on 19.01.2010.

17. He submits that it is a settled proposition of law that Courts while hearing challenge to an Arbitral Award under Section 34 of A&C Act, not being Appellate Courts, cannot appreciate/ re-appreciate evidence. The scope of Section 34 of the A&C Act is limited, and under no circumstance, can any court interfere with an Award by re-appreciating evidence. In support, he places reliance on the judgment of the Supreme Court in *Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.*, (2022) 1 SCC 131.

18. He submits that the findings of the learned Arbitrator on the facts are based on an appreciation of the evidence and the materials on record, which are neither perverse, nor contrary to the evidence, or against public policy, therefore, it was not open for the court to scrutinize the Award under Section 34 of the A&C Act as if it were sitting in appeal. However, the learned Single Judge went on to hear the petition as if it was hearing an appeal, and hence, travelled outside the mandate of Section 34 of the A&C Act. In support, he places reliance on the judgment of the Supreme Court in *Associate Builders v DDA*, (2015) 3 SCC 49.

**Submissions by the learned senior counsel for the respondents:**

19. On the other hand, the learned senior counsel for the respondents, while defending the Impugned Order, submits that the Award passed by the learned Arbitrator being perverse, arbitrary and



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opposed to law, was rightly set aside by the learned Single Judge.

20. He submits that the learned Arbitrator completely brushed aside the admitted documents, that is, the Deed of Retirement dated 19.01.2010, and the Notice of change of constitution of the partnership Firm issued by the Registrar of Firms making entry in the record regarding retirement of the outgoing partners, both duly signed by the appellant herein.

21. He further submits that the learned Arbitrator has completely ignored that neither the Retirement Deed nor the notice of retirement were on blank papers. The Retirement Deed was printed on the stamp papers, which were purchased on 19.01.2010. Moreover, the notice of retirement to the Registrar was in the format of a pre-printed Form-A, which could not have been a blank paper. Therefore, the plea taken by the appellant that he was made to sign some blank papers was completely false, and contrary to the evidence on record.

22. He submits that prior to the dispute regarding the partnership concern in question, the appellant's mother and the appellant were litigating with the respondent no.2 regarding another Firm namely, Delhi Hardware Stores. In fact, the appellant had written a letter dated 16.06.2009 to the Punjab National Bank, requesting them that the bank accounts of Delhi Hardware Stores in the said bank be frozen. He submits that in view of the said facts, it is improbable that the appellant would put signatures on blank documents at request of the respondents.

23. The learned senior counsel for the respondents further submits that despite the learned Arbitrator having expressly agreed with all the



contentions raised by the respondents herein, as is evident from Paragraph 31, the learned Arbitrator has proceeded to erroneously observe that there were “other circumstances” on record which were required to be taken into consideration, and that there was allegedly no serious cross-examination conducted by the respondents on the material points deposed in the appellant’s evidence by way of affidavit. He submits that, therefore, the Award is patently illegal and cannot be sustained.

24. He further submits that the learned Arbitrator, without appreciating any evidence and in complete contradiction to the record, has further held that it was an undisputed fact that the appellant herein was a sleeping partner in the respondent no.1 Firm. The learned Arbitrator has also gravely erred in holding that Clause 3 of the Partnership Deed stipulated that the partnership could be determined by issuance of three months’ written notice, and that there was no proper explanation from the respondents as to why such notice was not issued to “make it clear” to the appellant that he had retired from the partnership. He submits that these findings are wholly perverse, unsupported by any contemporaneous material, and contrary to the evidence on record.

**Analysis and findings:**

25. We have considered the submissions made by the learned counsels for the parties.

26. Section 34 of the A&C Act states the limited grounds only on which an Arbitral Award may be set-aside by the Court. So far as it is



relevant, it is reproduced herein under:-

***“Section 34. Application for setting aside arbitral awards.***

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*(2) An arbitral award may be set aside by the Court only if--*

*(a) the party making the application establishes on the basis of the record of the arbitral tribunal that--*

*(i) a party was under some incapacity, or*

*(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*

*(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*

*(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:*

*Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or*

*(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or*

*(b) the Court finds that--*

*(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*

*(ii) the arbitral award is in conflict with the public policy of India.*

*Explanation 1.--For the avoidance of any doubt, it is clarified that an award is in*



