IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

(1) S.B. Civil Misc. Appeal No. 2908/2007
Ramesh Devnani vs. Smt. Lata Devnani & Ors.
With
(2) S.B. Civil Misc. Appeal No. 2909/2007
Ramesh Devnani vs. Smt. Lata Devnani
With
(3) S.B. Civil Misc. Appeal No. 2910/2007
Ramesh Devnani vs. Smt. Lata Devnani & Ors.
With
(4) S.B. Civil Misc. Appeal No. 2931/2007
Mukesh Devnani vs. Smt. Lata Devnani
With
(5) S.B. Civil Misc. Appeal No. 2932/2007
Mukesh Devnani vs. Jayant Devnani & Ors.
With
(6) S.B. Civil Misc. Appeal No. 2933/2007
Mukesh Devnani vs. Bhishm Devnani

Date of Judgment :: 20.12.2013

Hon'ble Ms. Justice Bela M. Trivedi

Mr. J.M. Saxena,
Mr. R.D. Rastogi, for the **appellants.**

Mr. R.K. Agarwal, Sr. Counsel assisted by
Mr. R.K. Daga,
Mr. Arvind Soni, for the **respondents**

J U D G M E N T

BY THE COURT

1. All these six appeals arise out of the common judgment and order dated 26th May, 2007 passed by the District Judge, Jaipur City, Jaipur (hereinafter referred to as 'the Court below') in Arbitration Cases Nos.325/2006,

563/2006 and 569/2006, whereby the Court below has allowed the objections filed by the respondents nos.1, 2 and 3(non-claimants) under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act') and set aside the award dated 22nd June, 2006 passed by the sole Arbitrator. The S.B. Civil Misc. Appeal Nos.2908/2007, 2909/2007 and 2910/2007 have been preferred by the appellant-Shri Ramesh Devnani, whereas the S.B.Civil Misc. Appeal Nos.2931/2007, 2932/2007 and 2933/2007 have been preferred by the appellant-Shri Mukesh Devnani against the impugned order passed by the Court below.

2. The short facts, giving rise to the present appeals, are that late Shri Manga Ram Devnani had three sons, named, Ramesh Devnani, Mukesh Devnani and Bhagwan Devnani. The said Bhagwan Devnani had two sons, named, Jayant Devnani and Bhishm Devnani, and the name of his wife was Smt. Lata Devnani. On 13th May, 1992, a partnership firm was created by Shri Bhagwan Das Devnani, Shri Ramesh Devnani, Shri Mukesh Devnani and Shri Jayant Devnani, in the name and style of M/s. Maharaja Carpet & Textile Industries (hereinafter referred to as 'the M.C.T.I.). Subsequently on 16th November, 1992, it was agreed between the said

partners that the business of the firm shall be carried on at Maharaja House, Gangapole, Jaipur with the contribution of the capital to be made by the partners. It was further agreed that the duration of the firm shall be 'AT WILL' and the partners may retire from the firm by giving three months notice. All the four partners had agreed to have equal share i.e. 25% each in the profits of the said firm. It was also agreed that in case of dispute, the matter shall be referred to the Arbitrator under the Indian Arbitration Act. It appears that on 15th September, 1993, a further declaration was made by the three partners i.e. Bhagwan Devnani, Ramesh Devnani and Mukesh Devnani to the effect that three separate pieces of lands owned by them, totally admeasuring 3241.22 sq. yards at Maharaja House Gangpole, the details of which were given in the said declaration, shall be allowed to be used freely along with the built up apartments thereon for a period of 21 years i.e. upto 31st May, 2012 for the purpose of promoting the business of the said firm. It was also declared *inter-alia* that the said firm shall not have the right to sell or dispose of the said lands or any portion there of, however, the firm shall have right to mortgage the said land along with the apartments built thereon, by way of equitable mortgage.

