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

% ***Judgment Reserved on: 14.11.2025***
Judgment pronounced on: 28.11.2025

+ **FAO 389/2018 & CM APPL 33291/2018**

RAMESHWAR DAYALAppellant
Through: **Mr. L.K. Singh, Advocate.**

versus

KRISHAN SINGH PANWAR (DECEASED) THR LRSRespondents
Through: **Mr. S.C. Singhal, Advocate.**

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (the Act) is directed against the judgment dated 11.04.2018 passed by the ADJ-04, South-West District, Dwarka Courts, New Delhi in CS No. 15209/2016 dismissing the application under Section 34 of the Act. Parties in this appeal will be referred to as described in the claim petition.

2. The allegations in the claim petition are as follows:- The



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claimant and the respondent started business of sale/ purchase of properties around the year 1997. They were doing the said business in partnership and were distributing the profits equally between them. In the year 2000, the claimant and the respondent started the business of construction of buildings. The terms and conditions of the partnership were reduced into writing as per partnership deed dated 29.03.2000. The said partnership business was being carried on under the name and style M/s Asha Builders. The parties also opened a current account bearing no.5029 in the name of the Firm with the Bank of Maharashtra, Janak Puri, New Delhi. All the monies received by the Firm were deposited in the said account and was thereafter shared equally between the partners. Thereafter, the parties purchased a three storied building situated at Plot No. 33, Khasra No. 17/24, Gali No. 3, Mohan Block, West Sagarpur, New Delhi-46. The building consisted of basement, ground floor and first floor owned by one Kalawati



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Devi Pandey, who sold the basement and ground floor to one D.C. Verma. The first floor was sold to one Anil Jain. As the owners of different floors were different, the property was purchased by the claimant and the respondent by way of two different deeds.

2.1. It was mutually agreed and decided that the sale deed in respect of the basement and ground floor would be executed in favour of the claimant and the sale deed in respect of the first floor in favour of the respondent. The aforesaid arrangement was made for the sake of convenience. However, it was mutually agreed and accepted by the parties that they would jointly own and possess the property in dispute with equal undivided ownership rights and shares in the property. It was also agreed and accepted that whatever monetary benefits in the form of any earning was derived from the property or in the form of sale proceeds by selling the property would be distributed equally among the parties. It was after the purchase of the property, the aforesaid partnership



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business commenced. After the purchase of the property, they mutually consented to use the property for the purpose of the business of the Firm.

2.2. The partnership thereafter was dissolved by a deed of dissolution dated 05.05.2001. At the time of dissolution of the Firm, it had only two assets, namely, the current account with the Bank of Maharashtra and the aforesaid immovable property. The deed of dissolution was executed and signed by both the parties on their own volition and without any force, coercion, fraud or undue influence. The assets of the Firm, namely, the bank account and the immovable property have been mentioned in the deed of dissolution, which has been duly signed by the parties in the presence of witnesses. At the time of dissolution of the partnership Firm, the parties had agreed that they would sell the property in dispute and distribute the sale proceeds equally.

2.3. In the second week of May 2001, i.e., soon after the



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dissolution of the partnership, the claimant was in dire need of money and so he approached the respondent for his consent to sell the property so that the sale proceeds could be divided equally between the parties. However, the respondent avoided the claimant and did not accede to the request. Thereafter, the claimant came to know from common friends and acquaintances that the respondent had been representing himself to be the sole and absolute owner of the entire property and that the claimant had no right, title or interest in any portion of the property. Therefore, the claimant in order to protect and safeguard his interest in the property, published a notice in the daily newspaper Rashtriya Sahara in its issue dated 22.05.2001. He also sent a notice dated 18.05.2001 calling upon the respondent to partition the property equally by metes and bounds or in the alternative to give his consent for the sale of the property so that the sale proceeds could be divided equally between the partners. The respondent received



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the notice. However, he sent a reply dated 30.05.2001, raising untenable contentions. Hence, the claim seeking an award for partition of the property by metes and bounds into two equal shares as well as for award of damages.