*conflict with the public policy of India, only if,-*  
*(i) the making of the award was induced or*  
*affected by fraud or corruption or was in*  
*violation of section 75 or section 81; or*  
*(ii) it is in contravention with the fundamental*  
*policy of Indian law; or*  
*(iii) it is in conflict with the most basic notions*  
*of morality or justice.*

*Explanation 2.--For the avoidance of doubt,*  
*the test as to whether there is a contravention*  
*with the fundamental policy of Indian law*  
*shall not entail a review on the merits of the*  
*dispute.*

*(2A) An arbitral award arising out of*  
*arbitrations other than international*  
*commercial arbitrations, may also be set aside*  
*by the Court, if the Court finds that the award*  
*is vitiated by patent illegality appearing on the*  
*face of the award:*

*Provided that an award shall not be set aside*  
*merely on the ground of an erroneous*  
*application of the law or by reappreciation of*  
*evidence.”*

27. The Supreme Court in ***MMTC Ltd. v. Vedanta Ltd.***, (2019) 4 SCC 163, while interpreting the Section 34 of the A&C Act, has held as under:

*“10. Before proceeding further, we find it necessary to briefly revisit the existing position of law with respect to the scope of interference with an arbitral award in India, though we do not wish to burden this judgment by discussing the principles regarding the same in detail. Such interference may be undertaken in terms of Section 34 or Section 37 of the Arbitration and Conciliation Act, 1996 (for short “the 1996 Act”). While the former deals with challenges to an arbitral award itself, the latter, inter alia, deals with appeals against an order made under Section 34 setting aside or refusing to set aside an arbitral award.*

*11. As far as Section 34 is concerned, the*



*position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.*

**12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts.**

*(See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] ; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4*



SCC 445] ; and *McDermott International Inc. v. Burn Standard Co. Ltd.* [*McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181] )

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

(Emphasis Supplied)

28. The Supreme Court in *Delhi Metro Rail Corporation Limited*



***v. Delhi Airport Metro Express Pvt. Ltd., (2024) 6 SCC 357*** summarized the contours of the power of the Court to set aside an Award under Section 34 of the A&C Act, specially on the ground of patent illegality, as under:

*“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.”*

29. A reading of the above would show that apart from other specific grounds, an Arbitral Award may be set aside by a Court where the Court finds it to be in conflict with the public policy of India, which concept has been clarified in Explanations 1 and 2 to Section 34(2) of the A&C Act. An Arbitral Award arising out of domestic arbitrations, as is the case herein, may also be set aside by the Court if the Award is vitiated by patent illegality appearing on the face of the Award. Proviso to Section 34(2A) of the A&C Act, however, clarifies and warns that an Award shall not be set aside merely on the ground of an erroneous application of the law or by re-



appreciation of evidence. The ground of patent illegality is available for setting aside the Award *inter alia* if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it or is based on no evidence or in ignorance of vital evidence. The Court cannot, however, set aside an Arbitral Award merely because it may take a different or even a 'better' view of the contract than the Tribunal.

30. We may herein also note that the jurisdiction of the Court under Section 37 of the A&C Act is limited only to examine if the learned Court from which the appeal arises, has erred in applying the principles applicable to the limited jurisdiction vested in such Court under Section 34 of the A&C Act.

31. The Supreme Court in ***Punjab State Civil Supplies Corpn. Ltd. & Anr. v. Sanman Rice Mills & Ors.***, 2024 SCC OnLine SC 2632, while analysing the scope of Section 37 of the A&C Act, being an appellate provision, has held as under:

*“11. Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. **The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.***

*12. It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to*



reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.

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**14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.**

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**20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for**



*interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.*

*21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.*

*(Emphasis Supplied)*

32. Keeping in view the foregoing discussion on the legal position, we may now proceed to analyze the merits of the present case.

33. The limited question arising in the present dispute is whether the finding of the learned Single Judge that the Award passed by the learned Arbitrator, declaring the Retirement Deed dated 19.01.2010 as null and void, is vitiated by patent illegality, was within the contours of Section 34 of the A&C Act or not.