3. It further transpires that subsequently the disputes had arisen between the partners, and therefore appellant Ramesh Devnani served notices to the other partners calling upon them to appoint arbitrator for resolving the disputes. The said notices were replied to by the other partners. Since no consensus was arrived at between the partners for the appointment of the arbitrator, the appellant-Ramesh Devnani had made an application being No.246/2005 before the Court below seeking appointment of the arbitrator for resolving the disputes as mentioned therein, under Section 11 of the said Act. The Court below vide the order dated 2nd September, 2005 appointed the sole arbitrator Shri J.P. Bansal for resolving the disputes between the parties. The Court below *inter-alia* passed the following order:-

> **4. पत्रावली पर उपलब्ध प्रार्थनापत्र एवं जवाब प्रार्थनापत्र के तथ्यो से यह साफ जाहिर है कि पक्षकार के मध्य फर्म के विघटन एवं एकाउंट्स से संबधित विवाद है, जिसका निपटारा दोनों पक्ष एकल पंच के माध्यम से करवाना चाहता है । जिसकी नियुक्ति हेतु प्राथी ने मौजूदा आवेदन पेश किया है । जिस हेतु अप्राथिगण द्वारा अपनी सहमति जाहिर कि गई है । अतः पक्षकारन के मध्य उत्पन्न विवादो के निपटारे हेतु एकल पंच नियुक्त किया जाना उचित प्रतीत होता है ।**
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> **5. अतः पक्षकारन के मध्य उत्पन्न विवादो के निपटारे हेतु श्री जे. पी. बंसल, सेवनियुक्त आर. एच. जे.स. को एकल पंच नियुक्त किया जाता है । जो पक्षकारान को सुनवाई का उचित अवसर प्रदान करते हुए अपना अवार्ड 6 माह में पारित करे । चूकि पक्षकारान का यह कहना है कि मामला एकाउंट्स से संबधित है| अतः एकल पंच महोदय श्री राजेंद्र शर्मा, सी.ए. से एकाउंट्स संबधी राय लेने हेतु स्वतंत्र है ।**

4. The appellant-applicant-Ramesh Devnani submitted his statement of claims before the arbitrator to which the other three non-applicants i.e. Bhagwan Das Devnani, Mukesh Devnani and Jayant Devnani filed their common reply. The appellant-applicant-Ramesh Devnani also filed his rejoinder to the said reply. The arbitrator from the pleadings of the parties had framed as many as 12 issues, and both the parties had led their respective evidence before the arbitrator. It appears that during the course of the said proceedings, Shri Bhagwan Devnani expired on 25th November, 2005 and his heirs being Bhishm Devnani and Smt. Lata Devnani were brought on record, as Shri Jayant Devnani was already on record. It further appears that on 20th March, 2006, the arbitrator had passed the order for proceeding exparte against Mukesh Devnani, Bhishm Devnani and Smt. Lata Devnani, however, only Smt. Lata Devnani submitted an application for setting aside the said order. The arbitrator dismissed the said application vide the order dated 10th June, 2006, by observing that after the death of Bhagwan Devnani, notices were issued to his legal heirs including Smt. Lata Devnani, and that the Advocate Shri Radhey Shyam Sharma appearing for Smt. Lata Devnani and Bhishm Devnani had informed the arbitrator that his clients did not want to file

any separate pleadings, and wanted to adopt the reply filed by their predecessor in interest Shri Bhagwan Devnani. It was also observed that the said Advocate Shri Sharma had continued to attend the proceedings thereafter on 3rd March, 2006, and since he did not remain present on 20th March, 2006, exparte proceedings were drawn against them. The arbitrator thereafter passed the award dated 22nd June, 2006 granting following reliefs.

> "I pass the Final Award whereby I appoint Shri V.N. Saxena, Advocate, 4/480, Pradhan Marg, Malviya Nagar, Jaipur as Receiver who will act and operate as hereunder:-
> (i) That he will take possession of the land and building and fittings and fixtures appurtenant thereto and prepare an inventory thereof.
> (ii) That all the parties shall vacate the premises and hand over vacant possession of the land and building to the receiver within one month from the date of receipt of this award, failing which the receiver shall secure vacant possession with the help of the court.
> (iii) That having received vacant possession of land and all the property standing thereon the receiver shall sell it off by public auction and all the proceeds shall be deposited in the court of District Judge, Jaipur City, Jaipur.
> (iv) That out of the sale proceeds, the receiver shall pay off the taxes, if any, and Bank debts outstanding against the firm.
> (v) That the balance shall be distributed among the partners who shall get the money in direct proportion to their shares in the land. Sri Jayant Devnani, Smt. Lata Devnani and Shri Bhishm Devnani together in the capacity of legal representatives of deceased Bhagwan Devnani shall get money proportionate to his share in the land, that is 1326.33 sq. yards. Shri