3. The respondent entered appearance and filed written statement contending that the claim petition was liable to be rejected under Order VII Rule 11 CPC as the claimant had no right, title or interest in the disputed property. He claimed that the property was exclusively owned and possessed by him, from the very beginning. It was also contended that the deed of dissolution dated 05.05.2001 was a fabricated one. A perusal of Clauses 2 and 6 would make it clear that the same are not in alignment with the remaining portion of the document. Clauses 2 and 6 were added to the deed of dissolution after the parties had affixed their signatures in the same. Therefore, the respondent contended that the claim petitioner was not entitled to the reliefs prayed for.



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4. Before the arbitrator, oral and documentary evidence was adduced. On a consideration of the oral and documentary evidence and after hearing both sides, the learned Arbitrator dismissed the claim. Aggrieved, the claimant has come up in appeal.

5. It was submitted by the learned counsel for the appellant/claimant that neither the arbitrator nor the trial court considered the directions given by this Court in its order dated 20.01.2006 in OMP No. 266/2001 in its right perspective. Without considering the said direction, the conclusion arrived at is erroneous and hence, the same needs to be reversed.

6. *Per contra*, it was submitted by the learned counsel for the respondent that it was the burden on the part of the claimant to prove his case, which has not been done and, therefore, the claim was rightly dismissed. There is no infirmity in the impugned order calling for interference by this Court.



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7. Heard both sides.

8. Admittedly, in the earlier proceedings between the parties, this Court held thus:-

“2. I have examined the award. It appears that there is a great deal of dispute with regard to the genuineness of the Dissolution Deed which has been produced before the petitioner. According to the counsel of the respondent, clause 2(ii) and 6 of the Dissolution Deed have been interpolated after the Dissolution Deed was signed and executed by the parties. According to learned counsel for the petitioner, the documents have been signed by the parties being conscious of the said clauses 2(ii) and 6 of the Dissolution Deed.

3. To ascertain the rival contention of the parties, I had directed the learned counsel to produce the original of the Dissolution Deed. The same has been produced before me in court today and I find that it cannot be easily and



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conclusively determined as to whether the dissolution deed has been interpolated or not. And, therefore, a thorough investigation is required where both the parties want to lead expert evidence in this regard. Unfortunately the learned Arbitrator has not considered the matter with thoroughness that was necessary. Therefore, it would be appropriate that the award that has been passed by the ld. Arbitrator is set aside and the matter is referred for arbitration afresh to an independent arbitrator agreed upon by the learned counsel for the parties.”

(Emphasis supplied)

9. Pursuant to the aforesaid direction, the matter again came up before a fresh arbitrator, who found that there are no documents to support the claim made by the claimant and hence, dismissed the claim. The said award of the arbitrator has been confirmed by the trial court. Both the arbitrator as well as the trial court proceeded under the assumption that the partnership deed as well



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as the deed of dissolution are disputed and as no documents have produced in respect of the disputed immovable property, the claimant could not claim any right in the property and thus, proceeded to dismiss the claim.

10. A reading of the written statement of the respondent makes it quite apparent that there is no denial of the partnership deed or the execution of the deed of dissolution. What is contended or disputed is that after the execution of the deed of dissolution, clauses 2(ii) and 6 were interpolated. There is never a case in the written statement that there was no partnership deed or that the dissolution deed had not been executed. Therefore, apparently the arbitrator and the trial court went wrong in concluding that the claimant failed to establish the execution of partnership deed or the dissolution deed, which apparently were never in dispute.

11. Now coming to the question whether the dissolution deed



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was interpolated, after the same was executed and after the respective parties had affixed their signatures in the same. The relevant portion of the deed of dissolution reads thus:-

“

Now this deed of dissolution witnesseth as under:-

1. That the partnership between the party of the 1st part and party of the 2nd part shall stand dissolved w.e.f. to day i.e. 5th May, 2001.

2. That at present the partnership has following assets:-

(i) Current A/c No. 5029 in Bank of Maharashtra, Janak Puri, in the name of M/s Asha Builders.

(ii) Plot of land measuring 100 Sq. Yds, Plot No. 33, Khasra No.17/24, built up three Storey building at Mohan Block, Gali No.3, West Sagarpur, New Delhi in the name of K.S. Panwar & R. Dayal.

3. That the parties have mutually agreed to close the aforesaid bank account itself and to share equally the amount lying therein.