34. The case set-up by the appellant before the learned Arbitrator and in the present proceedings is that the respondent no.2 had obtained the signatures of the appellant on certain blank papers, which had been mis-utilized and illegally used to reflect his retirement from the Firm and its reconstitution. The learned Arbitrator, on this plea of the appellant, in fact, has held in favour of the respondent no. 2 and against the appellant, by observing as under:

*“28. ....Ld. counsel for the respondent have pointed out answer given by CW-1 in his*



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*cross-examination that earlier there was dispute between claimant and respondent regarding freeze of account of partnership firm M/s Delhi Hardware Store. The arguments were advanced by Ld. Counsel for the respondent that a person having earlier litigation with partners is not supposed to put signatures on blank papers. It agree with such contention of Ld. Counsel for respondent in this regard.”*

35. Having recorded the above finding, the learned Arbitrator then went on to hold that the respondent has been unable to prove the retirement of the Appellant from the partnership, by laying emphasis on “*Other Circumstances*”, including lack of “*serious cross-examination*” from the respondent no. 2 to the material points deposed by the appellant in his affidavit. These included lack of public notice of such retirement; lack of notice under Clause 3 of the Partnership Deed; receipt of payment of Rs.1,65,000/- (as claimed by the respondent no. 2 to have been paid to the appellant at the time of his retirement) not being filed; the High Court not being informed about the retirement of the appellant; and the financial documents of the respondent no. 1- Firm not being filed on record before the learned Arbitrator. The learned Arbitrator also drew an adverse inference from the fact that the name of the Advocate who had drafted the Retirement Deed had not been disclosed. The learned Arbitrator also found contradictions in the testimony of the witnesses produced by the respondent no. 2, regarding the manner and timing of the execution of the Retirement Deed. The learned Arbitrator, therefore, concluded as under:



*“32. It will be proper to refer to answer given by respondent no.2 in his cross examination, who appeared as RW-1, at page 2 of his cross-examination dated 04.07.2017, he has admitted that he is not having any authority in writing to represent respondent no.1. He has also admitted that at the time of filing Writ Petition in 2008, the claimant was also one of the partners. According to respondent no.2, he was orally authorized by other partners to file Writ Petition, it cannot be believed. He has also admitted that Civil Writ Petition was filed on the basis of partnership deed Ex. CW-1/5 and claimant was partner of that firm. At page 3 of his cross-examination RW-1 failed to give convincing reply regarding information given to Hon'ble High Court regarding reconstitution of Firm. If claimant had retired in 2010 from the partnership concern such information should have been given to Hon'ble High Court as well as to DDA. In his cross-examination dated 05.07.2017, 2nd page, it is virtual admission of respondent No.2 that no proper accounting of the firm was done at the time of alleged retirement of the claimant. RW-1 also failed to give convincing reply in cross-examination regarding amount in the account of the Firm. Respondent no.2 also failed to give convincing reply as to why he did not place on record relevant documents regarding financial position of the Firm. The balance sheet prepared at the time of retirement has also not placed on record. The statement of account prepared at the time of retirement had also not been signed. Question No. 5 dated 05.07.2017 is relevant to which reply given by witness is that document dated. 19.01.2010 have already been prepared by advocate prior to 19.01.2010, witness also failed to give name of the Advocate. Witness has admitted that he did not tell the terms and conditions of the document to the advocate. Witness has also stated that he does not remember when he collected the documents prepared by the advocate. Witness has also admitted that no*



*business was conducted during 2008 to 2011 and no Income Tax Return was filed. Question No. 27 dated 24.08.2017 is also relevant wherein he stated that he does not remember when he met claimant before 19.01.2010, it shows that matter regarding dissolution of the Firm was not discussed by him with the claimant. In question No. 34, RW-J admitted that he has not brought bank account of partnership firm from 2008 to 2011. Now it is to be considered if the retirement deed and 'Form-5' were actually signed in the office of the firm on 19.01.2010 or not. In reply to question No. 5 dated 30.08.2017, reply given by RW-1 is that all partners came together with witness on the other hand RW-2 Rajeev Gupta at page 4 has stated that when he reached office other partners were already there and Amit Mathur RW-3 was also there. RW-3 Amit Mathur has also replied in his cross dated 02.11.2017 in reply to question no.8 that other partners have already there in the office. RW-3 Amit Mathur and RW-2 Rajeev Gupta have stated in their cross-examination that documents i.e. retirement deed and 'Form-5' was lying on the table, while in their affidavit in evidence their version is different.*

*In para no. 3 of affidavit in evidence of Rajeev Gupta RW-2 it is mentioned that the documents were taken out from the drawer. Similarly, RW-3 Sh. Amit Mathur has also deposed in his affidavit in evidence in para no.3 that Mahesh Chand Khandelwal took out retirement deed drawn on stamp paper. The oral testimony given by all RWs are contradictory.*