> Ramesh Devnani shall get what corresponds to 1241.89 sq. yards and Mukesh Devnani in respect of 646 sq. yards.
> (vi) That until the receiver gets vacant possession of the premises he will receive with effect from 1.4.1997 monthly rental of Rs.20,000/- from Smt. Lata Devnani and Sarva Shri Jayant Devnani and Bhsima Devnani for unauthorized use and occupation of the premises. This amount shall first be deducted from the amount which they shall finally get from the sale proceeds of the firm properties. The amount so collected shall then be distributed among the stakeholders in the manner specified in para (v) above.
> (vii) That the receiver shall get as his remuneration one percent of the total sale proceeds of the firm properties in addition to official /routine expenses. He shall take all steps necessary to give effect to this award.
> (viii) That the applicant shall get Rs.1,00,000/- as costs from the contesting non-applicants".

5. Being aggrieved by the said award, the three objection applications being No. 325 of 2006, 563 of 2006 and 569 of 2006 came to be filed by the applicants Smt. Lata Devnani, Shri Jayant Devnani and Shri Bhishm Devnani respectively, under Section 34 of the said Act before the Court below. All the three applications came to be allowed by the Court below by setting aside the award in question made by the sole arbitrator, vide the common order dated 22nd June, 2006. Being aggrieved by the said common order passed by the Court below, these six appeals have been preferred by the appellants Shri Ramesh Devnani and Shri Mukesh Devnani, as stated here-in-above.

6. The learned counsel Mr. J.M. Saxena appearing for the appellant Ramesh Devnani, and the learned counsel Mr. R.D. Rastogi appearing for the appellant Mukesh Devnani had made their respective oral submissions, and also submitted the written arguments, relying upon various decisions of the Apex Court. The crux of their arguments is that the Court below had committed an error in setting aside the speaking award made by the arbitrator, mainly on the ground that Smt. Lata Devnani was not given sufficient opportunity of hearing by the arbitrator, and on the ground that the award made by the arbitrator was beyond the terms of reference, and was against the public policy of India. According to the counsels, the arbitrator had passed the order dated 10th June, 2006 rejecting the application of Smt. Lata Devnani for setting aside the earlier order to proceed exparte against her, as the counsel appearing for her and Shri Bhishm Devnani had informed the arbitrator that his clients did not want to file any separate pleadings, and wanted to adopt the reply filed by their predecessor i.e. Bhagwan Devnani. The counsels also submitted that even otherwise the said order dated 10th June, 2006 passed by the arbitrator had remained unchallenged at the instance of Smt. Lata Devnani, and therefore the Court below could not have set aside the

award on the ground that Smt. Lata Devnani was not given sufficient opportunity of hearing. Relying on the various documents on record, and on the decisions of the Apex Court, they submitted that the parties were free to make their claims supported by the documents, and to amend or supplement their claims and differences before the arbitrator, and that the expression "terms of reference" could not be said to be limited to the order passed by the Court below appointing the arbitrator. They further submitted that from the pleadings of the parties, it clearly emerged that the disputes had arisen in respect of the properties of the partnership firm M.C.T.I. and the said disputes had to be settled by the arbitrator in the light of the partnership deed dated 16th November, 1992, and the declaration dated 15th September, 1993. According to them, the arbitrator having decided the disputes on the basis of the pleadings, and evidence led by the respective parties, it could not be said that the arbitrator had travelled beyond the terms of reference. They also submitted that from the pleadings and evidence of the parties, it was sought to be established that the M.C.T.I. was established using the funds of the other firms like Maharaja Taxtile Printers, Maharaja Saries and Peugot, and therefore the arbitrator had dealt

with the issue of the creation of the said firms, which could not be said to be passing of the award beyond the terms of reference. The counsels have relied upon the decisions of the Apex Court on the interpretation of Section 34(2) of the said Act to submit as to under what circumstances, the award of the arbitrator could be set aside. The said judgments shall be dealt hereinafter as and when found necessary.