4. That there are no liabilities of the partnership firm as on date.



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5. That both the parties shall have no claim against each other after the dissolution of the firm and all the claims of the parties shall stand settled.

6. That both the present parties have agreed that the aforesaid plot and building No.33, belonging to partnership shall be sold at a convenient time and the sale procedure shall be shared 50% by the parties.”

12. As noticed earlier, this Court, by order dated 20.01.2006, had set aside the earlier award of the arbitrator and the matter was referred afresh so as to enable both sides to adduce evidence in respect of their respective contentions regarding the deed of dissolution. The respondent has no case that the deed of dissolution had not been executed, but only that the deed had been interpolated. Therefore, there was no necessity for the claimant to prove the execution of the dissolution deed. The burden lay on the respondent to prove that subsequent to the execution of the deed, the same had been interpolated.

13. The arbitrator found that neither party adduced any



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evidence though several opportunities were granted. Thus, in the absence of any expert evidence, it could not be decided as to whether there was any interpolation or not.

14. Here it would be apposite to refer to the relevant provisions in the Indian Evidence Act, 1872 (the Evidence Act). Section 101 says that any person who desires the court to give judgment as to any legal right or liability dependent on the existence of facts of which he asserts, must prove that those facts exist. Section 102 says that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. As per Section 103, the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

15. In the case at hand, it is the respondent who asserts that interpolations were made in the deed of dissolution after its



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execution. Therefore, the burden was clearly on the respondent to establish the same. However, no steps are seen taken in the said direction by the respondent. Apart from the mere contention in the written statement, nothing has been brought on record to prove that there has been interpolations in the deed. Merely because the clauses in question are not in alignment with the remaining paragraphs, cannot be a ground to believe that there has been interpolations after the execution of the deed.

16. When the learned counsel for the respondent was asked as to the person on whom the burden lay for proving the contention of interpolation, submitted that the interpolations are visible to the naked eye and, therefore, no further proof was required. The contention that is seen taken in the written statement is that Clauses 2(ii) and 6 were subsequently typed into the document where gaps had been left. Now, the question whether there was any gap(s) left in the document and whether the gaps were filled



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by the subsequent interpolations were matter(s) that required to be proved by the respondent. However, no effort(s) is seen to have been made by the respondent in the said direction.

17. It is true that in the legal notice issued by the claimant to the respondent, there is no specific reference to the clauses in the deed of dissolution, but only a demand for partition. This was pointed as a suspicious ground as the notice was issued after the execution of the deed of dissolution. This alone is also not a ground to disbelieve the deed of dissolution. The execution of the deed of dissolution is referred to in the notice. It is stated that the respondent is not cooperating with the request for partition and hence, the notice. A perusal of the deed of dissolution shows that there are two witnesses to the said deed. The said witnesses are not seen examined. No evidence has been led in as to the person who typed/prepared the deed. The said person could have been examined to prove the case of interpolation. But no such attempt is



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seen made by the respondent. The respondent has no case that the two witnesses were not available to be examined or that their whereabouts could not be traced out. That being the position, it can only be held that the contention regarding interpolation has not been proved.

18. It is no doubt true that for creating any right in an immovable property, the value of which is more than Rs. 100/-, execution of a registered document is necessary. The claimant does not have a case that any registered document was executed. He rests his claim on the dissolution deed the execution of which is not denied. The only contention of interpolation raised by the respondent has not been established. That being the position, the deed of dissolution stands proved as per which the parties agreed to treat the property as partnership property and, therefore, the contentions to the contrary cannot be countenanced.

19. In addition to the relief of partition, damages are also



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claimed. However, there is no evidence to prove damages. Therefore, the claim can only be partly allowed relating to the relief of partition of the property.

20. In the result, the impugned judgment and award is set aside. The claim is partly allowed and the prayer for partition of the immovable property referred to in the deed of dissolution by metes and bounds in two equal shares and to demarcate and identify the equal shares at the site and to handover one share each to the claimant and the respondent respectfully for their exclusive ownership, peaceful possession and enjoyment is allowed.

21. The appeal is partly allowed as aforesaid. Application(s), if any pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

NOVEMBER 28, 2025

kd/