*According to 'Pebley' an expert in evidence matter has opined that a man can tell lie but circumstances cannot. It was also his opinion that the party must produce best available evidence with him. Respondent No.2 was having the documents of the firm, which he failed to place on record. Circumstances are also there on record that claimant did not put*



*signature on document on 19.01.2010. The respondent no.2 also filed false plea before Hon'ble High Court regarding sale of the plot in question to some other person. The plea has been taken by claimant that respondent no.2 has been asked to pay Rs. 5 Lakh for filing false information before Hon'ble High Court. That does not carry weight as the order has not been placed on record. It is immaterial if claimant failed to place on record convincing evidence on record, if he was at Jaipur on 19.01.2010 or not. There is enough evidence on record to indicate that he did not sign document on 19.01.2010 in the office of the Firm as alleged by respondent no.2. Evidence of RW-4 Deepak Jain will not help respondent no.2 and the respondent in the light of above evidence on record that the claimant did not sign alleged document on 19.01.2010 as claimed by respondent no.2. It is also one of the circumstance to be considered in the case is that new firm was constituted by respondent no.2 after great delay and 'Form-5' was submitted to the Registrar after great delay of retirement deed. Under these circumstances I am of the opinion that respondent no.2 has failed to prove that the claimant has retired from Firm and he paid Rs. 1,65,000/- to the claimant at the time of his retirement."*

36. The learned Single Judge, in the Impugned Order has observed *qua* this issue as under:

*"36. As is apparent from the above, it is BK's case that he had signed blank documents, which were subsequently misused by MCK.*

*37. Thus, the principal question to be addressed by the Arbitral Tribunal was whether BK had signed any blank papers, which had been subsequently misused to reflect his retirement.*

*xxxxx*

*40. However, a visual examination of the*



*Retirement Deed indicates that it was not signed on a blank stamp paper. The Arbitral Tribunal had also not returned any finding that the blank stamp papers were signed by BK, which were subsequently misused by printing the Retirement Deed.*

41. *MCK had contested the allegation that BK had signed blank stamp papers on which the Retirement Deed was printed. Apart from the above, MCK had also stated that BK was a former employee of a bank and he was not expected to sign any blank document. Apart from that, MCK and BK were also involved in another litigation in reation to another partnership firm "M/s Delhi Hardware Store". In this regard, BK was cross-examined and in his cross-examination, he admitted that his mother had filed a suit in respect of the firm M/s Delhi Hardware Store, against MCK, respondent no.3 and one Mr Amit Mathur for partition and rendition of accounts. And, he had appeared as an attorney for his mother in those proceedings. He also admitted that he had sent a letter dated 16.06.2009 to Punjab and Sindh Bank, requesting it to freeze the accounts of the firm 'Delhi Hardware Stores'. He was shown the said letter dated 16.06.2009 (Ex CW/R-2) and he had admitted the same. The extract of his testimony are set out below:*

*"I was partner with Respondent No. 2 firm M/s. Delhi Hardware Stores. Firm M/s. Delhi Hardware Stores was purchased from someone in 1960s. Exact year I do not remember My mother Bhagwati Devi filed a suit against firm M/s. Dell Aardware Stores and Mr. Mahesh Chand Khandelwal, Smu Snehlata Khandelwal and Mr. Amit Mathur for partition and rendition of accounts. (objected to by Ld. Counsel the Claimant being out of pleadings). I appeared as Attorney of my mother in that case before the court. The matter*



*was referred to Arbitrator by court and I never appeared before the Arbitrator. The witness is asked to see the photocopy of the Award dated 03.05.2005 passed by Sh. B.L. Garg, Sole Arbitrator. Ld. Counsel for Claimant has raised objection saying that it is a photocopy and beyond pleadings. The Award passed by the Ld. Arbitrator is correct. Talks for settlement were going on between parties and this Award was passed later on when we stopped appearing before the Arbitrator. This is exhibited as CW1/R1.*

*I have seen my signatures on points A, B and C on the document, Retirement Deed i.e. Ex. CW1/28. (Original Retirement Deed is seen and returned) and Form-V of Registrar of Firms. The signatures on points A, B and Care of mine."*

xxxx xxxx xxxx

*"I asked Punjab & Sind Bank to freeze account of M/s. Delhi Hardware Stores. Ldo not remember such dates as to when Lased bank to freeze the account of M/s. Delhi Hardware. Stores. (Vol. 1 can produce that letter of request on next date). I might have asked Punjab and Sind Bank to freeze account of M/s. Delhi Hardware Stores in June 2008. It is correct that I submitted application dated 16.06.2009 Ex. CW1/R 2 to Punjab and Sind Bark in this regard."*