7. The learned senior counsel Mr.R.K. Agarwal and the learned counsel Mr. R.K. Daga appearing for the respondents, however, submitted that the arbitrator had not only travelled beyond the scope of reference, but had given directions in the award without any authority of law by appointing one Advocate Shri V.N. Saxena as the receiver and directing the concerned respondents to vacate the premises, and hand over the possession of land and buildings to the receiver, and further directing the receiver to sell off the said properties by public auction. According to them, the arbitrator had committed an error apparent on the face of record in not deciding the issues for which the reference was made, and in not awarding any share to Shri Jayant Devnani, who was admittedly the partner of the firm M.C.T.I. The counsels had also referred to the various notices, and the

statement of claim made by the appellant Ramesh Devnani to show that the Maharaja Saries and other firms were not the family firms, and that the reference was made to the arbitrator only in respect of the disputes pertaining to the dissolution and the accounts of the M.C.T.I. In short the learned counsel for the respondents have supported the order passed by the Court below, setting aside the award made by the arbitrator.

8. The moot question that arises before this Court is, whether the Court below was justified in setting aside the award made by the sole arbitrator, on the ground that the case was covered under the provisions contained in Section 34(2)(a)(iii) as the respondent Lata Devnani was not given opportunity to represent her case, and under Section 34(2)(a)(iv) as the arbitrator had travelled beyond the terms of reference, and on the ground that the award was in conflict with the Public Policy of India. So far as the question of not giving opportunity to the respondent Smt. Lata Devnani is concerned, it transpires from the order dated 10th June, 2006 passed by the arbitrator that on 2nd February, 2006, the concerned counsel appearing for Smt. Lata Devnani had conveyed the arbitrator that his clients did not want to file any separate pleadings, and wanted to adopt the reply put in

by their predecessor in interest Shri Bhagwan Devnani. It also appears that thereafter the said counsel Mr. Sharma had appeared on 3rd March, 2006, but did not appear on the next date i.e. 20th March, 2006, and therefore the arbitrator had closed the evidence of the respondent Shri Jayant Devnani and proceeded further with the hearing of arguments. It is pertinent to note that Shri Jayant Devnani was being represented through a lawyer. Apart from the fact that he was party to the arbitration proceedings, he was also one of the legal heirs of the deceased Bhagwan Devnani. The same Advocate, who was representing Smt. Lata Devnani and Bhishm Devnani in the arbitration proceedings was also representing Shri Jayant Devnani. When the Advocate appearing for Smt. Lata Devnani having already stated before the arbitrator that his client did not want to file any further pleading and wanted to adopt the pleadings filed by Shri Bhagwan Devnani, and when the evidence of Shri Bhagwan Devnani was already recorded prior to his death, it could not be said that the arbitrator had not given sufficient opportunity to Smt. Lata Devnani and Shri Bhishm Devnani to present their case. The award could be set aside under Section 34(2)(a)(iii) of the said Act, only when the party making application was not given proper notice of the

appointment of the arbitrator or of the arbitral proceedings, or was otherwise unable to present his case. Such was not the case in case of Smt. Lata Devnani. The Court, therefore, does not agree with the finding recorded by the Court below that the award was liable to be set aside under Section 34(2)(a)(iii) of the said Act on the ground that Smt. Lata Devanani was not given sufficient opportunity to present her case.

9. Now, let us examine whether the award in question was liable to be set aside under Section 34(2)(a)(iv) of the Act on the ground that the arbitrator had travelled beyond the scope of reference or was liable to be set aside under Section 34(2)(b) on the ground that it was in conflict with the Public Policy.

10. It is settled legal position that if the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to the arbitration, or it contains decisions on matters beyond the scope of the submission to the arbitration, such an award could be set aside under Section 34(2)(a)(iv) of the said Act. The Apex Court in case of **Food Crop. of India vs. Chandu Construction, (2007) 4 SCC 697** had observed that the arbitrator being a creature of the agreement between the parties, has to operate within the four corners of the

agreement. It was also observed in case of **Bharat Coking Coal Ltd. vs. Annapurna Construction, (2003) 8 SCC 154** that the arbitrator can not act arbitrarily, irrationally, capriciously or independent of the contract. The Apex Court in case of **ONGC Ltd. vs. Saw Pipes Ltd., (2003) 5 SCC 705** had considered the issue as to when the award could be set aside on the ground of being opposed to the public policy, and it was laid down as under :-

> 31. Therefore, in our view, the phrase 'Public Policy of India' used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term 'public policy' in Renusagar case it is required to be held that the award could be set aside if it is patently illegal. The result would be - award could be set aside if it is contrary to: -
>
> (a) fundamental policy of Indian law; or
>
> (b) the interest of India; or
>
> (c) justice or morality, or
>
> (d) in addition, if it is patently illegal.
>
> Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of

the Court. Such award is opposed to public policy and is required to be adjudged void."

11. Subsequently, the Apex Court had an occasion to deal with the issue as to under what circumstances, and on what grounds the award could be set aside under Section 34(2) of the said Act, in case of **Delhi Development Authority vs. R.s. Sharma and Company, New Delhi, (2008) 13 SCC 80**, wherein the Apex Court had deduced the principles for interference with an arbitral award by holding, as under:-

"From the above decisions, the following principles emerge:

(a) An Award, which is

(i) contrary to substantive provisions of law; or

(ii) the provisions of the Arbitration and Conciliation Act, 1996;

or

(iii) against the terms of the respective contract; or

(iv) patently illegal, or

(v) prejudicial to the rights of the parties;

is open to interference by the Court under Section 34(2) of the Act.

(b) Award could be set aside if it is contrary to:

(a) fundamental policy of Indian Law; or

(b) the interest of India; or

(c) justice or morality;

(c) The Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.

(d) It is open to the Court to consider whether the Award is against the specific terms of contract and if so, interfere with it on the

> ground that it is patently illegal and opposed to the public policy of India."

12. In the light of the aforestated settled legal position,if the facts of the present case are appreciated, it appears that as per Clause 15 of the partnership deed dated 16th November, 1992, the partners of M.C.T.I., namely, Bhagwan Devnani, Ramesh Devnani, Mukesh Devnani and Jayant Devnani had agreed to divide the net profit of the firm in equal shares i.e. 25% each, and had further agreed that in case of any dispute or differences amongst the partners, the same shall be referred to the arbitrator under the Indian Arbitration Act. It is not disputed that as per the subsequent declaration dated 15th September, 1993, the partners Bhagwan Devnani, Ramesh Devnani and Mukesh Devnani had agreed to allow free use of their respective lands along with built up apartments thereon for the purpose of the business of the firm. It was also stated in the said declaration that the said firm shall not have the right to sell or dispose of the said lands or any portion thereof without the consent of the partners, but the firm shall have right to mortgage the said lands, and the apartments built thereon by way of equitable mortgage. It appears that since the disputes between the partners had arisen, the partner Ramesh Devnani had given legal notice dated 18th May, 2002, calling upon the other

partners i.e. Bhagwan Devnani , Jayant Devnani and Mukesh Devnani to appoint the arbitrator to resolve the disputes under Section 11 of the said Act. In the said notice, the disputes were raised with regard to the accounts of the firm M.C.T.I. on the ground that the other partners were not allowing Shri Ramesh Devnani to have access into the accounts, and to participate in the affairs of the business of the firm. The said Ramesh Devnani again gave notice dated 2nd June, 2005 to the other two partners calling upon them to given consent to refer the disputes to the Advocate Shri Kailash Nath Bhatt, and in the said notice also, he had referred to the dispute with regard to the M.C.T.I. The said Ramesh Devnani again gave notice on 10th June, 2005 to the other three partners calling upon them to hand over the land of his ownership being used for the purpose of business of the M.C.T.I. It is significant to note that in the application filed by the said Mr. Ramesh Devnani before the Court below seeking appointment of arbitrator under Section 11 of the said Act also, the disputes sought to be referred to the arbitrator were regarding the dissolution and accounts of the firm M.C.T.I. The deceased Bhagwan Devnani in his reply to the said application had also agreed to refer the disputes with regard to the accounts of the firm M.C.T.I. to the