*42. As noted above, there is no dispute that the Retirement Deed was signed by BK; and, he had admitted his signatures on the said document. The Arbitral Tribunal had also concurred with the contention that a person, who has been litigating with his partners, would not put his signature on blank papers*

xxxxx



46. BK's signatures on the Retirement Deed are admitted. And, since there is no finding that he had signed blank stamp papers on which the Retirement Deed was printed; this Court is unable to concur with the conclusion that BK continued to be a partner of the Firm.

47. First of all, the Arbitral Tribunal has failed to return a finding with regard to the case set up by BK. As noticed above, it was his case that he had affixed his signatures on the blank papers and the said papers were manipulated/fabricated to reflect his retirement. Thus, the principal question to be addressed by the Arbitral Tribunal was whether the Retirement Deed – which is printed on a stamp paper dated 19.01.2010 (as is reflected on the rear side of the stamp paper) – was signed in blank and printed thereafter. There is no finding of the Arbitral Tribunal accepting BK's case that he had signed a blank paper and the Retirement Deed had been printed thereafter. There is no finding whether the Retirement Deed was manipulated or fabricated as alleged by BK.

48. Admittedly, BK had also filed a pre-printed form (Form-V), which clearly reflected that it was a notice for change in the constitution of the Firm. As noticed above, it is BK's case that MCK used to obtain his signatures "on blank papers/stamp papers on the pretext of filing in DDA/Sales Tax or other authority for restoration of allotment and possession of the ploi and for filing returns etc." There is no explanation why BK had signed a form for change in the constitution of the Firm. That was not a form required either for the purposes of filing in the DDA or any Sales Tax Authority or for restoration of the allotment of the property in question.

49. The Arbitral Tribunal found that no prior notice was issued for retirement of BK and the same was required in terms of the Partnership



*Deed. The said conclusion is erroneous. The Partnership Deed expressly provided that the partnership was at will. Clause 3 of the Partnership Deed provides "that partnership may be determined by other partner giving to the others three months notice in writing". Therefore, a notice for determination of the partnership is necessary if one or more partners decided to dissolve the Firm. This would clearly have no application where two of the partners have by consent agreed to retire from the Firm and have executed a Retirement Deed to the aforesaid effect.*

*50. It is material to note that there is no finding that MCK had manipulated the documents or perpetuated a fraud that vitiated the Retirement Deed. In absence of any such findings, the Retirement Deed could not be ignored.*

xxxx

*55. The learned counsel for BK was unable to point out any infirmity with the Retirement Deed. There was no visible feature which could even remotely indicate that the Retirement Deed was printed after the same was signed by all the partners. As stated above, in absence of any adverse finding regarding manipulation or fabrication of the said Retirement Deed, the same could not be ignored."*

37. We agree with the above observation of the learned Single Judge. The appellant had based his claim on the foundation that the blank documents signed by him had been manipulated into the Retirement Deed dated 19.01.2010. The learned Arbitrator did not give any specific finding on this claim of the appellant. On the other hand, on a perusal of the above quoted extract of the Award, it is



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evident that the learned Arbitrator had in fact agreed that no person will sign a blank document if such person is having prior litigation with the other. Therefore, though not specifically stating that the plea of the appellant that he had signed on blank papers on which Retirement Deed was printed later, the Arbitrator seems to have accepted the same. However, the learned Arbitrator then went on to discuss other extraneous circumstances on basis of which he holds that the appellant had not signed the Retirement Deed on 19.01.2010. The same in our view was extraneous to the claim of the appellant. Once it is found that the Retirement Deed has been signed by the appellant after it had been printed, it was for the appellant to show the circumstances under which it was signed and prove the grounds on which it would stand vitiated. The learned Arbitrator had therefore, completely misdirected himself.

38. Keeping in view the above, the Impugned Order is entitled to be sustained. The appeal, along with pending applications, is dismissed.

39. There shall be no orders as to costs.

**NAVIN CHAWLA, J**

**MADHU JAIN, J**

**DECEMBER 22, 2025/VS**