arbitrator. The Court below had accordingly passed the order dated 2nd September, 2005 for referring the said disputes to the sole arbitrator. The relevant part of the said order is already reproduced hereinabove. Under the circumstances, it clearly transpires that what was intended by the parties, and what was referred to the arbitrator by the Court below were the disputes with regard to the dissolution and the accounts of the partnership firm M.C.T.I. Only. It is also required to be noted that for referring the disputes to the arbitrator, the Clause 15 of the partnership deed dated 16/11/1992, which pertained to the firm M.C.T.I. was pressed into service. The arbitrator, therefore, was required to decide the dispute as to when the said partnership firm M.C.T.I. stood dissolved and the dispute about the accounts of the said firm. However, the arbitrator travelling beyond the terms of reference and the terms of agreement had sought to decide as to whether the Maharaja Saries, Majaraja Textile Printers and Peugot were family business firms or not, without deciding the real disputes in respect of the firm MCTI, referred to him.

13. As transpiring from the award itself, though the specific issues were framed from the pleadings of the parties, the arbitrator clubbed the issue Nos.1, 4, 5, 6, 9 and

11, and again raised other five points. The arbitrator held in para 10 of the award that the firms-Maharaja Textile Printers, Maharaja Saries, Peugot and M.C.T.I. were family firms, though no such issue was referred to nor framed in the proceedings. The arbitrator did not decide issue Nos.2, 3 and 12 specifically. While deciding issue Nos.7 and 10, the arbitrator held that the firm M.C.T.I. had stood dissolved with effect from 12/01/2003, and while dealing issue No.8, the arbitrator appointed the receiver and issued various directions without any authority of law. It is needless to say that the award being executable as decree, it is the concerned Court only which could execute the award by giving necessary directions in accordance with law, and that the arbitrator had no authority to appoint the receiver and execute the award by giving the directions as contained in the impugned award. Such an award made by the arbitrator is exfacie arbitrary, perverse, illegal and therefore liable to be set aside.

14. At this juncture, it is pertinent to note that in the statement of claims made by the appellant-applicant Shri Ramesh Devnani before the arbitrator, it was stated *inter-alia* that the said applicant and Shri Bhagwan Das Devnani and Mukesh Devnani had totally purchased ten plots from

their own respective personal income, and the building 'Maharaja House' was constructed from the income of the firm M.C.T.I. It was also stated that the respective plots purchased by the applicant and the other partners i.e. the non-applicant Nos.1 and 2 from their own income were to be freely used for the promotion of the business of the firm M.C.T.I. as per the declaration dated 15th September, 1993. Even in the rejoinder to the reply filed by the non-applicants, the appellant-applicant Shri Ramesh Devnani had specifically stated in para No.4 thereof that the firm M/s. Maharaja Saries was never the firm of joint family, and that he had 30% share in the said firm M/s.Maharaja Saries, and that the income of the partners of M/s. Maharaja Saries was also accordingly shown separately in the income tax returns and not shown as the income of HUF firm. It also appears that in the reply to the application filed by the non-applicants under Order XI Rule 14 of CPC, the appellant-applicant Ramesh Devnani had stated that the properties of the applicant had nothing to do with the partnership firm M.C.T.I. and only the dispute with regard to the dissolution of the firm was referred to the arbitrator, and that the arbitrator could not decide any dispute, which was not the subject matter of the firm. Thus, even as per the case of the

appellant- Ramesh Devnani, the parties had never intended to refer the disputes as to whether the Maharaja Saries and other firms were family firms or not or whether the M.C.T.I. was created out of the fund of other firms or not. The only dispute, which was referred to the arbitrator, was with regard to the dissolution and accounts of the M.C.T.I. firm.

15. Though, it is true that in the statement of claims, the appellant-Ramesh Devnani had sought for the relief seeking possession of the land belonging to him, which was given to the firm free of cost for using the same for the business of the firm, the said dispute having not been referred to the arbitrator by the court below, the arbitrator could not have decided the same. It is also pertinent to note that the non-claimants in their reply to the said claim made by the applicant had raised the issue of jurisdiction of the arbitrator to grant such relief, and the arbitrator had also framed the issue No.11 as to whether the arbitrator had the jurisdiction to grant relief of possession to the applicant or not, however, the arbitrator did not decide the said issue of jurisdiction and straight-away directed the non-applicants to hand over possession of the lands to the receiver appointed by the arbitrator. It is also significant to note that the arbitrator did not decide the issue about the accounts of the

firm, though specifically referred to him, and passed the award without deciding about the shares of each partner in the profits of the said firm. It is also pertinent to note that though the non-applicant Shri Jayant Devnani had equal share in the profits of the firm M.C.T.I. along with the other three partners, his share has not been recognized and has been totally discarded by the arbitrator.

16. It is further interesting to note that the arbitrator, while passing the impugned award, had directed the non-applicants to vacate the premises, and to hand over the vacant possession of the plots and buildings to the receiver, though admittedly as per the declaration dated 15th September, 1993, the said plots did not belong to the firm, and they belonged to the respective parties, namely, Shri Bhagwan Devnani, Ramesh Devnani and Mukesh Devnani, who had permitted their respective plots to be used only for the business purposes of the firm. When the said plots of land were not the properties of the firm M.C.T.I., there was no question of arbitrator directing the parties to hand over the possession of the said land and other properties standing thereon to the receiver, and further directing the receiver to sell off the same by public auction. By recording such findings on the issues not referred to him, and issuing the

directions without any authority of law, the arbitrator had indeed travelled beyond the scope of reference, rendering the award liable to be set aside under Section 34(2)(a)(iv) of the said Act. Such an award, which is patently illegal and prejudicial to the rights of the parties and to the administration of justice, could certainly be termed as the award in conflict with the Public Policy of India, and therefore also the same is liable to be set aside.

17. It was lastly submitted by the learned counsels for the appellants that the case be remanded to the arbitrator for determining the issues not decided by him in view of the provisions contained in Section 34(4) of the said Act. The counsels have relied upon the decision of the Apex Court in case of **Som Datt Builders Limited vs. State of Kerala, (2009) 10 SCC 259** in support of their submissions. Now, if the provision of Section 34(4) is considered, it appears that such provision could be invoked before the Court where the application under sub-section (1) of Section 34 is made and when the party requests the Court to adjourn the proceedings in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award. In

the instant case, apart from the fact that no such application was made by either of the parties before the Court below, there is no question of giving the arbitral tribunal an opportunity to resume the arbitral proceedings or to take any other action to enable the tribunal to eliminate the ground for setting aside the arbitral award. As discussed hereinabove, the Court has found that the arbitrator had not dealt with the disputes as contemplated by and falling within the terms of the reference, and had decided the matters beyond the scope of the submission to the arbitration. The entire award therefore is liable to be set aside in toto. In case of *Som Datt Builders Limited vs. State of Kerala (supra)*, the award was remitted to the arbitral tribunal for recording the reasons in support of the award, as the arbitral tribunal had not assigned any reasons. In the instant case, the arbitrator having passed detailed award with reasons, there is no need to grant him any opportunity to record the reasons by remanding the case. It is held by the Apex Court in case of **Mcdeormott International Inc. vs. Burn Standard Co. Ltd. & Anr., (2006) 11 SCC 181**, that the Court cannot correct the errors of the arbitrator. The Court can only quash the award leaving the parties free to begin the arbitration again, if it is so desired.

18. In that view of the matter, the award in question made by the arbitrator, being liable to be set aside under Section 34(2)(a)(iv) and Section 34(2)(b)(ii) of the said Act, the Court below had rightly set aside the same. However, it is observed that since the arbitrator has not decided the disputes, which were specifically referred to him, in respect of the dissolution and accounts of the firm M.C.T.I., it will be open for the parties to initiate fresh proceedings as may be advised to resolve their disputes.

19. The appeals are accordingly dismissed. Registry is directed to place a copy of this order in each connected file.

(Bela M. Trivedi) J.

Sanjay Solanki
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